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' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST THE LAURENS COUNTY SCHOOL DISTRICT

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiff United States hereby moves this Court to enter summary judgment against the Defendant Laurens County School District ("Laurens") for its willful and knowing interference with the Order of July 16, 1971 ("1971 Order") in this case and for its active participation in Dublin's violations of this Order. In support thereof, the United States submits the following.

I. Introduction

The undisputed facts establish that on August 6, 2003, Laurens received notice from the United States that its acceptance of transfers from Dublin were interfering with the 1971 Order and negatively affecting desegregation in Dublin. See Laurens Admis. No. 18 (Tab 13). The United States asked Laurens to cease its interference, but Laurens refused. Id. Nos. 18-19. On

April 15, 2004, the United States moved, inter alia, to enforce the 1971 Order against Dublin and enjoin Laurens's interference therewith. See U.S. Mot. to Enforce (Apr. 15, 2004). At the Court's invitation, see Order of June 3, 2004, at 1 n. 1, the United States moved to join Laurens as a defendant. See U.S. Mot. to Join Laurens. On June 28, 2004, Laurens responded and proposed an order that would grant the United States' motion provided joinder was limited to the issue of interdistrict transfers and the United States served a complaint upon Laurens. See Laurens Reply to U.S. Mot. for Joinder & Proposed Order (June 28, 2004). Pursuant to this Court's instructions at the scheduling conference on June 30, 2004, the United States filed a supplemental complaint against Laurens. See U.S. Supp. Comp. (July 16, 2004). Laurens served an Answer to the United States' Supplemental Complaint on September 10, 2004. See Laurens Ans. (Sept. 10, 2004).

Discovery ensued and produced substantial evidence establishing the undisputed facts set forth in the accompanying statement of material facts. As explained in the United States' Motion for Summary Judgment against Dublin, these facts show that transfers from Dublin to Laurens since at least 1997 have repeatedly and substantially violated the 5% limit of the 1971 Order. See Laurens Ans. ¶ 24 (admitting violations). The evidence also establishes that the violative transfers have impeded desegregation in Dublin's elementary schools by increasingly their racial identifiability, aggravating community perceptions of these schools as "black" schools, and influencing parents' choices about where to send their children to school. Dublin's violations merit summary judgment and injunctive relief against Dublin, but complete relief requires enjoining Laurens from accepting violative transfers because Laurens can accept them without Dublin's permission and can enroll students with copies of their records obtained by parents.

These facts require entering summary judgment against Laurens for having knowingly and willfully interfered with a valid court order and for having operated "in active concert or participation" with Dublin in violating the 1971 Order. Rule 65(d). Summary judgment against Laurens should be accompanied by an injunction issued under the All Writs Act, 28 U.S.C. § 1651(a), Federal Rule of Civil Procedure 65(d), or the Court's inherent authority to make a binding judgment. This injunction should enjoin Laurens from accepting violative transfers, require Laurens to continue its current residency verification procedures subject to minor modifications, and require the State Defendants to withhold Full-time Equivalent ("FTE") per pupil funds from Laurens for each Dublin resident student whose transfer violates the 5% limit of the 1971 Order.

II. Statement of the Facts

In accordance with Local Rule 56.1, the United States has submitted a separate statement of material facts to which the United States contends there is no dispute. See Statement of Facts (hereinafter "Facts"). Each statement of material fact is supported by citations to the record.

III. Legal Standards for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (citation omitted). Once the moving party meets its burden, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324.

The court must "view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion." Cast Steel Prods., Inc. v. Admiral Ins. Co., 348 F.3d 1298, 1301 (11th Cir. 2003). In assessing the evidence, "[t]he court must not resolve factual disputes by weighing conflicting evidence," Brown v. Hughes, 894 F.2d 1533, 1536 (11th Cir. 1990), but a "mere . . . scintilla of evidence" supporting the opposing party's position will not preclude entry of summary judgment against that party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); Loren v. Sasser 309 F.3d 1296, 1302 (11th Cir. 2002). To meet the materiality standard, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248; see also United States v. Gilbert, 920 F.2d 878, 883 (11th Cir. 1991). A dispute of material fact "is 'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. Due to the desegregation nature of this case, any trial would be before this Court, not a jury.

IV. Argument Against Laurens

Pursuant to the above principles, the United States is entitled to judgment as a matter of law against Laurens because there is no genuine issue of material fact with respect to the United States' claim that Laurens has knowingly and willfully interfered with the 1971 Order and has

acted in active concert and participation with Dublin in violating the 1971 Order. Laurens's interference with the 1971 Order has negatively affected desegregation in Dublin's elementary schools by increasing their racial identifiability as "black" schools and deterring parents from sending their children to these schools. This Court has the power to enjoin Laurens from interfering with this valid Order under the All Writs Act, 28 U.S.C. § 1651(a), Fed. R. Civ. P. 65(d), and its inherent authority to make a binding judgment. The United States need not prove a constitutional violation or discriminatory animus by Laurens to have summary judgment and the requested injunctive relief entered against Laurens. The undisputed facts also support the requested relief regarding residency verification and the withholding of FTE per pupil funds for violative transfer students.

A. Transfers from Dublin to Laurens Have Violated the 1971 Order and Have Had a Negative Effect on Desegregation in Dublin's Elementary Schools

Relief against Laurens is needed to remedy Dublin's repeated violations of the 1971 Order and to halt the negative effect that transfers to Laurens are having on Dublin's elementary schools. The accompanying motion for summary judgment against Dublin and its supporting memorandum fully set forth the arguments establishing these violations and the quantitative and qualitative negative effect that the violative transfers have had on desegregation in Dublin's elementary schools. See Laurens Ans. ¶¶ 24-25 (admitting Dublin's violations of the 1971 Order since 1997). The clear negative effects in each year dispose of Laurens's defense that the United States "fails to allege the actions of Laurens have caused any school within the remedial jurisdiction of this Court to fall out of compliance with any court order or obligation to achieve or maintain racial balance," Laurens Ans. at 9, because these effects were indisputably caused by

Laurens's acceptance of the transfers. The memorandum also explains why these violations preclude a finding of unitary status regarding transfers, effectively rebutting Laurens's defense that Dublin "has been and continues to be a *de facto* unitary school district entitled to a declaration of unitary status." Laurens Ans. at 8 (fifth defense).[1] These arguments and all facts supporting them in the accompanying Statement of Material Facts Not In Dispute are incorporated herein by reference.

B. Laurens Has Knowingly and Willfully Interfered with the 1971 Order

On August 6, 2003, Laurens received written notice from the United States that the numbers of white Dublin residents attending Laurens's schools from 1996 to 2003 exceeded the 5% limit on white Dublin residents transferring to majority white school districts that appears in the 1971 Order which governs Dublin and that such transfers were impeding desegregation in Dublin. Laurens Admis. No. 18 (Tab 13); see also Fact 124; Tabs 43-44. The United States asked Laurens what steps it was willing to take "to render the number of transfers consistent with the court's order." Laurens Admis. No. 18 (Tab 13). On March 12, 2004, Laurens informed the United States that it would not take any steps other than maintaining a tuition policy of $300 per family per year. See Fact 126; Tabs 13, 46. This tuition has been in place since the 2003-04 school year, see Fact 126, but it has yet to engender compliance with the 1971 Order.

Laurens instituted a tuition fee for transfer students in the 2002-03 school year, Laurens Admis. No. 24 (Tab 13), for financial reasons before it received notice of the 1971 Order from the United States. See Daniel Dep. of June 8, 2005, at 94:5-15 (Tab 47). In that year, tuition was

[1] This Court has never declared Dublin unitary and approved a consent order on July 1, 2005, requiring Dublin to take actions in several areas, see Consent Order of July 1, 2005, thereby negating any inference that Dublin is a *de facto* unitary school district.

$496 per student per semester, see id.; Laurens Ans. ¶ 32; Fact 125, but this did not reduce white transfers to a level compliant with the 1971 Order. The annual tuition of $992 per student did "ha[ve] a devastating effect on some low-income families." Deal Dep. at 103:22-104:4 (Tab 43). In the first year of tuition, black transfers from Dublin to Laurens fell from 92 in the 2001-02 school year to 22 in the 2002-03 school year. See Tab 15 2001-02 & 2002-03 Outgoing Transfers at 2. In the 2003-04 school year, the number fell further to 8, see id. 2003-04 Outgoing Transfers at 2, even though tuition was reduced that year to $300 per family. See Fact 126. The number remained well below the number of white transfers from Dublin in the 2004-05 school year (18 blacks vs. 150 whites) and the 2005-06 school year (17 blacks vs. 189 whites). See Tab 15 2004-05 & 2005-06 Outgoing Transfers at 3. The fact that so many more whites than blacks have transferred from Dublin to Laurens and that almost all of the whites transferred to Laurens's whitest elementary school even though its least white elementary school is closer to the Dublin city limits, see Facts 162-63, Ex. 500 (Tab 62), highlights that parents' choices were influenced by the increasing racial identifiability of Dublin's elementary schools.

Despite the clear negative effect on desegregation in these schools, for the past two and half years, Laurens has knowingly and willfully interfered with the 1971 Order by refusing to take any action to reduce the number of transfers other than maintaining its $300 tuition policy. See Laurens Admis. No. 19 (Tab 13); Fact 127. Even though its tuition policy forbids transporting non-residents, see Ex. D at 2, ¶ 7 (Tab 45), Laurens used to run buses into Dublin, see Fact 164, and continues to pick up transfers from Dublin this school year at designated spots in Laurens or along roads dividing the two school districts. See Facts 165. The only reason Laurens has given for refusing to cease its interference with the 1971 Order is that "there [we]re

more than twice as many students going from [Laurens] to [Dublin] as the number of students coming from [Dublin] to [Laurens in the 2003-04 school year.]" Ex. 518 (Tab 46). The undisputed facts, however, show that the transfers between Laurens and Dublin have reduced the white percentages in Dublin's elementary schools in each year since 1998 even when the numbers of white transfers from Laurens to Dublin have equaled or surpassed the number of white transfers from Dublin to Laurens. See Facts 31-85 (documenting negative effects in each year).

Even the analysis by Laurens's own expert Dr. Rossell found that the total number of white transfers between Dublin and Laurens caused Dublin to lose 420 white PreK-5 students between the 1997-98 and 2004-05 school years. See Rossell Dep. of Dec. 13, 2005 ("Rossell Dep."), at 149:25-150:24, 232:5-10, 233:3-6 (Tab 27); Ex. 580 (showing a drop from 1,030 in 1997-98 to 610 in 2004-05) (Tab 68). She concedes that the impact of the transfers on Dublin's elementary schools has been "negative," while maintaining that the district-level impact has not been. Tab 27 at 232:22-25. The significant loss of white students in Dublin's elementary schools caused by transfers was masked by Dr. Rossell's district-level (PreK-12) comparison, which showed a net gain of 72 white transfers from Laurens to Dublin and a net gain of 160 white students to Dublin from all districts during this time period. See Ex. 573: Rossell Rep. of Oct. 31, 2005, at 3 (Tab 26); Tab 27 at 231:3-13, 232:5-233:6.[2] If this Court were to use Dr.

[2] Dr. Rossell's report looks at the effect of transfers on the district level only, but she concedes that the district-level effect often masks a larger negative effect occurring at the school level. See Rossell Dep. at 18:20-24, 222:2-14 (Tab 27). For example, she admits that the negative two percentage point change she calculated at the district level in the 2002-03 school year masks a negative six percentage point change she identified at the grade cluster (3-5) level. See id. at 187:11-188:25; Ex. 588 (Tab 65).

Rossell's district-level multi-year analysis to determine if transfers negatively affected desegregation in Dublin, this would contravene binding precedent mandating a school-level single year analysis. See United States v. Lowndes County Bd. of Educ., 878 F.2d 1301, 1305 (11th Cir. 1989). Nevertheless, the drop in the district-level white percentage over the past eight years shows a sufficient negative effect to justify enforcement of the 1971 Order against Dublin and Laurens because the district-level white percentage fell 10.5 percentage points from 30.9% in the 1998-99 school year to 20.4% in the 2005-06 school year. See Fact 84; 1998-99 & 2005-06 Total Enrollment (Tab 19).

C. Laurens Should Be Enjoined from Accepting Transfers from Dublin that Exceed the 1971 Order's 5% Limit Because Laurens's Continuing Acceptance of These Transfers Interferes with the Effectiveness of the 1971 Order

In its accompanying motion for summary judgment against Dublin, the United States seeks enforcement of the 5% limit of the 1971 Order and relief enjoining Dublin from transferring education records to Laurens for students whose transfers violate the 5% limit. This relief is wholly warranted by Dublin's violations of the 1971 Order; however, the violations are likely to continue unless Laurens is enjoined from accepting violative transfers. Without such relief, Laurens can and will continue to accept violative transfers because it does not need Dublin's consent to transfers. See Laurens Admis. No. 20 (Tab 13); Laurens Ans. ¶ 28; GA Code § 20-2-293(a). In addition, 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. Laurens Admis. No. 20 (Tab 13). Unless Laurens is enjoined from accepting the violative transfers, they will continue to have a negative effect on

desegregation in Dublin's elementary schools, which are at high risk of becoming one race. See Facts 81-83.

Given the undisputed facts establishing Laurens's knowing and willful interference with the 1971 Order, this Court should enter summary judgment against Laurens and enjoin it from accepting transfers that violate the 1971 Order. Laurens challenges such an injunction on the grounds that Laurens is not subject to any desegregation order. Laurens Ans. at 9 (sixth defense). While it is true that Laurens is not directly subject to the 1971 Order, Laurens's knowing and willful interference with this Order does justify injunctive relief against it under the All Writs Act, 28 U.S.C. § 1651(a). Laurens argues that this Court is not authorized by § 28 U.S.C. § 1651 to issue the injunctive relief sought by the United States, see Laurens Ans. at 10 (eleventh defense); however, the undisputed facts wholly support the Court's authority to issue such relief.

The All Writs Act gives this Court the power to issue the requested injunction against Laurens even though it is not a party to the Dublin case because such relief is necessary to enforcement of the 1971 Order.[3] See 28 U.S.C. § 1651(a) ("[A]ll courts established by Act of

[3] Enjoining Laurens under 28 U.S.C. § 1615(a) does not require joining Laurens as a defendant or the complaint against it. See U.S. v. State of Texas (Hearne Indep. Sch. Dist.), 2005 WL 1868844, at *41 (E.D.Tex. 2005). As Hearne explains: "Contrary to Mumford's argument, the United States did not have to file a complaint in order to gain relief from Mumford's interference. The proper procedural method for seeking relief from a third party's interference with an existing desegregation order is by motion in the preexisting civil action in which the court order was entered. That was the exact procedure followed in Valley, see 646 F.2d at 935-36, and in prior proceedings in this case, see United States v. Texas, 356 F. Supp. at 470 (involving transfers to Highland Park school district)." 2005 WL 1868844, at *41. Thus, the United States' motion to enforce is sufficient for enjoining Laurens. The United States moved to join Laurens because the Court invited the United States to do so, see Order of June 3, 2004, at 1 n. 1, and the requirements for joinder under Federal Rule of Civil Procedure 19(a) were met. See U.S. Mot. to Join Laurens (June 21, 2004); Lowndes, 878 F.2d at 1302 & n. 2 (lower court joined several school districts, two of which were not under court order, in order to address interdistrict transfer violations). The United States filed a supplemental complaint

Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."); United States v. New York Tel. Co., 434 U.S. 159, 174 (1977) ("The power conferred by [28 U.S.C. § 1651(a)] 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 . . . ."); Valley v. Rapides Parish Sch. Bd., 646 F.2d 925, 943 (5th Cir. 1981) (holding that 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");[4] Bullock v. United States, 265 F.2d 683, 691 (6th Cir. 1959) (holding lower court had jurisdiction to enjoin private individuals from interfering with desegregation order under All Writs Act); Hearne, 2005 WL 1868844, at *41 (holding that All Writs Act gave court power to enjoin a non-party from accepting transfers from district under desegregation order); United States v. State of Texas, 356 F. Supp. 469, 471 (E.D.Tex. 1972) (enjoining state court from interfering with transfer clause of desegregation order under All Writs Act).

In Rapides, the district court enjoined the State of Louisiana, the state police, and "all persons with notice of this order" from "interfering with" two of its desegregation orders, and the Fifth Circuit upheld the district court's injunction under the All Writs Act. See 646 F.2d at 935, 943-44. As was true in Rapides, Bullock, and State of Texas, full enforcement of a federal desegregation order will not be possible unless this Court enjoins a non-party from interfering

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against Laurens because this Court directed the United States to do.

[4] 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).

with it. In Hearne, the court held that a non-party school district should be enjoined under 28 U.S.C. § 1651(a) from accepting transfers that interfered with a desegregation order to which the sending school district was subject. See 2005 WL 1868844, at *41. Because the relationship between Hearne, the party subject to the order, and Mumford, the non-party, was identical to that between Dublin and Laurens, Laurens's contention that it cannot be enjoined from interfering with a desegregation order to which it is not directly subject is plainly wrong.

D. Laurens Has Operated In Active Concert and Participation in Dublin's Violations of the 1971 Order

This Court also has the power to enjoin Laurens from accepting transfers that exceed the 5% limit in the 1971 Order under Federal Rule of Civil Procedure 65(d). This Rule provides that "[e]very order granting an injunction ... is binding" on "the parties to the action" as well as "those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Fed. R. Civ. P. 65(d). The undisputed facts show that Laurens received actual notice of the 1971 Order and the fact that its acceptance of transfers from Dublin had been interfering with this Order. See Fact 124. By continuing to enroll students from Dublin whose transfers violate the Order and to request their education records from Dublin, see Fact 128, Laurens has been "in active concert or participation" with Dublin in perpetuating violations of the Order and therefore must be enjoined from accepting further violative transfers. See United States v. Hall, 472 F.2d 261, 267 (5th Cir. 1972) (interpreting Rule 65(d) as codifying rather than limiting court's inherent power to protect its ability to render a binding judgment and affirming contempt finding against non-party under Rule 65(d)); F.D.I.C. v. Faulkner, 991 F.2d 262, 267 (5th Cir. 1993) (upholding lower court finding that wife was in active participation with

husband and thus subject to the injunction freezing the assets because the husband transferred the frozen assets to wife). In Hearne, the court held that Mumford, the non-party school district, was "in active concert and participation with [the state defendant] in its violation of [the transfer provision of a desegregation order] and, therefore, must be enjoined from accepting further transfers that reduce desegregation in Hearne." 2005 WL 1868844, at *40. Laurens, like Mumford, has actively participated in violations of a valid desegregation order, and therefore must be enjoined from accepting transfers that violate the 5% limit of the 1971 Order.

E. This Court May Enjoin Laurens's Acceptance of Transfers that Violate the 1971 Order Pursuant to Its Inherent Authority to Make a Binding Judgment

Because Laurens's interference with the 1971 Order has thwarted the attainment of the relief provided by the Order, this Court also may enjoin Laurens from accepting violative transfers from Dublin pursuant to this Court's inherent authority to preserve its power to make a binding judgment. See Hall, 472 F.2d at 265 (court had "fundamental power to make a binding adjudication between parties properly before it" by enjoining non-parties from interfering with desegregation order and by holding non-party in contempt for violating that injunction);[5] Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 693 (1979) (recognizing "the rule [in Hall] that nonparties who interfere with the implementation of court orders establishing public rights may be enjoined"); Cooper v. Aaron, 358 U.S. 1 (1958) (holding that governor and state legislature had duty to obey federal desegregation order against

[5] The court's rationale in Hall applies equally here: "[S]chool desegregation orders often strongly excite community passions . .. and are . . . particularly vulnerable to disruption by an undefinable class of persons who are neither parties nor acting at the instigation of parties. In such cases, . . . courts must have the power to issue orders . . . tailored to the exigencies of the situation and directed to protecting the court's judgment. The peculiar problems posed by school cases have required courts to exercise broad and flexible remedial powers." 472 F.2d at 266.

school district); Hearne, 2005 WL 1868844, at *42 (holding court's inherent power to make a binding judgment authorized enjoining non-party school district from accepting student transfers).

As the court explained in Hearne, "the Court may act upon its inherent authority to preserve its ability to render an effective judgment, and it may exercise that authority to enjoin third parties from action threatening the viability of its Order." Id. (citing Hall, 472 F.2d at 265). The court concluded that it "has the inherent authority to enjoin Mumford from accepting all transfers" because "Mumford's continued acceptance and enrollment of transfers that reduce desegregation in Hearne thwarts the relief provided in [the desegregation order]." Hearne, 2005 WL 1868844, at *42. This Court likewise has the inherent power to enjoin Laurens from accepting transfers from Dublin that exceed the 5% limit in the 1971 Order because Laurens's continued acceptance of violative transfers has reduced desegregation in Dublin and thereby undermined the relief provided in the 1971 Order.

F. Summary Judgment Does Not Require Proof of a Constitutional Violation By Laurens or Discriminatory Animus by Laurens

Laurens's first defense to the United States' Supplemental Complaint is that this Court lacks jurisdiction and the authority to grant the relief requested by the United States "due to the United States' failure to allege a constitutional violation as required by *Milliken v. Bradley*, 418 U.S. 717 (1974) has been committed by Laurens." Laurens Ans. at 1 (first defense). Laurens's second, third, and fourth defenses effectively make the same argument: the United States must prove a constitutional violation by Laurens or an interdistrict violation of the law or an applicable court order to support an interdistrict remedy. Id. at 8. Laurens's seventh and eighth defenses are

similar in that they insist the transfers to Laurens have a discriminatory effect or that Laurens acted with a discriminatory animus that is having a segregative effect. See id. at 8 (7th and 8th defenses). None of these defenses precludes summary judgment against Laurens.

Laurens relies heavily on Milliken, 418 U.S. 717, but that case is wholly inapposite. In Milliken, the issue was whether the lower court could order a comprehensive plan to desegregate the Detroit school district that involved 53 suburban districts and 295 school buses. See 418 U.S. at 733-34. The plan effectively treated Detroit and the 53 districts as one school district, and the Court held that "[b]efore 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. Unlike the situation in Milliken, the United States it not requesting consolidation of Laurens and Dublin into one school district or assignments of Laurens's students to Dublin schools in order to desegregate Dublin. All the United States seeks is to enjoin Laurens from interfering with Dublin's efforts to desegregate by forbidding Laurens from accepting violative transfers. Laurens completely misapplies Milliken because enjoining Laurens from interfering with the 1971 order is not an "interdistrict remedy" that requires proof of an "interdistrict violation." Id. at 745. The only proof needed for an injunction against Laurens is that Laurens is knowingly interfering with the 1971 Order, not that Laurens has committed a constitutional violation.

The cases cited above amply demonstrate that the United States need not allege or establish a Fourteenth Amendment or other constitutional violation by Laurens to obtain relief enjoining Laurens from accepting transfers that interfere with the 1971 Order. See Washington,

443 U.S. at 693; New York Tel. Co., 434 U.S. at 174; Lowndes, 878 F.2d at 1302 & n. 2; Rapides, 646 F.2d at 943; Hall, 472 F.2d at 267; Bullock, 265 F.2d at 691; Hearne, 2005 WL 1868844, at *42; United States, 356 F. Supp. at 471; 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). In Hearne, the court rejected Mumford's argument that the United States needed to prove Mumford's acceptance of transfers constituted intentional racial discrimination, because such proof 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." 2005 WL 1868844, at *42. Because the United States had moved only to enforce an existing order prohibiting transfers that negatively affected desegregation, the relevant question was whether those "transfers increase the racial identifiability of a district's schools, not on whether another district has acted with discriminatory intent." Id. (citations omitted). The undisputed facts amply show that transfers to Laurens have increased the racial identifiability of Dublin's elementary schools, see Facts 31-85; this is enough to support relief against Laurens.

Enforcement of the 1971 Order requires injunctive relief against Laurens and such relief does not discriminate against any person on the basis of race despite Laurens's contention to the contrary. See Laurens Ans. at 10 (13th defense). The 1971 Order is a valid order designed to remedy the prior de jure systems of Dublin and other Georgia school districts. See 1971 Order. Desegregation orders are inherently race-conscious and enforcement thereof is permissible due to their remedial nature. See, e.g., Lee v. Eufaula City Bd. of Educ., 573 F.2d 229, 232 (5th Cir.

1978) ("the ratio of black to white students in a given county may dictate that a larger number of black students may transfer into the Eufaula system without reducing desegregation or reinforcing the existence of a dual school system in the districts involved"). Laurens's suggestion that injunctive relief against it is barred because this "would infringe the fundamental right of parents to direct the education of their children," Laurens Ans. at 9, has been flatly rejected. 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).

G. This Court Should Require Laurens to Continue Implementing Its Current Residency Verification Procedures Because Some Students Have Falsely Claimed Residence in Laurens

Part of the injunctive relief requested by the United States in its motion to enforce and within this Court's power to grant under 28 U.S.C. § 1651(a), Fed. R. Civ. P. 65(d), or its inherent authority to make a binding judgment would require Laurens to verify students' residences so that Dublin residents cannot flout the 1971 Order by falsely claiming residence in Laurens. See United States v. Lawrence County Sch. Dist., 799 F.2d 1031, 1043, 1046 (5th Cir. 1986) (in remedying a violation of a desegregation order courts are not limited to directing compliance with the order); Rapides, 646 F.2d at 942 ("a federal district court's desegregation order will bind the children affected, their parents, and state and local officials"); Bd. of Educ. of Indep. Sch. Dist. 89, Oklahoma County v. York, 429 F.2d 66, 69-70 (10th Cir. 1970) (order requiring parents to send their son to certain school in district "was 'necessary and appropriate' in the aid of the court's jurisdiction over the underlying segregation problems" and valid under All Writs Act); Hearne, 2005 WL 1868844, at *40-*42 (recognizing injunctive power against

non-party under Fed. Civ. P. 65(d), All Writs Act, and court's inherent power to make a binding judgment).

The undisputed facts show that the number of white transfers from Dublin to Laurens dropped by 180 students from 310 to 150 between the 2001-02 and 2002-03 school year. See 2001-02 & 2002-03 Outgoing Transfers (Tab 15); Tab 20. The 2002-03 school year was the first time Laurens charged transfer students tuition in the amount of $992 per student per year. See Laurens Admis. No. 24 (Tab 13). The undisputed facts also show that there have been students since the 2002-03 school year who have claimed residence in Laurens for purposes of enrollment therein but whom both Dublin and Laurens have determined were residents of Dublin, not Laurens. See Dublin Admis. No. 16 (Tab 12); Laurens Admis. No. 23 (Tab 13); Facts 138-142. A Laurens board member and a former Laurens superintendent conceded that Dublin residents may have falsely claimed residence in Laurens to avoid paying tuition. See Fact 140. The board member admitted hearing that there is a problem with students lying about their residences. See Fact 141.

The United States examined data submitted by Dublin, the Georgia State Department of Education, and private school data to determine if the 180 student drop could be explained by students returning to Dublin or choosing to attend private schools or other public school districts in Georgia. Elementary students did not return to Dublin in any significant numbers; Dublin's data showed an increase of only 16 students in grades K-5 in the 2002-03 school year, but the reported Dublin transfer students at Lauren's three elementary schools that year fell by 100 students. See Facts 135-137. The drop of 180 students is not explained by an increase in private or home school enrollment because the number of Dublin residents in the private and home

school has changed little between the 1997-98 school year, when the total was 152, and the 2005-06 school year, when the total was 159. See Fact 10; Tabs 38, 39. Data from the Georgia Department of Education ("GDOE") show that only two white Dublin residents have transferred to Georgia public school districts other than Laurens in the past eight school years. See Facts 31, 51; Tab 15.

The United States identified students reported as residents of Laurens in the 2004-05 school year who previously were reported as transfer students from Dublin to Laurens in earlier GDOE FTE data. See Tab 57 (under seal). The United States then identified 124 white students from this list who were enrolled in Laurens as residents of Laurens in the 2005-06 school year, see Tab 58 (under seal), and sought to determine if its current data could verify the addresses provided by these students. See Fact 152. The addresses of 28 white students enrolled in Laurens in the 2005-06 school year could not be confirmed by the data available for the reported addresses. See Tab 59 (under seal); Fact 153. If all 28 students do not in fact reside in Laurens, the number of white transfers from Dublin to Laurens in the 2005-06 school year would rise from 189 to 217, the number of white transfers in excess of the 5% limit would rise from 159 to 184, and the negative effect of the violative transfers on desegregation in Dublin's elementary schools would be even greater than the negative percentage point drops based on the 189 figure. See Fact 32.

Because the huge drop in the number of white Dublin residents transferring to Laurens in the 2002-03 school year could not be explained by a commensurate rise in enrollment at Dublin, other Georgia school districts, or private and home school data, the United States asked this Court to require Laurens to verify residences of all new students, all former transfer students

from Dublin, and all former residents of Dublin. See U.S. Mot. to Enforce (Apr. 15, 2004). Since that time, Laurens adopted residency verification procedures and a form that are quite similar to those in the United States' proposed order to the Court. See Laurens's 2005-06 procedures and form at Tabs 45; Fact 143. The United States therefore asks that this Court order Laurens to continue using its 2005-06 residency verification procedures and form subject to limited revisions that are explained below and needed to deter Dublin residents from flouting the 1971 Order.

The requested injunction against Laurens would require it to continue using its current procedures and form for: (1) all students enrolling in Laurens for the first time, including but not limited to all K students; (2) any student who was ever a transfer student from Dublin; and (3) any student who ever resided in the Dublin school district zone. The requested revisions would require Laurens to obtain: (a) from legal guardians or foster care parents, a court decree declaring the District resident to be the legal guardian or foster care parent of the student, and (b) from adults other than a parent, legal guardian, or foster care parent, a signed, dated, notarized affidavit stating his or her relationship to the student and that the student shall be living in his/her home for a period of time encompassing the entire school year, and fully explaining the reasons for this arrangement. The admitting principal would make a good faith inquiry into the reasons, and if the reasons were not justifiable (i.e., school district preference would not be justifiable but a broken home would be), the Laurens Board would have to notify the non-parent that the student is being denied enrollment or withdrawn pursuant to this Court's order.

In addition, the injunction against Laurens should require Laurens to withdraw any student who does not provide the requisite proof of residence within ten days of receiving notice

that the proof is overdue. Laurens's current policy requires proof be submitted within ten days of enrollment, see Ex. D at 4 ¶ 4 of Tab 45, but 79 students had yet to provide proof of residency by December 12, 2005. See Tab 55 (filed under seal), Fact 149. Lastly, paragraph 6 of the current policy requires Laurens to "keep a record of the following for a period of three (3) years and make these materials available for inspection by the United States upon request," Ex. D (Tab 45), but the policy does not identify any documents. The injunction should specify that Laurens keep these documents for three years: all residency forms, including supporting affidavits and documentation; any action taken by District officials to verify residences; all complaints regarding possibly false residents, any District action taken with respect to those complaints, including supporting documentation, transfer applications, and actions taken on such applications. An injunction requiring Laurens to continue using its current residency procedures and forms subject to the few changes described above would be wholly consistent with residency verification procedures required in other desegregation cases. See, e.g., Sept. 10, 1999 Consent Decree in Lee v. Pike County Bd. of Educ. at 22-28; Agreed Modifications to 1991 Consent Order in United States v. West Carroll Parish Sch. Bd. at 2-6, 14-16 (see U.S. Mot. to Enforce, Tab 17 at 4-10, 12-21).

H. The State of Georgia Should Withhold FTE Funds from Laurens for Any Student Whose Transfer Violates the 5% Limit in the 1971 Order

Because Dublin grants parents' requests for copies of their children's records, and Laurens will enroll a non-resident student with a copy of his/her records, Laurens Admis. No. 20 (Tab 13), stopping transfers that violate the 1971 Order will require more than an injunction against Dublin alone. The entry of summary judgment against Dublin for its transfer violations

supports not only an injunction against Laurens, but also one ordering the State Defendants in this case to withhold FTE per pupil funds from Laurens for student transfers from Dublin that violate the 1971 Order. The combined relief is needed to enforce the 1971 Order fully; however, were this Court to decline to enter summary judgment against Laurens, this Court nonetheless could and should order the State Defendants to withhold FTE per pupil funds from Laurens for any transfers that violate the 1971 Order.

Withholding state FTE funds from Laurens is appropriate relief for the violations of the 1971 Order. The December 17, 1969 Order charged the State Defendants with "monitor[ing] the progress" of the desegregation efforts required by the Court's orders and "withholding state funds" when districts did not comply with the Court's orders. Order of Dec. 17, 1969, at 6-7 (Tab 3). In the 1971 Order, the Court required the State Defendants to "monitor th[e 5%] provision" by "obtain[ing] the number of inter-district transfers in its reports." 1971 Order at 3 n. 3A (Tab 2). The February 14, 1974 Order states that the State Defendants "have a continuing duty to promote compliance by the school districts in this cause with the orders of this Court and shall remain as active parties to this case until all of the school districts in this cause have been placed on the inactive docket." Order of 1974, at 6 (Tab 1). This Order also prohibits the State Defendants from "provid[ing] any state funds to any of said school districts which has been found in violation of the terms of the permanent injunction provided for in paragraph 4 of this order." Id. at 8.

Although the 1974 Order did not expressly prohibit the State Defendants from providing funds to *active* districts that violate the Court's orders, its earlier orders made this obligation clear, and if the Court was unwilling to let the State Defendants provide funds to *inactive*

districts that violated its orders, surely it would not permit the State Defendants to provide funds to *active* non-compliant districts. The language about withholding funds in the 1969 Order ("all districts not in compliance with these findings") and the 1974 Order ("any of said school districts which has been found in violation of the terms of [the Court's Order]") is sufficiently broad to require the State Defendants to withhold FTE funds from Laurens due to Laurens's knowing and willful interference with the 1971 Order, even though Laurens it not a party to this case. Because Laurens will continue to accept illegal transfers as long as the State continues to fund them, the State Defendants can substantially assist the Court in achieving compliance with the 1971 Order by withholding FTE funds from Laurens for any student whose transfer violates the 1971 Order.

The State Defendants have already informed the United States that "since the [transfer] matter appears to be uniquely local," they "would have no basis . . . for opposing any prayer [that the United States made] for the Court to enter an Order directing the State to withhold funds should that be what it determines to be a proper remedy." Letter from Evans to McCarthy of 5/14/04, at 10 (Tab 61). The recent Hearne decision fully supports the United States' request that the entry of summary judgment against Dublin and Laurens be accompanied by a directive to the State Defendants to withhold FTE per pupil funds for every Dublin resident that Laurens enrolls whose transfer exceeds the 5% limit of the 1971 Order. See 2005 WL 1868844, at *39. In Hearne, the court enjoined the Texas Education Agency ("TEA") from funding violative transfers at Mumford, which like Laurens, was not under court order. See 2005 WL 1868844, at *39 (requiring TEA to withhold funds for "the students transferring in violation of this order").

V. Conclusion

For the all of the reasons stated, the United States respectfully moves this Court for

judgment as a matter of law against Laurens and for the injunctive relief requested herein.

Respectfully submitted,

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DATED: February __, 2006

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing United States' Motion for Summary Judgment Against the Dublin City School District and Supporting Memorandum were served on February __, 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:

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