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 & LAURENS COUNTY SCHOOL DISTRICT), Defendants.	)	Civil Action No. 3009

UNITED STATES' OPPOSITION TO THE LAURENS COUNTY SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT

Defendant Laurens County School District ("Laurens") is not entitled to summary judgment with respect to the claims raised by the United States in its Motion for Further Relief against Laurens and its Supplemental Complaint against Laurens because genuine issues exist as to the material facts on which Laurens relies and Laurens's legal argument rests entirely on irrelevant case law. See Fed. R. Civ. P. 56(c); App. A ("Statement of Genuine Issues"). The genuine factual issues identified in Appendix A, however, do not pertain to the facts supporting the United States' Motions for Summary Judgment against Laurens and the Dublin City School District ("Dublin"). Thus, the issues in Appendix A do not preclude entering summary judgment against both districts.

Laurens's twenty-four page summary judgment memorandum can be distilled to one argument: Laurens cannot be enjoined from accepting transfers that violate the Order of July 16, 1971 ("1971 Order") because the United States has not proven that Laurens violated the

Constitution. Laurens Summ. J. Mem. at 2-3, 10-18, 20-23 (citing Milliken v. Bradley, 418 U.S. 717 (1974) and Lee v. Lee County Bd. of Educ., 639 F.2d 1243 (5th Cir. 1981)). This argument indicates a fundamental misunderstanding of the United States' motion as well as Milliken and Lee. Laurens offers no other defense to the United States' motion for summary judgment and the figures of Laurens's own expert, albeit unreliable,[1] also show violations of the 1971 Order and a negative effect on desegregation in Dublin's elementary schools. Consequently, this Court should deny Laurens's motion for summary judgment and grant that of the United States against Laurens.

I. The United States Need Not Prove A Constitutional Violation by Laurens

At best, Laurens does not understand Milliken or Lee. At worst, Laurens seeks to confuse this Court into applying the wrong legal standard. Either way, Laurens's reliance on Milliken and Lee is unavailing because these cases have no bearing on the request for non-interdistrict relief before this Court.

As explained in the United States' Memorandum in Support of its Motion for Summary Judgment Against Laurens, U.S. Summ. J. Mem. at 13-14, Milliken involved an interdistrict plan to desegregate the Detroit City schools by consolidating the Detroit City school district and 53 suburban school districts into one school district. 418 U.S. at 733-34. The metropolitan desegregation plan[2] also would have required extensive transportation of students across these districts to increase white enrollment in the Detroit City schools. Id. at 718, 734, 754. The Supreme Court was referring to these two aspects of the district court's order when the Supreme

---

[1] The United States moved to exclude Dr. Rossell's report on many grounds, including the unreliability of her figures. U.S. Mot. to Exclude & Am. Supp. Mem. at 20-23.

[2] See Lee, 639 F.2d at 1253 (referring to the interdistrict relief in Milliken as a "metropolitan area plan").

Court stated: "Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." Id. at 744-45.

Laurens seizes on the language of "a cross-district remedy," Laurens Summ. J. Mem. at 12, but should have realized that the relief sought here against Laurens is not "a cross-district remedy" if Laurens had done some basic legal research. Cross-district remedies include transporting students across district lines to desegregate one or more districts or mandating transfers across district lines as a means of desegregating one or more districts. See, e.g., Milliken, 418 U.S. at 755 (Stewart, J., concurring) ("Were it to be shown, for example, that state officials had contributed to the separation of the races . . . , then a decree calling for transfer of pupils across district lines . . . might well be appropriate."); Stout v. Jefferson County Bd. of Educ., 845 F.2d 1559, 1562 (11th Cir. 1988) (denying cross-district remedy that "would require the transfer of students from one school district to another"); United States v. Bd. of Sch. Comm'rs of City of Indianapolis, Ind., 637 F.2d 1101, 1112-14 (7th Cir. 1980) (affirming district judge's plan requiring transfer of more than 6,000 students from the Indianapolis school district to eight other school districts within the city of Indianapolis). Unlike the plaintiffs in these cases, the United States does not seek a cross-district remedy requiring transfers of Laurens's students to Dublin or consolidation of the Laurens and Dublin school districts.

The relief sought by the United States is simply not what Milliken calls an "interdistrict remedy." 418 U.S. at 743, 745. An interdistrict remedy ignores or eliminates boundaries between two or more districts by requiring one or more districts to participate in the desegregation remedy of another district through, for example, a consolidation or mandatory student transfers across the

districts. See id. at 741 ("Boundary lines may be bridged where there has been a constitutional violation calling for inter-district relief . . . ."). All of the seminal cases that considered "interdistrict remedies" and applied Milliken involved mandatory transfers across district lines or consolidations, not injunctions to halt transfers that interfered with valid desegregation orders.[3] The relief sought against Laurens is not "interdistrict" in nature because the United States does not seek to have Laurens *participate* in Dublin's desegregation remedy. The United States seeks merely to enjoin Laurens's knowing *interference* with this remedy and therefore need not prove that Laurens committed a constitutional violation with a significant segregative effect in Dublin.[4] Far from seeking relief that ignores the district lines between Dublin and Laurens, the United States seeks relief that enforces those lines.

---

[3] See Stout, 845 F.2d at 1562 (denying relief that "would require the transfer of students from one school district to another" because Milliken's standards were not met); Goldsboro City Bd. of Educ. v. Wayne County Bd. of Educ., 745 F.2d 324, 325, 329-33 (4th Cir. 1984) (plaintiff failed to prove violation under Milliken to support interdistrict remedy requiring consolidation of city and county schools); Hoots v. Commonwealth of Pa., 672 F.2d 1107, 1119-21, 1124 (3d Cir. 1982) (finding Milliken's standards were met and affirming order consolidating five districts into one district); Lee, 639 F.2d at 1270-71 (affirming lower court's refusal to order two other school districts to participate in a plan to desegregate a school in another district because Milliken's standards were not met); Indianapolis, 637 F.2d at 1112-14 (affirming cross-district remedy requiring over 6,000 student transfers from Indianapolis school district to eight other school districts); United States v. State of Mo., 515 F.2d 1365, 1368-71 (8th Cir. 1975) (affirming order consolidating three school districts into one to desegregate one of the districts because Milliken's standards met); Newburg Area Council, Inc. v. Bd. of Educ. of Jefferson County, 510 F.2d 1358, 1359-61 (6th Cir. 1974) (finding facts of Milliken distinguishable and holding that district court could disregard school district lines in devising desegregation plan); Evans v. Buchanan, 416 F. Supp. 328 (D. Del. 1976) (rejecting voluntary plans and ordering a consolidation plan), modified and aff'd, 555 F.2d 373, cert. denied, 434 U.S. 880 (1977); Evans v. Buchanan, 393 F. Supp. 428 (D. Del. 1975), aff'd, 423 U.S. 963 (1975) (affirming three judge panel's finding of interdistrict violations under Milliken's standards and panel's order requiring submission of interdistrict desegregation plans that could consolidate twelve school districts into one district).

[4] As a result, none of the complex board and tax-related questions raised by consolidating districts is at issue here. See Laurens Summ. J. Mem. at 21 (quoting Milliken, 418 U.S. at 743).

II. Binding Cases from This Circuit Show that Milliken Is Inapposite

That Milliken does not apply to the injunctive relief sought against Laurens was made plain by the Eleventh Circuit's discussion of "interdistrict relief" in Brown v. Board of Education of City of Bessemer, 808 F.2d 1445 (11th Cir. 1987). In Bessemer, 900 students who were part of the Jefferson County school district were annexed into the Bessemer City school district. Id. at 1446-47. Bessemer moved to join Jefferson to its desegregation case and for relief requiring Jefferson to continue educating the students in the annexed area because incorporating more than 200 of the 900 students would impede Bessemer's compliance with its desegregation orders. Id. at 1447. The district court ordered Bessemer to educate 200 of the students and ordered Jefferson to continue educating the remaining 700 until Bessemer could accommodate these students in desegregated schools, which was estimated to be in two to four years. Id.

Jefferson challenged the order under Milliken as having "grant[ed] interdistrict relief" without "evidence of an interdistrict violation." Id. The Eleventh Circuit rejected this argument.

> We do not reach th[e] [Milliken] question because the relief ordered was not interdistrict relief.
>
> This case is not one in which the district court consolidated separate school districts. See Little Rock School District v. Pulaski County Special School District No. 1, 778 F.2d 404 (8th Cir.1985). Nor is it a case in which the district court ordered independent school districts to participate in a single desegregation plan. See Milliken v. Bradley, 418 U.S. 717, 94 S. Ct. 3112, 41 L.Ed.2d 1069 (1974); Lee v. Lee County Board of Education, 639 F.2d 1243 (5th Cir. 1981). Long-existing school district boundaries are not being altered or ignored by court order.

Id. at 1447-48 (footnote omitted). The order "affect[ed]" both Jefferson and Bessemer, just as the relief sought by the United States would affect both Dublin and Laurens. Id. at 1448. "That fact alone, however, d[id] not make the injunction an interdistrict remedy" because the order "[did] not plac[e] a burden on Jefferson County of the kind disapproved in Milliken and the other interdistrict

cases cited above [i.e., Pulaski, 778 F.2d 404 and Lee, 639 F.2d 1243]." Id. at 1449. Just as the Eleventh Circuit recognized that the relief sought in Bessmer was not "interdistrict relief" subject to Milliken's or Lee's requirements, so should this Court reject Laurens's attempt to confuse the Court into applying these irrelevant standards to the non-interdistrict relief sought against Laurens.

Enjoining Laurens from accepting transfers that violate the 1971 Order and negatively affect desegregation in Dublin's elementary schools is an appropriate remedy for the transfer violations and does not constitute "interdistrict relief" under Milliken or Lee. The language of Lee itself makes this clear in the context of remedying Singleton transfer violations.

> A finding that a school district has accepted transfer students in violation of a Singleton clause customarily supports injunctive relief forcing an end to such transfers and compliance with the terms of the desegregation order. A finding that a district has violated a Singleton transfer provision included in its desegregation order does not, in and of itself, support a broader, interdistrict remedial order unless the conduct which violated the Singleton clause also comprised an interdistrict constitutional violation when evaluated under Milliken.

639 F.2d at 1261 (emphasis added). A finding by this Court that Dublin violated the 1971 Order's 5% limit on transfers likewise would support "injunctive relief forcing an end to such transfers and compliance with the terms of the [1971] order." Id. Such relief would include an injunction enforcing the 5% limit by prohibiting Laurens from accepting transfers in excess of that limit.[5]

The relief sought against Laurens differs markedly from the relief sought in Lee. In Lee, the

---

[5] We note that if Dublin were not on the active docket in the Ridley case, Order of Feb. 14, 1974 at 6 ¶ 5 (Tab 1), Dublin would be subject to a Singleton transfer provision like all other inactive Ridley districts. Id. at 5 ¶ f. Although the United States need not demonstrate a Singleton transfer violation because Dublin remains subject to the 1971 Order, id. at 7 ¶ 6(a), the undisputed facts demonstrate Singleton violations. See U.S. Summ. J. Mem. against Dublin at 14-20; U.S. Statement of Material Facts Not in Dispute in Supp. of Summ. J. Mots., Facts 31-112 (hereinafter U.S. Facts). Thus, were this Court to apply a Singleton transfer analysis in lieu of the 1971 Order's 5% limit, the undisputed facts also support entering summary judgment against Dublin and Laurens on the basis of Singleton violations.

United States moved "to require all three school boards in Lee County [i.e., the Auburn City, Opelika City, and Lee County boards] and the State of Alabama Board of Education jointly to develop and implement an interdistrict plan to desegregate the predominantly black school located at Loachapoka in the Lee County district." 639 F.2d at 1245. One of the issues was "whether Opelika's continued acceptance of transfer students . . . between 1970 and 1978 supports an order requiring Opelika to participate in efforts to desegregate the Loachapoka school." Id. at 1261. The evidence showed that the 54 transfers at issue (37 white and 17 black transfers) increased the Loachapoka school's black percentage by 5.24 percentage points from 91.20% to 96.44% black. Id. Applying Milliken, the Fifth Circuit affirmed the denial of interdistrict relief due to the small number of transfers and the fact that Opelika had not accepted any transfers since 1978. Id. The Fifth Circuit applied Milliken only because the United States sought "an order requiring the Auburn and Opelika school districts to participate in an interdistrict remedial plan to desegregate the Loachapoka school" that likely would have mandated transfers across the three districts or consolidated the districts. Id. at 1263.[6]

Had the United States sought only to enjoin Opelika's or Auburn's acceptance of transfers that violated the desegregation order, (as the United States has done with respect to Laurens), the Court would not have applied Milliken and would have enjoined any violative transfers. See id. at 1261 (distinguishing the interdistrict relief sought in Lee from relief that merely enjoins violative transfers). In Lee, an order enjoining transfers was not needed because both Opelika and Auburn had come into compliance with their Singleton transfer obligations by ceasing all transfers. Id. at 1261-62. Lee's facts are easily distinguished because Dublin continues to violate the 1971

[6] See also id. at 1270 ("[A]n interdistrict order requiring other school systems to participate in the desegregation of that school [must be based on] an interdistrict violation . . . .").

Order, Laurens continues its knowing interference with this Order, the numbers of transfers are large, and the undisputed facts show that parents' school choices are being influenced by the increasing racial identifiability of Dublin's schools caused by the violative transfers. See U.S. Facts 86-108. Under these very different circumstances, Lee requires "injunctive relief forcing an end to such transfers and compliance with the terms of the desegregation order." Id. at 1261.

Equally unpersuasive is Laurens's argument that Milliken applies because Laurens is not a Ridley district. See Laurens Summ. J. Mem. at 2, 11; Valley v. Rapides Parish Sch. Bd., 646 F.2d 925, 943-44 (5th Cir. 1981);[7] United States v. State of Texas (Hearne Indep. Sch. Dist.), (NO. 6:71-CV-5281), 2005 WL 1868844, at *42-*43 (E.D. Tex. Aug. 4, 2005). In Rapides, the court enjoined several non-parties from interfering with a desegregation order and never discussed Milliken. 646 F.2d at 943-44. The injunction was upheld because "the court had broad power under the All Writs Act, 28 U.S.C. § 1651 to enjoin third parties, including state courts, from interfering with its desegregation orders." Id. at 943 (citing Cooper v. Aaron, 358 U.S. 1 (1958); United States v. Hall, 472 F.2d 261 (11th Cir. 1972), United States v. State of Texas, 356 F. Supp. 469 (E.D. Tex. 1972), aff'd, 495 F.2d 1250 (5th Cir. 1974)).

In Hearne, the court enjoined a non-party school district (Mumford) from accepting transfers from a school district under a desegregation order (Hearne) without requiring proof of an interdistrict constitutional violation under Milliken. 2005 WL 1868844, at *41-*42. Like Laurens, Mumford argued that its acceptance of transfers from Hearne could not be enjoined absent proof that Mumford had committed intentional race discrimination. Id. at *42. The district court

[7] Cases decided by the Fifth Circuit prior to October 1, 1981, are binding precedent in the Eleventh Circuit. See Bonner v. City of Pritchard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

was not persuaded by Mumford's misleading argument and held that a constitutional violation by Mumford would be "relevant if the United States had sued Mumford under the Equal Protection Clause to enjoin intentional discrimination, but the United States brought no such claims." Id.[8] The court based its order enjoining Mumford from accepting transfers from Hearne, not on a Milliken violation, but rather on the transfer violations of the desegregation order and the negative effect that they had on desegregation in Hearne's schools. Id. at *37-*39, *41-*42.

Rapides and Hearne also dispose of Laurens's unsupported argument that the 1971 Order does not limit transfers from Dublin to Laurens absent proof that Laurens committed a "constitutional violation . . . that produces significant segregative effects in another district." Laurens Summ. J. Mem. at 3 n.3. This argument is not only refuted by Rapides and Hearne, but also defies common sense. If, as Laurens suggests, the 1971 Order permitted students to flee the Ridley districts for the non-Ridley districts in Georgia, desegregation efforts in Georgia would have been severely impeded. In addition, the non-Ridley districts, like Laurens, that agreed to desegregation plans with the old United States Department of Health, Education, and Welfare ("HEW plans") had interdistrict transfer obligations that paralleled those in a Singleton transfer clause. See, e.g., HEW Plan for Glascock County, GA at ¶ VII (using Singleton language) (Tab 2).

This Court's power to issue the requested injunctive relief against Laurens in the absence of an interdistrict constitutional violation also has been recognized by the Fifth Circuit. See Lauderdale County Sch. Dist. v. Enterprise Consol. Sch. Dist., 24 F.3d 671, 683 (5th Cir. 1994).

> There is no question that federal courts can stop segregation-promoting transfers of students between school districts, place restrictions upon the transfers such as the

---

[8] See also Pitts v. Freeman, 755 F.2d 1423, 1426-27 (11th Cir. 1985) (lower court erred by requiring plaintiffs to prove discriminatory intent for violations of desegregation order because such proof is required only after a finding of complete unitary status).

> Singleton provision contained in many of the HEW plans, and remedy violations of Singleton clauses. It is a different question, however, whether a court can order the interdistrict transfer of students. For example, if a school district violates the Singleton provision, the appropriate remedy is to end the illegal transfers, not to order broad interdistrict relief . . . .

Id. The Fifth Circuit correctly distinguished relief that remedies transfer violations by stopping the violative transfers from "interdistrict relief" that requires transfers between two or more school districts or the consolidation of independent districts. Id. In Lauderdale, the lower court had ordered transfers from one district to another, and the Fifth Circuit explained that "the propriety of court-ordered transfers between districts" must be evaluated under Milliken's standards. Id. These standards do not apply when the requested relief seeks only to stop transfers that are interfering with a valid order and negatively impacting desegregation at the school level.

III. Injunctive Relief Against Laurens is Warranted Given Its Knowing Interference with a Valid Court Order and the Cases Cited by the United States

The nature of the relief sought by the United States removes it from Milliken's purview and places its squarely within the case law regarding interdistrict transfers, the All Writs Act, and Federal Rule of Civil Procedure 65(d) cited in the United States' summary judgment motion against Laurens. See Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 693 n.32 (1979) (recognizing "the rule [in Hall] that nonparties who interfere with the implementation of court orders establishing public rights may be enjoined" under Rule 65(d)); United States v. New York Tel. Co., 434 U.S. 159, 174 (1977) ("The power conferred by [the All Writs Act] extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice . . . ."); Cooper, 358 U.S. at 17-18 (holding that governor and state legislature had duty to obey federal desegregation order against school district);

United States v. Lowndes County Bd. of Educ., 878 F.2d 1301, 1308 (11th Cir. 1989) (enjoining transfers due to segregative effect on school); Rapides, 646 F.2d at 943-44 (enjoining non-party interference with desegregation order under the All Writs Act); Lee v. Eufaula City Bd. of Educ., 573 F.2d 229, 233 (5th Cir. 1978) (transfers having a cumulative negative effect on desegregation in a school should be enjoined); Hall, 472 F.2d at 267 (interpreting Rule 65(d) as codifying rather than limiting court's inherent power to protect its ability to render a binding judgment); Bullock v. United States, 265 F.2d 683, 691 (6th Cir. 1959) (enjoining interference with desegregation order under All Writs Act); Hearne, 2005 WL 1868844, at *41-*42 (enjoining transfers under the All Writs Act, Rule 65(d), and the court's inherent power to make a binding judgment); State of Texas, 356 F. Supp. at 471-72 (enjoining state court from interfering with the transfer clause of a desegregation order under the All Writs Act).

These cases focus on a federal court's power to enjoin conduct that interferes with an existing order, and none of them predicates the exercise of this power on proof of a Milliken violation. These cases make clear that the United States need not establish a constitutional violation by Laurens[9] to obtain relief enjoining Laurens from accepting transfers that exceed the 5% limit of the 1971 Order. The United States need only show that Laurens is knowingly interfering with the 1971 Order, and the United States has shown this by proving substantial violations of the 1971 Order caused by Laurens's knowing acceptance of the violative transfers.[10]

---

[9] Laurens's transfer policy is written in race neutral terms, see Laurens Summ. J. Mem. Ex. F, but the United States does not know if Laurens implements this policy in a racially neutral way, see id. at 4-5, 13, because Laurens did not produce evidence regarding its denials of transfers, which might have demonstrated that blacks and whites are treated the same with respect to denials. See Laurens Resp. to Interrog. 3 of U.S. Second Set of Interrogs. at 4-5 (Tab 3).

[10] Laurens argues that this "Court may not presume that the racial composition of Laurens and Dublin resulted from impermissible action by either district." Laurens Summ. J. Mem. at 15

The undisputed facts also establish that the violative transfers are negatively impacting desegregation in Dublin's elementary schools by reducing their white percentages and influencing parents' elementary school choices.[11] U.S. Facts 31-112; see Hearne, 2005 WL 1868844, at *42 (finding relevant question to be whether "transfers increase the racial identifiability of a district's schools, not on whether another district has acted with discriminatory intent"). The undisputed violations and their deleterious effect merit enforcement of the 1971 order through injunctive relief against both Dublin and Laurens.

Laurens challenges the applicability of Federal Rule of Civil Procedure 65(d) on the grounds that Milliken is the controlling legal authority. Laurens Summ. J. Mem. at 10 n.10. Laurens's Milliken argument lacks merit for the reasons given above. Laurens also contends that "the evidence clearly demonstrates that . . . Dublin and Laurens never worked together in any way concerning transfers" and that therefore Laurens is not a "person[] in active concert with [Dublin]"

(citing Lee, 639 F.2d at 1254-55). The United States has not relied on a presumption, but rather has demonstrated that the transfers to Laurens increased the racial identifiability of Dublin's elementary schools and deterred parents from sending their children to these schools. U.S. Facts 33-112. Causality has been amply demonstrated because the increase in the racial identifiability of these schools in each school year is directly attributable to transfers from Dublin to Laurens. See id. Laurens tries to negate this causality by citing one portion of Dr. Schuber's deposition. Laurens Summ. J. Mem. at 19 n.12 (citing Ex. O at 57-58). Laurens failed to reveal to the Court that Dr. Schuber retracted his belief that the decline in Dublin's white enrollment was due to a decline in white Dublin residents when faced with his own analysis showing a decline of only 25 Dublin residents from FY91, when there were 3,389 residents, to FY01, when there were 3,364 residents. See Schuber Dep. of July 6, 2005, at 129:24-132:14 (Tab 4); Ex. 547 (Tab 5).

[11] Laurens argues that parental choices are to blame for the increasing racial identifiability in Dublin's schools and that parents have a right to these choices. Laurens Summ. J. Mem. at 20, 23-23. Laurens is wrong on both counts. First, Laurens is to blame for the negative effect of the transfers because Laurens need not accept them. Second, parents residing in Dublin do not have a right to send their children to Laurens's schools. See Rapides, 646 F.2d at 942 ("While it has long been held that parents have a right to direct the education of their children, such a right does not give them the unqualified authority to choose a particular public school.") (citations omitted).

as Rule 65(d) requires. This argument is unpersuasive considering the undisputed testimony showing that Laurens and Dublin worked together on a regular basis to facilitate the violative transfers for at least the past decade. U.S. Facts 117, 128-31. Despite having notice of the 1971 Order and the negative effect of the violative transfers on desegregation in Dublin, Laurens kept asking Dublin for the student records of the violative transfers and Dublin kept producing them despite its duty not to do so under the 1971 Order. Id.; see Rapides, 646 F.2d at 944 (ordering district to withhold student records from public schools to comply with desegregation order limiting transfers).[12] The United States need not show that Laurens solicited transfers, see Laurens Summ. J. Mem. at 20, because the undisputed facts satisfy Rule 65(d)'s terms.

IV. Dr. Rossell's District-Level Analysis Does Not Support Summary Judgment in Favor of Laurens Because Her Analysis Ignores Binding Case Law, Misinterprets the 1971 Order, States Obvious and Irrelevant Conclusions, and Lacks Reliability

The factual basis for Laurens's summary judgment motion rests entirely on Dr. Rossell's figures and conclusions. As a result, the motion must fail because her analysis is inconsistent with binding case law, misinterprets the 1971 Order, reaches irrelevant conclusions about racial balance in Dublin, and lacks reliability. The United States already has briefed these arguments extensively and explained why Dr. Rossell's report and testimony should be excluded under Federal Rule of Evidence 702 and as a spoliation sanction for her and Laurens's counsel's destruction of discoverable evidence. See U.S. Mem. & Reply in Supp. of Mot. To Exclude. These arguments are incorporated herein by reference, and only a few are noted here to address

---

[12] Laurens contends that the 1971 Order does not trump Georgia's law on student records "[i]n the absence of some evidence of discrimination." Laurens Summ. J. Mem. at 23. This contention is refuted by Rapides, 646 F.2d at 944, and has received no support from the State defendant in this case. Opposition from the Georgia Department of Education is not expected given its willingness to withhold FTE funds if this Court finds violations of the 1971 Order. See Letter from Evans to McCarthy of 5/14/04, at 10 (Tab 61 of U.S. Summ. J. Mem. against Laurens).

specific assertions in Laurens's summary judgment motion.

As explained above, Milliken does not apply to the relief sought against Laurens; therefore, the United States need not prove that Laurens has committed a constitutional violation that is a "'substantial cause' of a 'significant' interdistrict segregative effect in Dublin." Laurens Summ. J. Mem. at 12 (quoting Lee, 639 F.2d at 1256). Nevertheless, the undisputed facts show that the transfers violating the 5% limit of the 1971 Order have negatively affected desegregation in Dublin's elementary schools by increasing their racial identifiability. See U.S. Facts 33-112. Dr. Rossell's report, which includes only district-level assertions about the effect of transfers, does not negate these facts and lacks reliability for the reasons previously identified by the United States. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. Dublin's admissions and the undisputed deposition testimony of its principals and superintendents also establish that transfers to Laurens have increased the community perception of Dublin's schools as "black" schools and deterred parents from sending their children to Dublin. See Dublin Admis. Nos. 21-25 (Tab 6); U.S. Facts 86-108. Dr. Rossell has not refuted any of these facts, nor could she given her failure to discuss community perceptions of Dublin's schools with anyone, Rossell Dep. at 27:25-32:3 (Tab 7), her own view of Dublin's schools as "black schools," id. at 32:4-12, and her concession that transfers negatively affected desegregation in its elementary schools and could influence parents' school choices. Id. at 227:3-14, 229:15-230:1. These undisputed facts amply refute Laurens's summary judgment motion. See Hearne, 2005 WL 1868844, at *37-*39 (finding similar decreases in white enrollment percentages caused by transfers and comparable testimony from district officials about community perceptions established a sufficient negative effect on desegregation).

Although not needed to prove a violation of the 1971 Order or to obtain injunctive relief against Laurens, the undisputed facts also show that the cumulative effect of all transfers between

Dublin and Laurens and all transfers in and out of Dublin has been negative on the desegregation of Dublin's elementary schools. See Tab 8 (showing effect of transfers between Laurens and Dublin only); Tab 9 (showing effect of all transfers in and out of Dublin). These facts establish violations of the Singleton transfer provision applicable to inactive Ridley districts under the relevant standards set forth in Lowndes, 878 F.2d 1301 and Eufaula, 573 F.2d 229. See Order of Feb. 14, 1974 at 5 ¶ f (transfer clause uses Singleton's language) (Tab 1). While the United States need not prove a Singleton violation with evidence that transfers have had a quantitative and qualitative negative cumulative effect on Dublin's schools because active Ridley districts like Dublin are not subject to the Singleton transfer clause, Tab 1 at 6-7, the Singleton cumulative effect analysis is far more relevant to the inquiry before this Court than the Milliken standard requiring evidence of "a constitutional violation" by Laurens that is a "substantial cause" of a "significant segregative effect" in Dublin. 418 U.S. at 744.

Eufaula makes crystal clear that any analysis of whether interdistrict transfers negatively affect desegregation must measure the effect on the school-level, not the district level. 573 F.2d at 231. In Eufaula, the trial record showed only the effect of interdistrict transfers on the district-level black percentage in Barbour County, not on the percentages in Barbour's individual schools. Finding this record insufficient with respect to the effect inquiry, the Fifth Circuit held that:

> The 'cumulative effect' of the transfer program must be measured on a school-by-school basis. *This is the only operational level on which actual segregative effect can be measured, and upon which it can be determined whether the transfer policy reduces desegregation or reinforces the existence of a constitutionally impermissible dual school system.*

573 F.2d at 233 (emphasis added) (footnote omitted). Any ambiguity as to whether the effect of transfers can be measured at the district level, as Dr. Rossell has done, was dispelled by the Fifth Circuit's repetition of its holding. See id. at 236 ("The effect of desegregation must be measured

on a school-by-school basis."); see also id. at 234 ("As we have held, cumulative effect must be measured on a school-by-school basis.").[13]

Lee, a case upon which Laurens relies heavily, reiterates Eufaula's holding that "the effect is to be measured on a 'school-by-school' basis" and acknowledges that prior to Eufaula, "it was not unreasonable . . . to interpret th[e] language [of a Singleton transfer clause] as prohibiting only those transfers which had a district-wide impact." Lee, 639 F.2d at 1262 n.13. Prior to 1978 when Eufaula was issued, it might have been understandable for Dr. Rossell to opine solely on the district-level impact of transfers between two school districts. In the wake of Eufaula and Lee, however, her district-level conclusions are insufficient to support summary judgment for Laurens, just as the district-level record in Eufaula was insufficient to support any findings regarding the effect of transfers on desegregation in Barbour County's individual schools. See 573 F.2d at 233.

Lowndes not only reinforced Eufaula's holding but also clarified it. 878 F.2d at 1305 (holding that one cannot calculate the effect of transfers on desegregation if one conducts "a district- or county-wide analysis"). Lowndes explained that the quantitative cumulative effect of transfers must be measured by "compar[ing] of the racial composition of the . . . [s]chool as it would exist without the transfers with the [school's] present enrollment including the transfers." Id. The quantitative inquiry must be followed by a "qualitative" determination of whether transfers have "increase[d] the racial identifiability of th[at] school[]." Id. The qualitative inquiry examines whether transfers "aggravate[d] or alter[ed] popular perceptions of [the school's] racial

---

[13] This holding also was the basis for this statement: "At such time as further proceedings shall be required it may also be necessary to analyze on a school-by-school basis the cumulative effect of the transfer program on desegregation in Quitman County, Georgia, as the record reflects a 16% increase in black enrollment in the system as a whole resulting from the transfer program, but fails to show the effect upon the individual schools within the system." Id. at 235 n.13.

identity [as a black school] and . . . affect[ed] the decisionmaking process of white students considering where to attend school." Id. at 1306. This inquiry is definitive because "[a] Singleton violation has still occurred if the [percentage point] increment of change [caused by the transfers] has resulted in a perception of the school as being more 'white' [or more black]." Id. at 1307.

Lowndes dictates that any consideration by this Court of whether transfers from Dublin to Laurens negatively impact desegregation in Dublin must examine the percentage point changes in the schools' racial percentages caused by transfers and whether the increasing racial identifiability of the schools has influenced parents' school choices. See id. at 1305-07. To steer the Court's attention away from whether transfers increased the "racial identifiability" of Dublin's schools, Laurens focuses on Dr. Rossell's irrelevant and self-evident "racial balances." See Laurens Summ. J. Mem. at 6, 16, 18-19; Laurens's Statement of Undisputed Material Facts (hereinafter Laurens Facts), Facts 30-36. Racial balance refers to whether a school's racial composition is the same as the racial composition for the whole district or the district-wide racial composition for the grade levels in that school.[14] Dublin's single grade configuration since August 2003 inherently renders each of its schools "racially balanced" against the district-wide racial composition and the district-wide racial composition for the grade levels in each school. Dr. Rossell's conclusions on this point are therefore self-evident and unhelpful. See Hygh v. Jacobs, 961 F.2d 359, 363 (2d Cir. 1992) (opinions must help the trier of fact under Federal Rule of Evidence 702).

Dr. Rossell's racial balance conclusions are also irrelevant because the "racial balance" inquiry in Freeman, 503 U.S. at 474, is distinct from the relevant inquiry of whether transfers to

---

[14] See Freeman v. Pitts, 503 U.S. 467, 474 (1992) ("[T]he degree of racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole.").

Laurens increased the "racial identifiability" of Dublin's schools as black schools and deterred parents from sending their children to Dublin's schools. See Lowndes, 878 F.3d at 1305. A school may be racially identifiable and racially imbalanced, but it need not be both to show that transfers have negatively affected desegregation in that school. See id. at 1305-08. As long as the transfers to Laurens cause the community to perceive Dublin's elementary schools as black schools and influence parents' school choices, the transfers are negatively affecting desegregation even if the schools are racially balanced against Dublin's district-wide racial composition.

Due to Laurens's misunderstanding of the binding standards in Lowndes and Eufaula, all of Dr. Rossell's assertions regarding her district-level and cumulative year summaries of transfers between Dublin and Laurens are irrelevant and hence incapable of supporting summary judgment for Laurens. See Laurens Summ. J. Mem. at 13-19; Laurens Facts 29-47. For example, Dr. Rossell's determination that there were 72 more white transfers from Laurens to Dublin than white transfers from Dublin to Laurens over an eight-year period, Ex. C at 3, in no way negates the 5% violations in each of these years or their undisputed negative effects on Dublin's elementary schools, particularly given the unreliability of her figures. See App. A at Facts 37-47; U.S. Mem. in Supp. of Mot. to Exclude at 20-23 (identifying eight errors in her analysis). Even though Dr. Rossell's underlying analysis includes the percentage point changes caused by all transfers at the school and grade cluster levels, see, e.g., Ex. 588 (Tab 10), these figures were not included in her report and are unreliable. See Ex. C; U.S. Mem. in Supp. of Mot. to Exclude at 20-23. If, however, this Court were to rely on her school-level and grade-cluster-level figures as well as her calculations of how many transfers exceeded the 5% limit in the 1971 Order, see Ex. 580 (Tab 11), this Court would be compelled to find violations of the 1971 Order and a negative cumulative

effect on Dublin's elementary schools caused by the violative transfers.[15]

Dr. Rossell's statements about Dublin's compliance with the 1971 Order are equally unhelpful because Dr. Rossell misinterprets the Order's clear language and misapplies its 5% limit. See 1971 Order at 3; Order of Jan. 24, 1974, at 4-5, 9-10 (applying 5% limit contrary to Dr. Rossell's interpretation) (Tab 16). Laurens relies on Dr. Rossell's erroneous assumption that the 1971 Order "does not speak to the issue of whites transferring in [to Dublin] [sic]" or "whether whites transferring in [to Dublin] [sic] can cancel whites transferring out." Laurens Summ. J. Mem. at 3 n.2 (quoting Ex. C at 4). At her deposition, Dr. Rossell reiterated her mistake, testifying that the transfer clause of the 1971 Order "is silent on the issue of whites coming into Dublin -- and so you have to guess at what the court might feel about a transfer program in which whites coming in roughly equal whites going out." Rossell Dep. at 206:22-207:1 (Tab 7). The clause, however, is not silent about whites coming into Dublin or other school districts because Dublin was a majority white district when the 1971 Order was issued, see Order of April 21, 1970, at 4 (Tab 17), and the provision applies to majority white and majority black districts. Nor does the language "in no event," 1971 Order at 3, require "guessing" for the language plainly means "never" regardless of how many transfers enter a district.

Laurens's claim to having enhanced Dublin's compliance with the Constitution flies in the face of undisputed evidence demonstrating that Laurens's interference has precluded compliance

---

[15] Her calculations of the 5% limit show violations in each year. See Ex. 580 (Tab 11). Her school-level figures show negative effects on Dublin's elementary schools in the 2003-04 and 2004-05 school years. See Ex. 597 (showing a -6 percentage point change at Saxon Heights in FY05) (Tab 12); Ex. 590 (showing a -6 percentage point change at Susie Dasher and Saxon Heights in FY04) (Tab 13). Her grade cluster figures also show negative effects on Dublin's elementary schools. See, e.g., Ex. 588 (showing a -13 percentage point change at Saxon Heights in FY03) (Tab 10); Ex. 596 (showing -14 percentage point change at Saxon Heights in FY02) (Tab 14); Ex. 592 (showing a -11 percentage point change at Saxon Heights in FY01) (Tab 15).

with the 1971 Order. See Laurens Summ. J. Mem. at 14. Each violation of Dublin's 1971 Order continues its Fourteenth Amendment violation. See Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 459 (1979); United States v. Lawrence County Sch. Dist., 799 F.2d 1031, 1044 (5th Cir. 1986) (same). Hence, Laurens has hindered Dublin's compliance with the Constitution.

V. Injunctive Relief Enjoining Laurens's Acceptance of Transfers Exceeding the 5% Limit and Requiring Laurens to Continue a Modified Version of its Residency Verification Procedures is Warranted and Within this Court's Power to Grant

Once a district court finds a violation of a transfer provision of a desegregation order, "[i]t is incumbent upon the district court to fashion the injunctive relief . . . to alleviate the reduction of desegregation . . . which is found to exist as a result of the transfer policy." Eufaula, 573 F.2d at 233 n.10. In "fram[ing] its order to alleviate any adverse desegregative effects found to exist[,] [i]t may, for example, be necessary to enjoin the acceptance of transfer applications from a district as a whole or only from specified schools within a district." Id. at 234-35. In its motion for further relief filed April 15, 2004, the United States asked the Court to enjoin all white transfers in grades K-8 and to enforce the 5% limit with respect to students in grades 9-12 because the United States believed that transfers were negatively impacting grades 6-8 in addition to grades K-5. See Mot. for Further Relief of Apr. 15, 2004, & Proposed Order (Ex. P). Based on information learned in discovery and the United States' calculations of the negative effect of transfers on Dublin's schools, the United States modified its request for injunctive relief against Laurens in its motion for summary judgment. The modified relief would permit no more than 5% of the white students in grades K-5 and no more than 5% of Dublin's total white residents students from transferring to Laurens each year because this relief will "alleviate [the] adverse desegregative effect" that transfers to Laurens are having on Dublin's elementary schools. Eufaula, 573 F.2d at

234-35.[16]

Laurens objects to any relief requiring it to verify residences, Laurens Summ. J. Mem. at 21, even though it voluntarily implemented most of the residency verification procedures requested by the United States this school year. See Ex. F; U.S. Fact 143. In moving for summary judgment against Laurens, the United States modified its request for relief regarding residency verification to give Laurens credit for its voluntary steps and to close a few loopholes so that Dublin residents cannot flout the 1971 Order by falsely claiming residence in Laurens. U.S. Summ. J. Mem. at 18-20. Laurens's policy goes beyond what the United States requested by requiring residency verification of every Laurens student. See Laurens Summ. J. Mem. at 5, Exs. F, I. The United States merely asks this Court to order Laurens to continue its residency verification procedure for (1) new students, (2) students who were transfer students from Dublin, and (3) students who were residents of Dublin. U.S. Summ. J. Mem. at 19. The minor modifications to the policy requested by the United States aim to close the loophole of sham student residences with purported legal guardians, foster care parents, and non-parents and to ensure that Laurens withdraws students who do not provide proof of residence within ten days of receiving notice that the proof is overdue because 79 students had not provided the requisite proof by December 12, 2005. See Ex. J (filed under seal); U.S. Fact 149.

To achieve compliance with the 1971 Order and to halt the negative effect of transfers, some residency verification is needed to prevent students barred by the Order's 5% limit from nonetheless transferring to Laurens by falsely claiming residence therein. The undisputed and

[16] The United States has no objection to children of Laurens's employees receiving priority for the transfers within the 5% limit of the 1971 Order, see Laurens Summ. J. Mem. at 21, and the 5% limit should accommodate all such children as well as other students.

admitted facts show that students have been willing to do this. See U.S. Facts 135-142, 151-154. Relief requiring continuation of the current policy with minor modifications is warranted by the undisputed facts and supported by Eufaula. In Eufaula, the United States sought an injunction requiring the Eufaula board to use residency verification procedures to enforce the Singleton transfer provision. 573 F.2d at 235-36. The district court denied this relief, but the Fifth Circuit reversed, finding that "no analysis of cumulative segregative effect can be accurate if the Board is not even required to verify that students with Eufaula addresses are in fact residents of the city." Id. at 235.[17] Eufaula coupled with the other legal authorities cited in the United States' summary judgment memorandum against Laurens provide ample support for ordering the residency verification relief. See U.S. Summ. J. Mem. at 16-17 (citing 28 U.S.C. § 1651(a); Fed. R. Civ. P. 65(d); Lawrence, 799 F.2d at 1043, 1046; Board of Educ. of Indep. Sch. Dist. 89, Oklahoma County v. York, 429 F.2d 66, 69-70 (10th Cir. 1970); Hearne, 2005 WL 1868844, at *40-*42).

VI. Conclusion

Laurens is not entitled to summary judgment because genuine issues of material fact remain, especially with respect to the facts based on Dr. Rossell's irrelevant and unreliable analysis. See App. A; U.S. Mem. & Reply in Supp. of Mot. to Exclude. While the genuine issues identified in Appendix A preclude summary judgment for Laurens, they do not preclude summary judgment for the United States because Dr. Rossell has not refuted the facts showing violations of the 1971 Order's 5% limit or the negative effect that transfers are having on desegregation in Dublin's elementary schools.

---

[17] The Fifth Circuit "sympathize[d] with the personnel difficulties which may be occasioned by the institution of a policing system," but held that "administrative inconvenience cannot serve as a roadblock to assuring compliance with the mandate of Singleton." Id. at 236.

Respectfully submitted,

WAN J. KIM
Assistant Attorney General

FRANZ R. MARSHALL
EMILY H. McCARTHY
(District of Columbia Bar No. 463447)
Attorneys for Plaintiff United States
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section -PHB
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Ph: (202) 514-4092
Fax: (202) 514-8337

LISA GODBEY WOOD
United States Attorney
Southern District of Georgia

Delora L. Kennebrew
Assistant United States Attorney
Chief, Civil Division
Southern District of Georgia
Georgia Bar No. 414320

DATED: March 24, 2006

APPENDIX A
UNITED STATES' STATEMENT OF GENUINE ISSUES OF MATERIAL FACTS

4. Orders other than the Order of July 16, 1971 ("1971 Order") are relevant to the United States' claims against Laurens to the extent they establish: Dublin's continuing duty to comply with the interdistrict transfer provision of the 1971 Order, see Order of Feb. 14, 1974, at 6-7 (Tab 1); Dublin's failure to achieve unitary status, see Consent Order of July 1, 2005; and that Dr. Rossell's interpretation of the 1971 Order is incorrect. See Order of Jan. 24, 1974 at 4-5, 9-10 (Tab 16).

6. Dr. Rossell contends that "[t]he 1971 court order does not speak to the issue of whites transferring in [to Dublin] nor to the issue of whether whites transferring in [to Dublin] can cancel whites transferring out." Ex. C at 4. She is wrong. The provision is not silent about whites coming into Dublin, or any other school district for that matter, because Dublin was a majority white district in 1971 and for many years thereafter, see Order of April 21, 1970, at 4 (Tab 17), and the provision has been applicable to both majority white and majority black districts in Georgia. The language "in no event," 1971 Order at 3, means "never" regardless of how many white transfers come into Dublin.

13. Laurens cites the 2004-2005 Dublin Annual Report Card for the assertion that Laurens was 55% white in the 2004-05 school year. Presumably, Laurens meant to cite the 2004-05 Laurens Annual Report Card at Exhibit E. The United States disputes the 55% white figure because data from the Georgia Department of Education ("GDOE") website for Laurens in the 2004-05 school year, the accuracy of which Laurens has admitted, Laurens Admission No. 3 (Tab 18), shows that Laurens was 65% white in the 2004-05 school year. See Laurens Oct. 2004 FTE data (Tab 19). This is consistent with Laurens's own representations that Laurens was 65% white in the two preceding years: 2003-04 and 2002-03. See Laurens's Statement of Undisputed Material Facts (hereinafter Laurens Facts), Fact 14.

16. The United States agrees that the text of Laurens's transfer policy applies to students

regardless of race, but the United States lacks sufficient information to agree that the policy has never been applied to students on a racially disparate basis because Laurens never produced information regarding its denials of transfer applicants. See Laurens Resp. to Interrog. 3 of U.S. Second Set of Interrogs. at 4-5 (Tab 3).

19. The United States agrees that the text of Laurens' transfer policy is race neutral, but the United States lacks sufficient information to agree that the policy is applied equally to all non-resident students regardless of transferring district because Laurens never produced information regarding its denials of transfer applicants. See id.

26. The United States agrees that the July 8, 2004 Minutes of the Laurens County Board of Education require development and implementation of a procedure by which any individual may notify Laurens of a student believed to be a resident of the Dublin City school's attendance zone but who is attending Laurens. See Ex. I. The United States also agrees that Laurens developed an address verification form and that the form has been used to request verification of the addresses of two students. See Exs. K, L (under seal). The United States, however, disputes that Laurens posted its procedure on its website and provided annual written notice of this procedure to parents, see Ex. F at Att. A, ¶ 4, because Laurens has produced no evidence of this to the Court or the United States.

27. The United States agrees that paragraph 4 of Attachment A in Exhibit F requires Laurens to take reasonable steps to determine if a complaint was bona fide and "if the student is a bona fide transfer student or a bona fide resident of the Laurens County school zone," id., but the United States does not have sufficient information to know whether Laurens has implemented the policy in this prescribed manner except for documentation showing that two forms reflect verification of bona fide residencies. See Ex. L (under seal). The policy requires Laurens to post the complaint process on its website and to notify parents of this process each year, Ex. F at Att. A, ¶ 4, but Laurens

has submitted no evidence to the Court or the United States showing that these two requisite practices have been implemented this year.

29. Relying on Dr. Rossell's report, Laurens asserts that "[t]he decline in white enrollment in Dublin City schools from 1997 to 2004 would have been greater were it not for the lenient transfer policies in place in Dublin and Laurens which permitted 160 more whites students to enroll in Dublin City schools that would have without transfers." Ex C. at 4. The United States disputes Dr. Rossell's figure of 160 because her analysis failed to count 263 transfers from Dublin to West Laurens Middle School (WLMS) and West Laurens High School (WLHS) in the 1998-99, 1999-00, and 2000-01 school years, of whom 186 were white. See Laurens FTE99, FTE00, & FTE01 Transfers from Dublin to WLMS and WLHS (Tab 20). Dr. Rossell's net gain of 160 white students is incorrect because it does not include the 186 whites and relies on an analysis involving at least seven other errors. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. Including the 186 students yields a net loss of 26 white students to Dublin, but even this number is unreliable given her seven other errors. See id. Her district-level analysis showing a net gain of 160 white students also hides the fact that her analysis shows a net loss of 420 white students in grades PreK-5 over that period. See Ex. 580 (showing a drop from 1,030 in 1997-98 to 610 in 2004-05) (Tab 11). The United States' calculations show that transfers exceeding the 5% limit (Tab 25), transfers between Dublin and Laurens (Tab 8), and all transfers in and out of Dublin (Tab 9) caused white enrollment percentages in Dublin's elementary schools to decline each year since 1998. See Tabs 8, 9, 25.

30. Relying on Dr. Rossell's report, Laurens asserts that interdistrict transfers have no effect on racial imbalance in the Dublin City schools. Ex. C at 8. The United States disputes this assertion because Dr. Rossell's racial balance figures are unreliable due to the eight errors in her analysis. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. Dr. Rossell's racial balance

conclusions are also irrelevant to the inquiry before this Court, which is whether transfers from Dublin to Laurens have violated the 1971 Order and negatively affected desegregation in Dublin by increasing the racial identifiability of its schools and deterring parents from sending their children to Dublin's schools. The undisputed facts show that the effect of transfers to Laurens has been negative in both respects. See U.S. Statement of Undisputed Material Facts (hereinafter U.S. Facts), Facts 32-112; see also Tabs 8, 9, 25.

31. Relying on Dr. Rossell's report, Laurens asserts that for the 2003-04 and 2004-05 school years, interdistrict transfers have no effect on racial imbalance. Ex. C at 8. The United States disputes this assertion for the reasons given in response to Fact 30 above, which are incorporated herein by reference. The United States also disputes this assertion because: Dublin used a single grade configuration in the 2003-04 and 2004-05 school years such that its schools were inherently racially balanced against its district-wide racial composition and its district-wide racial composition for the grade levels in each school; the undisputed facts show that in both the 2003-04 and 2004-05 school years, the transfers violating the 5% limit (Tab 25), the transfers between Dublin and Laurens (Tab 8), and all transfers in and out of Dublin (Tab 9) had a negative effect on the racial identifiability of Dublin's elementary schools, see U.S. Facts 32-85, Tabs 8-9, 25; and transfers to Laurens deterred parents from sending their children to Dublin's schools. See U.S. Facts 86-108.

32. Relying on Dr. Rossell's report, Laurens asserts that "there is a remarkably low level of racial imbalance in the Dublin City schools." Ex. C. at 8. The United States disputes this assertion for the reasons given in response to Fact 30 above, which are incorporated herein by reference, and adds that Dublin's use of a single grade configuration since August 2003 inherently renders its level of racial imbalance across schools "remarkably low" in the 2003-04, 2004-05, and 2005-06 years.

33. Relying on Dr. Rossell's report, Laurens asserts that "[t]he Dublin City schools are

far more racially balanced than many other school districts around the country." Ex. C at 9. The United States disputes the relevancy of this statement because none of the other districts examined by Dr. Rossell used a single grade configuration for all grades. Rossell Dep. at 258:23-260:15 (Tab 7). In addition, Dublin would inherently be more racially balanced in the 2003-04, 2004-05, and 2005-06 school years when it used a single grade configuration than the other school districts she examined.

34. Relying on Dr. Rossell's report, Laurens asserts that "[i]n every year but one, 2001-02, the Dublin City schools were in compliance with the strict racial balance standard contained in the 1971 Court Order." Ex. C at 9. The United States disputes this assertion because Dr. Rossell's racial balance conclusions are unreliable due to the eight errors in her analysis. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. Dr. Rossell's racial balance conclusions are also irrelevant to the inquiry before this Court, which is whether transfers from Dublin to Laurens violated the 1971 Order and negatively affected desegregation in Dublin by increasing the racial identifiability of its schools and deterring parents from sending their children to Dublin's schools. The undisputed facts show that the effect of transfers to Laurens has been negative in both respects. See U.S. Facts 32-112; Tabs 8, 9, 25.

35. Relying on Dr. Rossell's report, Laurens asserts that in 2001-02, Dublin High School exceeded the court standard percentage by one percent. Ex. C at 9. The United States presumes that Dr. Rossell is stating that the white percentage of the after-transfer enrollment at Dublin High School exceeded 50% to 150% of the district-wide after-transfer white percentage by one percentage point. Because Dr. Rossell's numbers are unreliable, see U.S. Mem. & Reply in Supp. of Mot. to Exclude, the United States looked to the data on the GDOE website to determine if Laurens's assertion was true. The 2001-02 data from the GDOE website shows that Dublin High School was 35.9% white and that the district-wide white percentage was 23.7%. See Tab 21. Once again Dr. Rossell's figure proved

unreliable because the high school's percentage white (35.9%) was only .03 percentage point outside the 50% to 150% range of Dublin's district-wide percentage (i.e., 11.85% to 35.6% white). See id.

36. Relying on Dr. Rossell's report, Laurens asserts that "[t]he system of student transfers between Dublin and Laurens actually improved racial balance in Dublin schools." Ex. C at 3. The United States disputes this racial balance conclusion because Dr. Rossell's analysis is based on eight errors. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. The conclusion is also irrelevant for the reasons given in response to Facts 30 and 34 above.

37. Relying on Dr. Rossell's report, Laurens asserts that "[b]etween the 1997-98 and 2004-05 academic years, less white Dublin residents (1597) transferred to Laurens than white Laurens residents transferring to Dublin (1661); resulting in a net gain to Dublin of 72 white students." Ex. C at Table 1. The United States disputes Dr. Rossell's figure of 72 whites because her analysis failed to count 263 transfers to WLMS and WLHS in the 1998-99, 1999-00, and 2000-02 school years, of whom 186 were white. See Tab 20. Dr. Rossell's net gain of 72 white students is incorrect because it does not include the 186 white transfers and relies on an analysis involving at least seven other errors. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. Including the 186 students produces a net loss of 114 white students to Dublin caused by transfers to and from Laurens, but even this number is unreliable given her seven other errors. See id. Her district-level analysis showing a net gain of 72 white students also hides the fact that her own analysis shows a net loss of 420 white students in grades PreK-5 over that period. See Ex. 580 (Tab 11). The United States' calculations show that between the 1998-99 and 2005-06 school years, white transfers between Dublin and Laurens caused a net loss of 528 white students in Dublin's grades K-5 and a net loss of 253 white students in grades K-12. Compare number of white transfers from 687 (Laurens) for K-5 and K-12 in Tab 26 (Dublin Incoming Transfers) with number of white transfers to 687 (Laurens) for K-5 and K-12 in Tab 27.

38. The United States disputes Fact 38 for the same reasons given in its response to Fact 29 above, which are incorporated herein by reference.

39. Relying on Dr. Rossell's report, Laurens asserts that "[i]n 2004-05, more whites transferred to Dublin (198) than transferred out of Dublin (192)." Ex. C Table 1. While Table 1 of Dr. Rossell's report shows this, the United States disputes the accuracy of this assertion because Dr. Rossell's eight errors render her 2004-05 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. The unreliability of her 2004-05 figures is shown plainly by: the substantial deviation between Dr. Rossell's 2004-05 Dublin enrollment figures and those on the GDOE website, compare Ex. 597 (3,543 students, 809 white) (Tab 12) with Dublin October 2004 FTE data (3,040 students, 682 white) (Tab 19); her double counting of at least 26 students due to her failure to merge the Laurens and Dublin SR05 data, see Tab 22 (filed under seal); and her failure to consider the withdrawal codes of 50 students in Laurens SR05 data and 776 students in Dublin's SR05 data. See Tab 23 (filed under seal). The United States' calculations show that in 2004-05, 15 more whites in grades K-12 transferred out of Dublin (150) than transferred into Dublin (135). Compare 2004-05 K-12 data at 2 (Tab 27) with 2004-05 K-12 data at 4 (Tab 26). The United States' calculations show that in 2004-05, 81 whites in grades K-5 transferred from Dublin to Laurens and 30 whites in grades K-5 transferred from Laurens to Dublin, causing a net loss of 51 white students in Dublin's elementary schools. Compare 2004-05 K-5 data at 1 (Tab 27) with 2004-05 K-5 data at 2 (Tab 26).

40. Relying on Dr. Rossell's report, Laurens asserts that "[i]n 2003-04, 166 white Laurens residents transferred to Dublin and 161 white Dublin residents transferred to Laurens." Ex. C Table 1. While Table 1 of Dr. Rossell's report shows this, the United States disputes the accuracy of this assertion because Dr. Rossell's eight errors render her 2003-04 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. For example, her failure to consider the withdrawal codes in

Laurens SR04 data and to merge the Laurens SR04 data with the Dublin March FTE04 data resulted in her double counting 34 students, 24 of whom withdrew from Laurens but remained in its SR data, see Tab 23 (filed under seal), and 10 of whom appeared in both Dublin's and Laurens's data. See Tab 24 (filed under seal). The United States' calculations show that in 2003-04, 66 whites in grades K-5 transferred from Dublin to Laurens and 35 whites in grades K-5 transferred from Laurens to Dublin, causing a net loss of 31 white students in Dublin's grades K-5. Compare 2004-05 K-5 data at 1 (Tab 27) with 2004-05 K-5 data at 2 (Tab 26).

41. Relying on Dr. Rossell's report, Laurens asserts that "[i]n 1999-00, 244 white Laurens residents transferred to Dublin and 169 white Dublin residents transferred to Laurens." Ex. C Table 1. While Table 1 of Dr. Rossell's report shows this, the United States disputes the accuracy of this assertion because Dr. Rossell's eight errors render her 1999-00 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. For example, she omitted 67 transfers to WLMS and 74 transfers to WLHS, 93 of whom were white. See Tab 20. This mistake alone would raise the number of white transfers from Dublin to Laurens from 169 to 262, which would mean transfers caused Dublin to lose 18 whites in 1999-00. Even this number is unreliable because Dr. Rossell failed to consider the withdrawal codes of 26 students in Laurens SR00 data, see Tab 23 (filed under seal), and doubled counted 7 students by failing to merge the Laurens SR00 and Dublin March FTE00 data. See Tab 24 (filed under seal). The United States' calculations show that in 1999-00, 22 more whites in grades K-12 transferred from Dublin to Laurens (259) than transferred from Laurens to Dublin (237). Compare 1999-00 at 2 (Tab 27) with 1999-00 at 4 (Tab 26). The United States' calculations show that in 1999-00, 153 whites in grades K-5 transferred from Dublin to Laurens and 69 whites in grades K-5 transferred from Laurens to Dublin, causing a net loss of 84 white students in Dublin's grades K-5. Compare 1999-00 K-5 data at 1 (Tab 27) with 1999-00 K-5 data at 2 (Tab 26).

42. Relying on Dr. Rossell's report, Laurens asserts that "[i]n 1998-99, 252 white Laurens residents transferred to Dublin and 187 white Dublin residents transferred to Laurens, for a net gain to Dublin of 181 whites." Ex. C Table 1. While Table 1 of her report shows this, the United States disputes the accuracy of this assertion because Dr. Rossell's eight errors render her 1998-99 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. For example, she omitted 44 transfers to WLMS, of whom 34 were white. See Tab 20. This mistake alone would raise the number of white transfers from Dublin to Laurens from 187 to 221, which would mean a net gain of only 31 whites. Even this number is unreliable, however, because Dr. Rossell failed to consider the withdrawal codes of 57 students in Laurens SR99 data, see Tab 23 (filed under seal), and doubled counted 10 students by failing to merge the Laurens SR99 and Dublin March FTE99 data. See Tab 24 (filed under seal). The United States' calculations show that in 1998-99, only 37 more whites in grades K-12 transferred from Dublin to Laurens (213) than transferred from Laurens to Dublin (250). Compare 1998-99 at 2 (Tab 27) with 1998-99 at 4 (Tab 26). The United States' calculations show that in 1998-99, 123 whites in grades K-5 transferred from Dublin to Laurens and 96 whites in grades K-5 transferred from Laurens to Dublin, causing a net loss of 27 white students in Dublin's elementary schools. Compare 1998-99 K-5 data at 1 (Tab 27) with 1998-99 K-5 data at 2 (Tab 26).

43. Relying on Dr. Rossell's report, Laurens asserts that "in 1997-98, 316 white Laurens residents transferred to Dublin and only 135 white Dublin students transferred to Laurens." Ex. C Table 1. While Table 1 of her report shows this, the United States disputes the accuracy of this assertion because Dr. Rossell's eight errors render her 1998-99 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. For example, she failed to consider the withdrawal codes of 43 students in Laurens SR98 data, see Tab 23 (filed under seal), and doubled counted 11 students by failing to merge the Laurens SR98 and Dublin March FTE98 data. See Tab 24 (filed under seal).

44. Relying on Dr. Rossell's report, Laurens asserts that "[a]nnual white enrollment in the Dublin City schools before and after transfers is basically even over the course of the last eight school years." Ex. C Figure 1. This statement is not supported by Figure 1 of her report because this figure says nothing about annual white enrollment in Dublin before or after transfers. Figure 1 shows only the number of white transfers calculated by Dr. Rossell: (1) from Dublin to Laurens, (2) from Laurens to Dublin, and (3) to Dublin from all districts. The United States cannot agree with Laurens's assertion because the undisputed facts show that after-transfer annual white enrollment in all of Dublin's schools, and in its elementary schools in particular, was substantially lower than it would have been had no transfers occurred in each of the last eight years. See Tab 9 (showing 574 K-12 whites and 175 K-5 whites after transfers ("Actual") and 622 K-12 and 244 K-5 whites before transfers ("w/o Trnsf") in 2005-06). Annual white enrollment in Dublin's elementary schools after the transfers that violated the 5% limit was also substantially lower than it would have been had the violative transfers not occurred in each of the last eight years. See Tab 25 (showing after transfer ("Actual") white enrollment fell from 1,033 in 1998-99 to 574 in 2005-06 and that white enrollment without violative transfers ("compliant white enrollment") fell from 1197 in 1998-99 to 733 in 2005-06).

45. Relying on Dr. Rossell's report, Laurens asserts that "[o]nly in one year did interdistrict white transfers violate the intent of the court order – to keep Dublin City schools from resegregating – and that was a temporary phenomenon that in fact did not result in resegregation of the district." Ex. C at 5. The United States disputes Dr. Rossell's interpretation of the 1971 Order's transfer provision because it is fundamentally at odds with the Order's language, see 1971 Order at 3, and the Court's application thereof. See Order of Jan. 14, 1974 (Tab 16). Because Dr. Rossell interprets the Order incorrectly, the United States also disputes all of her statements regarding

Dublin's compliance with or violations of the 1971 Order as well as her statements regarding whether such violations negatively impacted desegregation in Dublin. Moreover, it is for this Court, not Dr. Rossell who has no legal background, to interpret the meaning of the 1971 Order. The United States' calculations show high numbers of white transfers that violated the 5% limit of the 1971 Order in each year: 164 in the 1998-99 school year; 214 in the 1999-00 school year; 230 in the 2000-01 school year; 267 in the 2001-02 school year; 112 in the 2002-03 school year; 92 in the 2003-04 school year; 117 in the 2004-05 school year; and 159 in the 2005-06 school year. See Numbers of Transfers Exceeding 5% Limit of 1971 Order from 1998-99 to 2004-05 (Tab 28).

46. Relying on Dr. Rossell's report, Laurens asserts that "[b]y the 2002-03 academic year, there was almost no difference between whites transferring in and those transferring out and by 2003-04 and 2004-05, there was a small net gain in whites to Dublin." Ex. C at 2. The United States disputes this assertion regarding the 2003-04 and 2004-05 years for the same reasons given in response to Facts 39 and 40 above, which are incorporated herein by reference. The United States disputes the assertion regarding the 2002-03 school year because Dr. Rossell's eight errors render her 2002-03 analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. For example, she failed to consider the withdrawal codes of 105 students in Laurens SR03 data, see Tab 23 (filed under seal), and doubled counted 54 students by failing to merge the Laurens SR03 and Dublin March FTE03 data. See Tab 24 (filed under seal). The United States' calculations show that in 2002-03, 72 whites in grades K-5 transferred from Dublin to Laurens and 42 whites in grades K-5 transferred from Laurens to Dublin, causing a net loss of 30 white students in Dublin's elementary schools. ~~Compare 2002-03 K-5 data at 1 (Tab 27) with 2002-03 K-5 data at 2 (Tab 26).~~

47. Relying on Dr. Rossell's report, Laurens asserts that "[i]nterdistrict white transfers slightly *slowed* the decline in the percentage white [enrollment] of the Dublin City schools." Ex. C

at 10. The United States disputes this assertion because Dr. Rossell's eight errors render her entire analysis unreliable. See U.S. Mem. & Reply in Supp. of Mot. to Exclude. The United States also disputes this assertion because its own calculations show that transfers caused the percentage white in each of Dublin's elementary schools to fall between 1998-99 and 2005-06. Grades K-2 were 22.2% white and grades 3-5 were 23.7% white in 1998-99. Compare first and last page of Tab 9. By 2005-06, grades K-1 were only 10.9% white, grades 2-3 were only 17.1% white, and grades 4-5 were only 14.3% white. Compare first and last page of Tab 9. Dr. Schuber's testimony and analysis also shows that the decline in Dublin's white percentage was not due to a decline in Dublin residents. See Schuber Dep. of July 6, 2005, at 129:24-132:14 (Tab 4); Ex. 547 (showing a decline of only 25 Dublin residents from 3,389 in FY91 to 3,364 in FY01) (Tab 5).

48. The United States disputes Laurens's assertion that "[n]either Dublin nor Laurens took affirmative steps to solicit or facilitate the transfer of any student from Dublin to Laurens," which cites pages 113, 114, and 120 of Larry Daniels's deposition. These excerpts of Mr. Daniels deposition show only that Laurens did not advertise its transfer procedures or make a special effort to distribute these procedures in Dublin, but Mr. Daniels conceded that board minutes are published in the newspaper. Ex. N at 113:24-114:13. Mr. Daniels also conceded that Laurens used to transport Dublin students to Laurens. Id. at 114:14-21, 115:24-116:19. This affirmative step by Laurens to facilitate transfers is confirmed by other undisputed facts. See U.S. Facts 164-166. Additional undisputed facts, including Mr. Daniels's own testimony, establish that Dublin and Laurens worked together to facilitate the violative transfers because Laurens continued to request student records for violative transfers despite having notice of the 1971 Order and Dublin continued to send the records to Laurens despite its obligation not to do so under the 1971 Order. See Ex. N at 117:20-119:1, 174:3-21; U.S. Facts 117, 128-31.

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing United States' Opposition to the Laurens County School District's Motion for Summary Judgment, including Appendix A and Tabs 1-28, was served on March 24, 2006, via Federal Express upon counsel for the Dublin City School District and the first counsel listed for the Defendant Laurens County School District, and by first-class mail, postage prepaid, upon the remaining counsel for Defendant Laurens County School District and the State Defendants:

Jerry A. Lumley, Esq.
Lumley & Howell, LLP
350 Second Street
Macon, GA 31201
Attorney for Defendant Dublin City School District

Janet Higley, Esq.
Parks, Chesin & Walbert, P.C.
521 East Morehead Street, Suite 120
Charlotte, North Carolina 28202
Attorney for Laurens County School District

A. Lee Parks, Esq.
Parks, Chesin & Walbert, P.C.
75 Fourteenth Street, Suite 2600
Atlanta, Georgia 30309
Attorney for Laurens County School District

Donald W. Gillis, Esq.
Nelson, Gillis & Thomas, LLC
125 N. Franklin Street
Dublin, GA 31021-6701
Attorney for Laurens County School District

Alfred L. Evans, Esq.
State Judicial Building, Suite 232
40 Capitol Square, S.W.
Atlanta, Ga. 30334-1300
Attorney for State Defendants

Emily H. McCarthy

EMILY H. MCCARTHY
Attorney for Plaintiff United States