IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA, Plaintiff, and CHARLES RIDLEY, et al., Plaintiff-Intervenor, v. STATE OF GEORGIA *et al.,* (DUBLIN CITY SCHOOL DISTRICT) Defendants.	)	Civil Action No. 3009

UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO JOIN THE LAURENS COUNTY BOARD OF EDUCATION AS A DEFENDANT UNDER RULE 19(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE

The United States submits this memorandum of law in support of its Motion to Join the Laurens County Board of Education ("Laurens") as a Defendant Under Rule 19(a) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

On April 15, 2004, the United States filed its Motion to Enforce Orders of July 16, 1971 and May 19, 1978, for Issuance of Rule to Show Cause, and for Further Relief ("Motion to Enforce"). In the Motion to Enforce, the United States seeks, inter alia, an order enjoining Laurens from accepting transfers from the Dublin City School District ("Dublin") that contravene the July 16, 1971 Order ("1971 Order") and requiring Laurens to verify students' residences pursuant to the terms in the proposed order accompanying the Motion to Enforce so that Dublin

City residents cannot flout the 1971 Order by falsely claiming residence in Laurens's attendance zone. The United States seeks this relief because without it enforcement of the 1971 Order will be illusory. Due to Dublin's violations of the 1971 Order, an order requiring Dublin to comply with the Order by withholding student records from Laurens for violative transfers is warranted. Such an order, however, will provide incomplete relief because Laurens can continue to accept violative transfers without Dublin's consent and will accept copies of students' records from parents and guardians for purposes of enrolling transfer students. Joining Laurens as a defendant under Rule 19(a) of the Federal Rules of Civil Procedure is appropriate because this will enable the Court to provide complete relief regarding the transfer violations. Joining Laurens also will enable the parties to obtain information regarding the transfer violations from Laurens through discovery. As the Court noted in its Order of June 3, 2004, "it appears that Laurens has a strong interest in this litigation," Order of Jun. 3, 2004, at 1 n. 1, because the disposition of the United States' Motion to Enforce could affect Laurens's obligations regarding transfers and residency verification. For all of these reasons, this Court should join Laurens as a defendant.

I. Dublin's Violations of and Laurens's Knowing Interference with the 1971 Order

The United States incorporates by reference the procedural history and factual assertions in Parts II and III of its Memorandum in Support of its Motion to Enforce. See U.S. Mem. in Supp. of Mot. to Enforce at 3-10 ("U.S. Mem."). As explained in that Memorandum, Dublin is violating the inter-district transfer clause of its 1971 Order by allowing white students to transfer to the majority white district of Laurens in substantial excess of the Order's 5% limit. The inter-district transfer clause reads as follows:

Transfers to students in one district for attendance at public schools in another

> district shall be granted only on a non-discriminatory basis. In no event, shall more than 5% of the minority students be allowed to transfer to other districts where they are either in the majority or made a part of a larger minority percentage than in the district from which they have transferred, excluding those instances where all students of both races in a certain category are transferred by contract approved by the State School Board.

1971 Order at 3, § I(3) (U.S. Mem. Tab 3). The term "minority race" refers to the numerical minority in a school district for any one regular school year. Appendix to 1971 Order at 1, ¶ I (U.S. Mem. Tab 3). While black students were the numerical minority in Dublin in 1971, today white students are the numerical minority. See U.S. Mem. at 6. This change is of no consequence because the 1971 Order applied to minority white and minority black districts across Georgia and still serves the goal of furthering desegregation in Dublin. See id.

Dublin's court reports for the past seven years show that substantial numbers of transfers to Laurens have violated the Order: 108 in the 1997-98 school year; 205 in the 1998-99 year; 239 in the 1999-00 year; 260 in the 2000-01 year; 287 in the 2001-02 year; 107 in the 2002-03 year; and 113 in the 2003-04 year. See U.S. Mem. Tab 7. During that time period, Dublin's PK-12 white enrollment has decreased from 1,385 students in March 1997 to 763 in November 2003, and its total enrollment has changed from 36% white to 24% white. See id. Tab 8 at 1. The negative effect of the violative transfers has been especially stark in grades K to 8, where the number of whites has dropped by more than half from 853 to 422 between the 1996-97 year and the 2003-04 year. See id. Tab 8 at 1. The negative effect on desegregation is also evidenced by Dublin's use of racially segregative class assignment practices in grades K to 8 to stop white students from transferring out of Dublin. See id. at 17-25. Given the especially negative effect in grades K to 8, the United States asked this Court to enforce the Order by allowing only high

school transfers from Dublin to majority white districts up to the Order's 5% limit at least until such time as white enrollment in Dublin's middle and elementary schools increases to levels comparable to that of its high school. See id. at 7.

The relief sought against Dublin is needed to stop the violative transfers and the negative effect that they are having on desegregation in Dublin, but this relief will be incomplete. Even if the Court enforces the 1971 Order by allowing only high school transfers up to the 5 % limit and by prohibiting Dublin from transferring records for students whose transfers violate the Order, Laurens can and will continue to accept the transfers without Dublin's consent under Georgia law. See GA Code § 20-2-293(a). In addition, Laurens will accept copies of records from parents and guardians when enrolling transfer students and presently requires only an address that is in Laurens's zone to indicate residency. Due to these circumstances, granting relief against Dublin alone will not achieve full compliance with the Order and will not halt the negative effect that the transfers to Laurens are having on desegregation in Dublin. Laurens's knowing interference with the 1971 Order and its refusal to cease that interference demonstrate that complete relief requires joining Laurens as a defendant to this case, enjoining it from accepting violative transfers, and requiring it to conduct effective verification of students' residences.

II. This Court Should Join Laurens as a Defendant Under Rule 19(a)

In its Order of June 3, 2004, this Court "invite[d]" the United States to seek joinder of Laurens as a party to the case. Order of Jun. 3, 2004, at 1 n. 1. Although the United States maintains that the requested injunctive relief against Laurens may be granted pursuant to the All Writs Act, 28 U.S.C. § 1615(a), for the reasons given in its Memorandum in Support of its Motion to Enforce, see U.S. Mem. at 11-14, the United States accepts the Court's invitation to

move for joinder of Laurens because the requirements for joinder under Rule 19(a) of the Federal Rules of Civil Procedure are met. Rule 19(a) provides in pertinent part as follows:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

Fed. R. Civ. P. 19(a). Rule 19(a)(1) "stresses the desirability of joining those persons in whose absence the court would be obliged to grant partial or 'hollow' rather than complete relief to the parties before the court." Advisory Committee Notes to Fed. R. Civ. P. 19, 28 U.S.C. App., at 119.

Here, the United States has presented evidence of substantial and repeated violations of the 1971 Order by Dublin, but "complete relief cannot be accorded among those already parties" without joining Laurens for three reasons. Fed. R. Civ. P. 19(a). First, Laurens can and will continue to accept transfers that violate the Order because it does not need Dublin's consent. Second, even if Dublin refuses to transfer the records of violative transfer students, parents and guardians can obtain copies of the records and Laurens will accept copies for enrollment purposes. Third, Dublin residents will be able to defy the Order by feigning residence in Laurens's attendance zone unless this Court orders Laurens to verify the residences of new students, former Dublin residents, and former transfer students from Dublin as the proposed order requires. Thus, the relief for the inter-district transfer violations will be hollow and

incomplete unless Laurens is joined to the case, enjoined from accepting violative transfers, and ordered to verify students' residences.

In deciding whether to join a party, "a court should be guided by 'pragmatic concerns, especially the effect on the parties and the litigation.'" Wymbs v. Republican State Executive Comm. of Florida, 719 F.2d 1072, 1079 (11th Cir. 1983). In Wymbs, the lower court granted the plaintiff's request to have a state rule requiring the selection of three delegates from each congressional district declared unconstitutional. On appeal, the Eleventh Circuit found that "proper relief [could] not likely be accorded the current parties in this suit without the Republican National Committee's ["RNC"] presence" because the lower court's decision would have no effect on the RNC, which would remain free to continue enforcing a national rule that mandates three delegates per district. Id. at 1080. The Eleventh Circuit indicated that it could have determined the feasibility of joining the RNC as a defendant under Rule 19(a), but it declined to join the RNC due to the potential infringement on the RNC's first amendment rights and its conclusion that the controversy was non-justiciable. See id. These two obstacles are not present here, and the situation in Wymbs is otherwise analogous. If this Court orders Dublin to comply with the 1971 Order and enjoins it from transferring records to Laurens for violative transfer students, the order will have little to no effect on Laurens, which will remain free to enroll violative transfer students with copies of their records and without Dublin's consent.

The situation before this Court is also analogous to that in Focus on the Family v. Pinellas Suncoast Transit Authority, 344 F.3d 1263 (11th Cir. 2003), where complete relief could not be granted unless a private company was joined to the action as a defendant. In Focus on the Family, a private company named Eller had refused to place the plaintiff's advertisements on bus

shelters, and the plaintiff alleged that a provision of Eller's contract with the Pinellas Suncoast Transit Authority ("PSTA") violated the First Amendment. Id. at 1268-71. The plaintiff sued PTSA but did not sue Eller. The contract gave PTSA veto power over Eller's ability to run certain kinds of advertisements, id. at 1268, but did not give PTSA the power to require Eller to run a particular advertisement. Id. at 1280. The Eleventh Circuit held that Eller was a necessary party defendant under Rule 19(a) because "complete relief cannot be afforded in Eller's absence, as PSTA cannot require the running of a particular advertisement on its bus shelters." Id. at 1280. Likewise, since Dublin cannot require Laurens to stop taking transfer students that violate the 1971 Order, complete relief cannot be afforded in Laurens's absence.

If Laurens is not joined, the parties' ability to obtain necessary evidence regarding the inter-district transfer violations may also be limited. By filing a joint motion with Dublin for a scheduling conference and a scheduling order setting a period of discovery and a date certain for trial, Laurens has already subjected itself to the jurisdiction of this Court and implied that it will participate in discovery. See Joint Mot. for Scheduling Conference & Entry of Scheduling Order at 2. Joining Laurens, however, will ensure the parties' ability to obtain the information needed to address the transfer violations. This was also true in United States v. Lowndes County Bd. of Educ., where the lower court joined several school districts, two of which were not under court order like Laurens, in order to address inter-district transfer violations alleged by the United States. See 878 F.2d 1301, 1302 & n. 2 (11th Cir. 1989). After discovering a network of inter-district transfers that were violating the Singleton-type transfer clauses of the Lowndes school district and two other court-ordered districts, the United States moved to enforce the transfer clauses, to consolidate the cases of the other two districts, and to join several other school

districts. Id. at 1302. Over the school district's objections, the lower court joined six districts, including the two which were no longer under court order, as defendants "in order that discovery may be had in an effort to obtain complete information needed to adequately present pending matters to this court." Order of Jan. 20, 1988, at 1-2 (Ex. 1).

Unlike violations of a Singleton transfer clause which require quantitative proof that the transfers have changed the racial composition of a particular school and a qualitative determination that the transfers have "increased the racial identifiability of th[at] school," Lowndes, 878 F.2d at 1305, violations of Dublin's transfer clause require only proof that the 5% limit has been exceeded. Dublin's data showing high numbers of transfers in excess of the 5% limit, its failure to take steps to stop the transfers, and its facilitation of the transfers by sending student records to Laurens clearly establish violations of the 1971 Order. If, however, the Court seeks evidence regarding the precise adverse effect of the transfers to Laurens on each Dublin school, such data could be obtained through discovery provided Laurens is joined as a defendant. The data already show that the transfers to Laurens have caused a substantial drop in Dublin's white enrollment, particularly in grades K through 8, see U.S. Mem. Tab 8 at 1, and have increased the racial identifiability of the Dublin schools as "black schools." Lowndes, 878 F.2d at 1308.[1] The transfers to Laurens also have "undermine[d] desegregation efforts at the [Dublin

[1] As was true in Lowndes, the changes in white enrollment caused by the transfers to Laurens are "aggravat[ing] . . . popular perceptions of [the Dublin schools'] racial identity and [are] affect[ing] the decisionmaking process of white students considering where to attend school." 878 F.2d at 1306. And when schools are already predominantly one race, "the range of deviation" caused by transfers need not be as large to have a "qualitative segregative effect." Lee v. Eufaula City Bd. of Educ., 573 F.2d 229, 233 n. 9 (5th Cir. 1978) (noting that "a transfer program which has the effect of increasing the black student population in a particular school from 90% to 100% may be more suspect than a corresponding 10% increase from 50% to 60%").

middle and elementary] schools," id. at 1305, because Dublin is clustering white students in heterogeneous and ability grouped classes to prevent white students from transferring out of Dublin. See U.S. Mem. at 17-25.

Although the evidence needed to prove a transfer violation in Lowndes differs from that needed here, this Court, like the court in Lowndes, has sufficient evidence of transfer violations to justify joining Laurens under Rule 19(a). As explained above, Laurens must be joined as a defendant to ensure that the relief regarding the transfer violations is complete. This relief must enjoin Laurens from accepting violative transfers because Laurens has refused to cease its interference with the Order. This relief also must require Laurens to conduct meaningful residency verification so that Dublin residents cannot render the other relief hollow by merely producing an address that exists within Laurens's attendance zone. Considering that the United States has been unable to locate approximately 180 Dublin residents who used to be transfer students in Laurens, there is a strong basis for believing that Dublin residents are falsely claiming residence in Laurens to avoid paying Laurens's tuition, which was $992.00 per child in the 2002-03 year, or to avoid being sent back to Dublin if the 1971 Order is enforced. See U.S. Mem. at 10. Whatever their reason, Dublin residents must not be permitted to flout the 1971 Order or undermine the requested relief enjoining Dublin from transferring records and enjoining Laurens from accepting violative transfers.

Since Laurens appears to have an interest in retaining the transfer students from Dublin and in maintaining its minimal residency verification procedures, joinder under Rule 19(a)(2)(i) is also justified because the disposition of the United States' Motion to Enforce "may (i) as a practical matter impair or impede [Laurens's] ability to protect that interest." Fed. R. Civ. P.

19(a)(2)(i).

Conclusion

For all of the above reasons, the United States respectfully requests that this Court join Laurens County as a defendant to this case under Rule 19(a) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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DATED: June ___, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing United States' Motion to Join Laurens County Board of Education as a Defendant Under Rule 19(a) of the Federal Rules of Civil Procedure and Memorandum in Support were served on this ____ day of June, 2004, via first-class mail, postage prepaid, upon the following attorneys of record:

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