IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY T. LEE, et al.,	)	
	)	
Plaintiffs,	)	
and	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor	)	
and Amicus Curiae,	)	
	)	
NATIONAL EDUCATION ASSOCIATION,	)	
Plaintiff-Intervenor,	)	Civ. No. 70-251-S
	)	
vs.	)	CLAY COUNTY BOARD
	)	OF EDUCATION
MACON COUNTY BOARD	)	
OF EDUCATION, et al.,	)	
	)	
Defendants.	)	
	)	

RESPONSE OF UNITED STATES IN OPPOSITION TO THE MOTION TO INTERVENE FOR THE PURPOSE OF SUBSTITUTING CLASS REPRESENTATIVE AND CLASS COUNSEL IN THE LEE CLASS; OR IN THE ALTERNATIVE, A MOTION TO INTERVENE FOR THE PURPOSE OF DECERTIFYING THE LEE CLASS, OR CREATING SUBCLASSES OF AFRICAN-AMERICAN STUDENTS, AND PARENTS AND TAXPAYERS WHO EITHER ATTEND, OR WHOSE STUDENTS ATTEND BIBB GRAVES K-12 PUBLIC SCHOOL OPERATED BY THE CLAY COUNTY PUBLIC SCHOOL SYSTEM

For the second time in the past year, a group of black Clay County residents have moved to intervene in this desegregation case to oppose the closure of Bibb Graves School. This Court denied the prior motion to intervene and should likewise deny this recycled motion. As explained more fully below, the proposed intervenors are precluded from seeking intervention for

a second time and, in any event, have failed to satisfy the legal requirements for either intervention of right or permissive intervention because their interest in a desegregated school system is adequately represented by the existing parties.[1]

PROCEDURAL AND FACTUAL BACKGROUND

This action is part of the state-wide school desegregation litigation styled as Lee v. Macon County Board of Education, initiated in 1963. On July 3, 1963, the United States was added as a Plaintiff-Intervenor and as amicus curiae "in order that the public interest in the administration of justice would be represented." Lee v. Macon County Bd. of Educ, 267 F. Supp. 458, 460 (M.D. Ala. 1967), aff'd sub nom., Wallace v. United States, 389 U.S. 215 (1967). On July 11, 1974, this Court entered an Order applicable to seven school systems, including Clay County, from among the defendants in Lee v. Macon County Board of Education. This Order dissolved the detailed regulatory injunction in place at the time, and replaced it with a permanent injunction addressing, inter alia, student assignment, faculty and staff assignment, transportation, school construction and consolidation, and transfers. The Court also placed this case on its inactive docket, subject to reactivation "on proper application by any party."

The Board sought to reactivate this case on June 26, 2000, by filing a petition seeking approval for continued transfers of students into Clay County from Talladega and Randolph Counties. The United States opposed the petition, and the United States and private plaintiffs

[1] Although there is a general rule in favor of holding evidentiary hearings for intervention motions filed by parents in a school desegregation case, see Adams v. Baldwin County Bd. of Educ., 628 F.2d 895, 897 (5th Cir. 1980), the Eleventh Circuit has held that district courts may deny such a motion to intervene without a hearing when "it is more than clear that [the proposed intervenors] are not entitled to intervene." Bradley v. Pinellas County Sch. Bd., 961 F.2d 1554, 1556 (11th Cir. 1992) (citation and internal quotations omitted). The United States believes this Motion to Intervene should be denied without a hearing consistent with Bradley.

(collectively, "plaintiff parties") sought additional information. On July 21, 2000, this Court granted the Board's petition for the 2000-01 school year, but denied the petition for future years.

On May 17, 2002, the Board informed the United States that it had recently voted to close Bibb Graves School, a 29% black K-12 school, for budgetary reasons before the 2002-03 school year.[2] During subsequent conversations concerning the impact of the Board's decision on desegregation, the Board informed the plaintiff parties that for budgetary reasons, the Board needed to close at least one school in the district, and that closing one, or both, of its K-12 schools (Bibb Graves and Mellow Valley) would provide the greatest financial benefit to the district. The plaintiff parties engaged in an extensive evaluation of the Board's closure and consolidation plan, including review of the Board's responses to the United States' information requests, interviews with district staff and select Board members, tours of the relevant school facilities, tours of bus routes, and detailed discussions with the Board's counsel.

On June 7, 2002, a group of Bibb Graves parents moved to intervene in this case to object to the proposed closure of Bibb Graves.[3] The United States, the private plaintiffs, and the Board

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[2]During the 2002-03 school year, the Board is operating six schools with a total enrollment of 2339 students, 22% of whom are black and 76% of whom are white:

- Mellow Valley School (K-12 399 students 0% black, 99% white)
- Bibb Graves School (K-12 341 students 29% black, 71% white)
- Ashland Elementary School (K-6 394 students 17% black, 79% white)
- Clay County High School (7-12 320 students 21% black, 77% white)
- Lineville Elementary School (K-6 480 students 32% black, 65% white)
- Lineville High School (7-12 405 students 32% black, 67% white)

[3] The named plaintiffs were Danny Morris, Tamra Morris, Robert Ware, Pat Ware, Jerry Culp, Stephanie Smith, Lamarcus Jones, Lillian Phillips, and Dot Edmonson. The caption of the their pleadings listed these names followed by "et al." In telephone conversations, counsel for the proposed intervenors stated that they represent all of the parents of students at Bibb Graves School. Robert Ware, Pat Ware, Lamarcus Jones, and Lillian Phillips are once again named

opposed the proposed intervention. This Court denied their motion to intervene on July 17, 2002.

On July 23, 2002, the Board voted unanimously to close both Bibb Graves and Mellow Valley at the end of the 2002-03 school year. After a careful review of the Board's decision and extensive negotiations, the United States, private plaintiffs, the Board and Defendant Alabama State Board of Education drafted a consent decree that provided for the closure of the two schools.[4] At the request of the Board, the parties agreed not to finalize the consent decree until county residents voted on a November 2, 2002 referendum to increase taxes, which was apparently proposed to help keep Bibb Graves and Mellow Valley open. Although the referendum ultimately failed, the Board by that time had learned that the projected budget deficits, which prompted the Board's original decision to close Bibb Graves, were no longer accurate and the school district was in fact expecting to end the 2002-03 school year with a surplus. See Letter from Sweeney to Rho of 10/14/02 (attached as Exhibit 2).

Notwithstanding this revised forecast, the Board, on January 17, 2003, affirmed its July 23, 2002 decision, again voted to close the schools, and authorized its counsel to sign the proposed consent decree on the Board's behalf before filing it with this Court. The Board, the

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plaintiffs in the pending Motion to Intervene.

[4]The Board projects that after implementing the consent decree, the student enrollment at the district's schools will be:

- Ashland Elementary School (K-6 569 students 17% black, 81% white)
- Clay County High School (7-12 567 students 19% black, 79% white)
- Lineville Elementary School (K-6 504 students 26% black, 71% white)
- Lineville High School (7-12 516 students 26% black, 71% white)

See Letter from Miller to Rho of 1/17/03 (attached as Exhibit 1).

United States and the private plaintiffs all signed the consent decree. While the parties waited for the consent of the Alabama State Board of Education, a member of the Board who had voted for the consent decree resigned and the Board appointed a replacement. On February 26, 2003, with the consent of all the parties, the Joint Motion for Approval of Consent Decree ("Joint Motion") was filed.

On the next day, despite having given its consent, granted authority to counsel to sign on its behalf, and jointly filed the consent decree, the Board voted 3-2 to rescind its consent. The Board thereafter filed a Motion to Reject Proposed Consent Decree ("Motion to Reject") on March 10, 2003. Both the Joint Motion and the Motion to Reject are pending before this Court.

On March 5, 2003, proposed intervenors filed this Motion to Intervene, as well as a Complaint for Declaratory and Injunctive Relief ("Complaint") and a Motion to Dismiss and Objection to Consent. The Motion to Intervene seeks intervention of right under Federal Rule of Civil Procedure 24(a), or in the alternative, permissive intervention under Rule 24(b). The proposed intervenors "claim an interest relating to the closing of Bibb Graves School" (Mot. to Intervene ¶ 3) and are seeking to intervene as plaintiffs "for the purpose of objection to any alleged consent Order and for the purpose of moving to dismiss the motion to approve any consent Order as granted" (id. ¶ 5).

The proposed intervenors allege, inter alia, that the Board's February 27 vote to rescind its consent was an effective withdrawal of consent from the Joint Motion (id.); the consent decree was the product of a false impression that the district faced a budget deficit and was actually motivated by racism and the Board's desire to increase Clay County High School's athletic classification from 1A to 2A (id. ¶¶ 6, 22, 23); closing Bibb Graves will place an unequal burden

on black students in terms of extended travel and reductions in extracurricular, athletic, and scholarship opportunities (id. ¶¶ 10-13); Bibb Graves students will be moved closer to a potential safety hazard in the event of a chemical disaster at the nearby U.S. Army Depot (id. ¶ 14); and the Consent Decree ignores the proposed intervenors' "rights in attending an integrated school at a close proximity to their homes and to participate in athletics and other extracurricular activities in a small, neighborhood school" (id. ¶ 22). The Motion to Intervene alleges in addition that closing Mellow Valley would violate Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq., and the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. (Mot. to Intervene ¶ 24.)

ARGUMENT

I. The proposed intervenors cannot intervene because the law of the case is that they are not entitled to intervention.

The Motion to Intervene should be denied because this Court already denied intervention on July 17, 2002 to a similar group of proposed intervenors who raised similar objections to the proposed Bibb Graves closing.[5] This Court's earlier denial of intervention is the law of the case and should preclude proposed intervenors from attempting to intervene a second time for the same reasons. "[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case" unless the prior decision is

[5] The first group of proposed intervenors represented parents of black students at Bibb Graves. The current group represents those very same parents, as well as Bibb Graves' black students themselves. The two groups of proposed intervenors have identical interests to each other: opposing the school closing. Adding their children to the caption of the motion cannot hide the fact that the parents have already moved for and been denied intervention in this case. To the extent this Court treats the Motion to Intervene as the students' first motion, however, it should be denied as to them for the reasons discussed below. See infra Parts II and III.

"clearly erroneous or would work a manifest injustice." Arizona v. California, 460 U.S. 605, 618 & n.8 (1983).

Although the proposed intervenors have changed the title of their motion from the original "Motion to Intervene as Plaintiffs" to the current title, which casts the motion in terms of class action issues, the substance of the two motions is the same. The first intervention motion, filed on June 7, 2002, stated that intervention was sought because the "proposed closure of Bibb Graves High School perpetuates a dual system of education." (Mot. to Intervene as Pls. at 1.) The second intervention, filed on March 5, 2003, states that intervention is sought "because your Petitioners claim an interest relating to the closing of Bibb Graves School" (Mot. to Intervene ¶ 3) and "for the purpose of objection to any alleged consent Order and for the purpose of moving to dismiss the motion to approve any consent Order as granted" (id. ¶ 5). Although the current Motion to Intervene and Complaint address the adequacy of the private plaintiffs' representation, it is in the context of an argument for intervention under Rule 24, not an objection to the class representative or counsel under Rule 23.[6]

The proposed intervenors, denied intervention of right and permissive intervention last year, have filed a second Motion to Intervene in an attempt to do indirectly what this Court's July 17, 2002 Order prevented them from doing directly, namely intervene to oppose the closure of Bibb Graves. Cf. Hopwood v. Texas, 78 F.3d 932, 961 (5th Cir. 1996) (precluding, under law of the case doctrine, proposed intervenors from challenging a second time district court's denial of

[6] Indeed, the proposed intervenors also include allegations about the adequacy of the United States' representation in these discussions. The United States' role may be relevant to a Rule 24 argument for intervention, but it is irrelevant if the proposed intervenors were truly making a Rule 23 argument that the private plaintiffs' class representative or counsel should be replaced.

motion to intervene).

II. The proposed intervenors are not entitled to intervention of right.

Rule 24(a)(2) of the Federal Rules of Civil Procedure requires would-be intervenors to demonstrate that they meet each of the following requirements: (1) the application to intervene is timely; (2) the applicant has an interest in the subject matter of the underlying action; (3) the applicant is so situated that disposition of the action, as a practical matter, may impede or impair his or her ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties to the action. United States v. City of Miami, 278 F.3d 1174, 1178 (11th Cir. 2002). The applicant bears the burden of establishing each of these four elements. Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989).

Here, the proposed intervenors' application fails because they cannot show that their interest in furthering desegregation is inadequately represented by the existing parties, and because any other interest they may have in the closure of Bibb Graves School is not a valid basis for intervention.

A. *The existing parties adequately represent any cognizable interest the proposed intervenors may have.*

To the extent the proposed intervenors' interest in this action is to further desegregation, the United States, the private plaintiffs, and the Board share the identical interest and adequately represent it. Because the proposed intervenors cannot meet their burden of proving that their legally cognizable interests are not adequately represented, the Motion to Intervene should be denied.[7] E.g., City of Miami, 278 F.3d at 1178.

[7] Some of the proposed intervenors' interests are not legally cognizable in this desegregation lawsuit. See infra Part II.B.

Under Title IV of the Civil Rights Act of 1964, the United States is charged with representing the interests of public school children by challenging state-imposed segregation in education. See 42 U.S.C. § 2000c-6. As a result of this charge, insofar as the proposed intervenors seek to ensure desegregation of the school system, the United States necessarily shares the same ultimate objective. Similarly, the private plaintiffs in this case are a class comprised of black students and parents in the Clay County school system who seek desegregation of the school system.

There is a presumption "that a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention." United States v. Georgia, 19 F.3d 1388, 1394 (11th Cir. 1994); see also City of Miami, 278 F.3d at 1178-79. This presumption is "especially appropriate" where the United States is a party "because . . . the Government is charged by law with representing the interests of the absentee." United States v. S. Bend Cmty. Sch. Corp., 692 F.2d 623, 628 (7th Cir. 1982). Thus, "when the government is a party, the moving party must make a very compelling showing of inadequacy of representation." United States v. Coffee County Bd. of Educ., 134 F.R.D. 304, 310 (S.D. Ga. 1990).

The United States and private plaintiffs have carefully considered the proposed intervenors' concern that closing Bibb Graves may undermine desegregation. The United States requested and evaluated information from the Board regarding, inter alia, the Board's analysis of any effect the proposed closure may have on desegregation; current and proposed racial distribution of students in the county; current and proposed bus routes, including information regarding any disproportionate burden that may be borne by black students; the Board's student

assignment policies, including its "freedom of choice" policy; and the comparative course offerings at the Board's high schools. See Letters from Rho to Sweeney of 5/23/02, 5/28/02, 6/13/02 (Attached as Exhibits 3-5). Many of these areas mirror the concerns raised by the proposed intervenors. (Mot. to Intervene ¶¶ 6 ("freedom of choice" policy), 10 (student assignment), 17 (bus routes).) In addition, private plaintiffs counsel had telephone conversations with proposed intervenors' counsel and attended a meeting of Bibb Graves parents on June 25, 2002. The United States and private plaintiffs also met with the proposed intervenors and their counsel in Clay County on July 11, 2002.[8]

Based on a careful review of this information, the United States and private plaintiffs concluded that the Board's proposal to close Bibb Graves did not "perpetuate or re-establish the dual system." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 21 (1971); see Harris v. Crenshaw County Bd. of Educ., 968 F.2d 1090, 1094-95 (11th Cir. 1992); see also July 11, 1974 Order (specifying that "all school construction, consolidation, and site selection . . . shall be done in a manner which will prevent the reoccurrence of the dual structure."). With respect to student assignment, the Board's proposal will move Bibb Graves students from one desegregated school to other desegregated schools. If anything, the resulting consolidated schools in Ashland and Lineville will have student bodies that are slightly more representative of the overall district

[8] The proposed intervenors allege that the plaintiff parties and the Board have somehow colluded to deny the proposed intervenors' rights. (E.g., Mot. to Intervene ¶ 22; Compl. Declaratory Inj. Relief ¶ 20.) These conclusory allegations are insufficient to meet the proposed intervenors' burden to demonstrate inadequate representation for two reasons. First, the allegations concern standard and appropriate meetings between opposing counsel necessary to a negotiated settlement. Second, mere allegations, without any evidence, is insufficient. "Representation is adequate if no collusion is shown between the representative and an opposing party . . . ." United States v. Louisiana, 90 F.R.D. 358, 363 (E.D. La. 1981) (quoting Martin v. Kalvar Corp., 411 F.2d 552, 553 (5th Cir. 1969)) (emphasis added).

racial composition than is currently enrolled at Bibb Graves.[9]

With respect to transportation, extracurricular activities, and the other factors set forth in Green v. County School Board of New Kent County, 391 U.S. 430 (1968), the United States and private plaintiffs concluded that although there are certainly burdens associated with any school closing, the Board's plan to close Bibb Graves will distribute those burdens equitably across racial groups. See Arvizu v. Waco Indep. Sch. Dist., 495 F.2d 499, 504-05 (5th Cir. 1974) ("To comply with constitutional mandates, the burden of desegregation must be distributed equitably; the burden may not be placed on one racial group.").[10] Indeed, the overwhelming majority of students effected by the closings are white, and there is no reason to expect that black students will bear the consequences of closing Bibb Graves any more than their white classmates.

Ultimately, the Board's plan to close Bibb Graves is acceptable because it is neutral with respect to desegregation in the district. Under such circumstances, the Board should be free to decide how best to allocate its limited resources. See, e.g., Lee v. Geneva County Bd. of Educ., 892 F. Supp. 1387, 1396 (M.D. Ala. 1995) (noting that the "hard decision" whether to close a school "should be made by local school authorities, not by a federal court, unless the local

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[9] Bibb Graves is currently 29% black. The Board projects that the consolidated schools in Ashland and Lineville will be 18% and 26% black, respectively. Both will therefore be closer to the district's overall 22% black enrollment than Bibb Graves currently is. In addition, two other aspects of the proposed consent decree will have very strong desegregative impacts on the district's student assignment. First, closing the 99% white Mellow Valley will eliminate the only racially identifiable school in the district and help the remaining schools closely mirror the district's racial composition. Second, the consent decree ended the Board's "freedom of choice" policy to the extent that segregative transfers will no longer be allowed.

[10] In Bonner v. Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit rendered prior to the close of business on September 30, 1981.

decision serves to perpetuate or re-establish the racially segregated dual school system.").

Thus, the United States and private plaintiffs have actively sought to understand and to address the proposed intervenors' concerns. That we ultimately reached a different conclusion about whether the consolidation proposal comports with the Board's desegregation obligations neither renders our representation of their interest in desegregation inadequate nor entitles the proposed intervenors to intervene as a matter of right. See United States v. Perry County, 567 F.2d 277, 279-80 (5th Cir. 1978) (holding that interests of applicants were properly represented by school board and a bi-racial advisory committee even though applicants would have voted differently than board on issue of school construction); see also United States v. Louisiana, 90 F.R.D. 358, 363 (E.D. La. 1981) ("[The United States and proposed intervenors'] interests, while they may differ in detail at some point, have an overriding similarly; indeed they are identical. 'Interests may be different without being adverse.'" (citation omitted)).

B. ***Any interest in preventing the closure of Bibb Graves for reasons unrelated to desegregation is not legally cognizable in this action.***

To the extent the proposed intervenors are simply seeking to oppose the closing of Bibb Graves because it is their neighborhood school, or because of other reasons unrelated to desegregation, they are not entitled to intervene in this action. The Eleventh Circuit adheres to a "narrow reading" of the Rule 24 term "interest," requiring a "direct, substantial, legally protectable interest in the proceedings." Perry County, 567 F.2d at 279. In the context of a school desegregation case, the only interest parents may assert to justify intervention is an interest in a unitary system. Id. A motion for intervention must therefore identify "the ways in which the goal of a unitary system had allegedly been frustrated." Hines v. Rapides Parish Sch.

Bd., 479 F.2d 762, 765 (5th Cir. 1973).

Here, the proposed intervenors have asserted an interest "relating to the closing of Bibb Graves School." (Mot. to Intervene ¶ 3.) But they have failed to demonstrate how closing Bibb Graves will frustrate the goal of achieving a unitary system. The thrust of their asserted interest in opposing the Joint Motion is their asserted "rights in attending an integrated school at a close proximity to their homes and to participate in athletics and other extracurricular activities in a small, neighborhood school." (Id. ¶ 22.) These interests do not warrant intervention: "An interest in maintaining local community schools, without any showing that consolidation would hamper the avowed goal of eliminating the vestiges of past discrimination, fails to constitute a legally cognizable interest in a school desegregation case." United States v. Georgia, 19 F.3d at 1394; see also, e.g., Perry County, 567 F.2d at 279 ("In the context of public school desegregation, there are innumerable instances in which children, parents, and teachers may be deprived of various 'rights' (e.g., the 'right' to attend a neighborhood school) without having had the opportunity to participate directly in the judicial proceedings which divest them of those 'rights.'").

Like the group of parents who were denied intervention in Perry County, the proposed intervenors "oppose the [decision] on various policy grounds, which, though important, are unrelated to desegregation and the establishment of a unitary school system." 567 F.2d at 279-80. For example, proposed intervenors allege that Bibb Graves athletes may face greater competition at the consolidated schools (Mot. to Intervene ¶¶ 10, 19); special education students will have to move to new schools that may not meet their needs as well (id. ¶ 18); and students in general will be moved closer to a potential safety hazard in the event of a chemical disaster at the

nearby U.S. Army Depot (id. ¶ 14). Although these asserted interests are undoubtedly important to the proposed intervenors, they are, like the interest in maintaining a neighborhood school, merely policy objections that are unrelated to desegregation and therefore unavailing to their argument for intervention. Perry County, 567 F.2d at 279-80. Simply put, the proposed intervenors "are not entitled to intervention of right simply because they would have voted differently had they been members of [the Board]." Id. at 280 (citing Jones v. Caddo Parish Sch. Bd., 487 F.2d 1275, 1277 (5th Cir. 1973)).[11]

Finally, to the extent the proposed intervenors are seeking to resolve solely the concerns of the parents at Bibb Graves, rather than seeking to advance desegregation of the school system as a whole, their interest cannot justify intervention. See Bradley v. Pinellas County Sch. Bd., 165 F.R.D. 676, 680 n.4 (M.D. Fla. 1994) ("The intervenor must seek to enforce desegregation of the school system as a whole rather than to protect individual interests or to object to discrete issues of school policy.").

III. The proposed intervenors should not be permitted to intervene permissively.

An applicant for intervention may be permitted to intervene when a timely motion is made, and "an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b)(2). In considering whether to permit intervention, courts are to consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of

[11] The proposed intervenors also claim they have "a direct, substantial, legal [sic] protectable interest in intervening because their interests are not protected by either of the present parties." (Mot. to Intervene ¶ 4.) This argument provides no support for the Motion to Intervene because it merely conflates two separate intervention requirements. The proposed intervenors must prove both that they have a cognizable interest in this litigation and that their interest is not adequately represented by the parties.

the original parties." Id. Whether to allow permissive intervention is entirely within the discretion of the court; thus, courts may deny permissive intervention even when the timeliness and commonality requirements are met. E.g., Sunbelt Veterinary Supply, Inc. v. Int'l Bus. Sys. United States, Inc., 200 F.R.D. 463, 466 (M.D. Ala. 2001). Moreover, it is well-settled that in school desegregation cases, a court may deny intervention where the "parties in the original action [are] aware of [the issues proposed intervenors seek to present] and are completely competent to represent the interests of the new group." Hines, 479 F.2d at 765. As with intervention of right, "[t]he parental interest that justifies permissive intervention is an interest in a desegregated school system." Pate v. Dade County Sch. Bd., 588 F.2d 501, 503 (5th Cir. 1979).

Here, the proposed intervenors have not demonstrated that their legally cognizable interest in desegregation is not adequately represented by the existing parties. See supra Part II. Furthermore, the existing parties are completely aware of the issues raised by the proposed intervenors. Under such circumstances, permissive intervention should be denied. Hines, 479 F.2d at 765.

Given that any interest the proposed intervenors may have in furthering desegregation is fully represented by the United States and private plaintiffs, their entry in the case would serve only to burden and delay unnecessarily the implementation of the proposed consent decree. As this Court is well aware, the longer the parties wait before beginning the closure process, the less feasible it becomes to close the schools before the start of the 2003-04 school year, as the parties agreed. Cf. Coffee County, 134 F.R.D. at 310-11 (finding that where United States and school system were engaged in active and time-sensitive negotiations, permitting intervention would prejudice ongoing negotiations).

Finally, permitting this group of proposed intervenors to intervene would undermine the effective management of this case. The proposed intervenors have failed to explain why they, as opposed to any other group of interested students and parents, should be permitted to intervene when their desegregation-related interests are identical to those of the existing plaintiff parties in the case. Under the proposed intervenors' theory, any student or parent of a student raising school-related concerns, however remotely related to desegregation, could intervene. This is precisely the type of unmanageable situation courts have the authority to prevent through the discretion afforded in Rule 24(b).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the proposed intervenors' Motion to Intervene.

Respectfully submitted,

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Dated: April 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response to Motion to Intervene has been sent, by facsimile and first-class mail, postage paid, on this tenth day of April 2003, to the following counsel of record:

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