IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. _____

BOBBY CURRY, *et al.*, and JAKE BARRETT, *et al.*,
Proposed Intervenors-Appellants

v.

MACON COUNTY BOARD OF EDUCATION
(Clay County Board of Education), *et al.*,
Defendants-Appellees

UNITED STATES OF AMERICA,
Plaintiff/Intervenor-Appellee

ANTHONY T. LEE, *et al.*,
Plaintiffs-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES' OPPOSITION TO PROPOSED INTERVENORS' MOTION FOR A STAY OF ORDER DENYING INTERVENTION

On June 12, 2003, proposed intervenors-appellants Bobby Curry, *et al.*, and Jake Barrett, *et al.*, noticed an appeal of the district court's May 13, 2003, order denying intervention (Tabs A and B). On June 16, 2003, proposed intervenors moved this Court to stay the district court's order denying intervention (Tab C). The United States opposes the motion.

STATEMENT

This longstanding school desegregation case was initiated in 1963 by black children and their parents residing in Tuskegee, Alabama. Shortly after this suit was filed, the United States was added as a party. In August 1963, the court ordered that Macon County public schools be desegregated. *Lee* v. *Macon County Bd. of Educ.*, 221 F. Supp. 297 (M.D. Ala. 1963). The following year, the complaint was amended to challenge dual school systems throughout the state and to seek statewide desegregation. Following extensive litigation, the court concluded that a dual school system based on race was maintained and operated throughout the state. *Lee* v. *Macon County Bd. of Educ.*, 231 F. Supp. 743 (M.D. Ala. 1964). Since then this Court and its predecessor, the former Fifth Circuit, have heard numerous appeals regarding desegregation in the State of Alabama.[1]

A. *Clay County, Alabama*

On July 11, 1974, the district court entered an order applicable to seven defendant school systems in Alabama, including Clay County, Alabama. The July

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[1] See, *e.g.*, *Lee* v. *Macon County Bd. of Educ.*, 970 F.2d 767 (11th Cir. 1992); *Lee* v. *Macon County Bd. of Educ.*, 650 F.2d 608 (5th Cir. 1981); *Lee* v. *Macon County Bd. of Educ.*, 584 F.2d 78 (5th Cir. 1978); *Lee* v. *Macon County Bd. of Educ.*, 498 F.2d 1090 (5th Cir. 1974); *Lee* v. *Macon County Bd. of Educ.*, 483 F.2d 242 (5th Cir. 1973); *Lee* v. *Macon County Bd. of Educ.*, 482 F.2d 1253 (5th Cir. 1973); *Lee* v. *Macon County Bd. of Educ.*, 468 F.2d 956 (5th Cir. 1972).

1974 order prohibited the Clay County School Board from taking any action "which tends to segregate or otherwise discriminate against students by or within school[s] on the basis of race, color, or national origin," and requires "all school construction, consolidation, and site selection * * * be done in a manner that will prevent the reoccurence of the dual structure." The district court placed the Clay County case on its "inactive docket," but subject to reactivation "on proper application by any party or on the Court's motion." The Clay County school system remains subject to the July 11, 1974, order.

During the 2001-2002 school year, the Clay County School Board operated six schools serving 2,346 students, of whom 23% were black, 77% white, and 1% Hispanic or American Indian. The schools and populations were as follows:

> Ashland Elementary School (K-6, 397 students, 18% black; 78% white);
> Clay County High School (7-12, 310 students, 24% black; 74% white);
> Lineville Elementary School (K-6, 465 students, 31% black; 67% white);
> Lineville High School (7-12, 383 students, 35% black; 64% white);
> Bibb Graves School (K-12, 381 students, 28% black; 72% white);
> Mellow Valley School (K-12, 410 students, 0% black, 99.5% white).

Consent Order at 3 (Tab D). During that school year, the Clay County schools operated under a "freedom of choice" plan that permits students who provide their own transportation to attend any school of their choice. *Ibid*. The Clay County schools have desegregated student populations, with the exception of Mellow

Valley, which enrolls no black students and has never graduated a black student. *Ibid.* Under the freedom of choice plan, 48 white students from outside the Mellow Valley area provided their own transportation to Mellow Valley during the 2001-2002 school year. *Ibid.* The total number of students who provided their own transportation to the district's other schools was 35, of whom 26 were white and 9 were black. *Ibid.*

During 2002, the Clay County School Board informed the United States that it had voted to close Bibb Graves School at the end of the 2001-2002 school year for budgetary reasons. *Ibid.* On June 7, 2002, a group of parents whose children attend Bibb Graves School moved to intervene to oppose the proposed school closure. The district court denied the motion to intervene on July 17, 2002 (see Tab E). No appeal was taken of that intervention order.

On July 23, 2002, the School Board voted unanimously to reopen Bibb Graves School for the 2002-2003 school year, but to close *both* the Bibb Graves *and* Mellow Valley Schools (both K-12) at the end of the 2002-2003 school year.[2]

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[2] The Clay County School Board projected that after closing Bibb Graves and Mellow Valley Schools, the student enrollment at the remaining schools would be as follows:

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

See Response of the United States, Exh. 1 (filed Apr. 11, 2003) (Tab H).

Consent Order at 4 (Tab D). The Clay County School Board determined that "it [was] necessary to close at least one school for budgetary reasons, and that closing one, or both, of its K-12 schools will provide the greatest financial benefit." *Id.* at 3. Prior to submission of the consent order to the district court, citizens from Mellow Valley and Bibb Graves asked the School Board to "defer submission until after November 5, 2002, at which time the citizens of Clay County would vote on a proposal to increase the ad valorem taxes for the benefit of the school system." District Court's May 13, 2003, Order at 2 (Tab B). The tax proposal was subsequently defeated. *Ibid.* After the defeat, however, the financial projections for the school system changed, so that instead of a projected deficit in excess of $600,000 for the 2002-2003 school year, the Board anticipated an operating surplus. *Id.* at 2-3. The Mellow Valley and Bibb Graves parents thus requested the Board to reconsider its school closure decisions in view of the projected operating surplus. The Board did reconsider its decision, "but on January 17, 2003, by a 3-2 vote, the Board authorized its attorney to submit the consent decree for this court's approval." *Id.* at 3.

On February 26, 2003, the School Board and parties to the case jointly moved the district court to approve a consent order facilitating the school closings.

See Joint Motion To Approve Consent Order (Tab D). The next day, on February 27, 2003, a newly composed Board, by a vote of 3-2, voted to rescind the prior Board's decision to close the Bibb Graves and Mellow Valley schools, and on March 10, 2003, filed a motion to reject the proposed consent order. See District Court's May 13, 2003, Order at 3 (Tab B).

On March 5, 2003, two groups moved to intervene as of right and permissively to oppose the school closings. Black Bibb Graves students and their parents and taxpayers moved to intervene to oppose the closing of Bibb Graves School, and white Mellow Valley students and their parents and taxpayers moved to intervene to oppose the closing of Mellow Valley School. The district court held a status conference on March 13, 2003, and asked the parties to further brief the issues concerning intervention and the school closings. District Court's March 13, 2003, Order at 4 (Tab B).

B. *District Court's Order on Intervention and Approval of Consent Decree*

On May 13, 2003, the district court denied intervention to the Bibb Graves and Mellow Valley proposed intervenors (see Tab B). The district court noted that it had "previously denied the motion to intervene filed by the Bibb Graves Plaintiffs on July 17, 2002." The district court held

> [t]he Bibb Graves Plaintiffs have recast their motion to intervene and request that a substitute class and class counsel be appointed or that the original class be decertified. The motion is denied. Upon consideration of the motions to intervene filed by both the Mellow Valley Plaintiffs and the Bibb Graves Plaintiffs and the responses of the United States, the Lee Plaintiffs, and the Clay County Board of Education, the motions to intervene are DENIED.

District Court's May 13, 2003, Order at 2 (Tab B).

By that same order, the district court denied the School Board's motion to reject the consent decree. The district court held that it is "not free to reject the consent decree solely because the reconstituted Board no longer wishes to honor it." *Id.* at 3. "Eleventh Circuit case law makes clear that the new Board cannot succeed in its attempt to withdraw its predecessor's properly granted consent. " *Ibid*, citing *Stovall* v. *City of Cocoa, Fla.*, 117 F.3d 1238, 1242 (11th Cir. 1997); *Allen* v. *Alabama State Bd. of Educ.*, 816 F.2d 575 (11th Cir. 1987).

The district court approved the consent order. The district court stated that consent orders should be approved "so long as they are not unconstitutional, unlawful, unreasonable, or contrary to public policy." District Court's May 13, 2003, Order at 3 (Tab B), quoting *Stovall*, 117 F.3d at 1240. The district court held (*id.* at 4) that

> [c]losing Mellow Valley and Bibb Graves will not perpetuate or re-establish the dual system. There being no evidence presented to the court to indicate that the proposed consent decree is unconstitutional, unlawful, unreasonable,

> or contrary to public policy, the court grants the Joint Motion To Approve Consent Order filed on February 26, 2003.

C. *District Court's Order Denying Reconsideration*

On May 21, 2003, the Bibb Graves and Mellow Valley proposed intervenors moved for a new trial and to stay enforcement of the consent order pending resolution of the motion (Tab F). On May 23, 2003, the School Board petitioned for reconsideration and to stay enforcement of the decree. The district court denied the motions. See District Court's May 30, 2003, Order (Tab G).

The Clay County School Board argued that implementing the consent order before the 2003-2004 school year was not feasible. The district court, however, found this claim unconvincing. The district court observed that at the March 13, 2003, status conference, the parties were asked to brief the feasibility of closing both schools, but that the School Board failed to do so and instead discussed the 2-2 deadlock on the Board following the resignation of one of its members. *Id.* at 2. The district court noted that the Board, in prior filings, "indicated that it was willing and able to begin the process of closing a school as late as mid-May * * * [having] first voted to close Bibb Graves before the 2002-2003 school year." *Ibid.* The district court thus found "no evidence in the record to substantiate the argument that closing the Bibb Graves and Mellow Valley schools for the 2003-

2004 school year was not feasible." *Ibid*.

The district court was also unconvinced by the Board Chairman's recent affidavit accompanying its petition for reconsideration that a majority of the Board thinks it is not feasible to close the schools in the upcoming school year. The district court noted that "one 'Board member and the Superintendent believe that plans are in place for an orderly consolidation,'" and that in any event the Board "has failed to articulate a reason why this information could not have been presented earlier and should be considered for the first time on a petition for reconsideration." *Id.* at 3. The district court stated that "[n]ow that it is displeased with the court's order, the Board cannot choose to introduce evidence that appears to have been available to it when the court ordered the parties to brief and submit materials on the issue of feasibility." *Ibid.* The district court found further that circumstances surrounding the proceedings belie the Board's argument that the school closings are not feasible:

> First, the Board has provided to the parties all information required by the consent decree. This information includes the Board's plans for assigning students to the consolidated schools, transporting students along newly designed bus routes, reassigning faculty and staff, addressing additional school construction needs, and providing notice of the closings to students and parents. Second, the Superintendent believes closing the schools is still feasible. Third, any problems posed by implementing the consent decree were self-induced by the Board. The Board initially approved the consent

> decree on January 17, 2003, almost eight months before the start of the 2003-2004 school year. The Board delayed implementation of the decree by moving to withdraw from the consent decree, despite binding Eleventh Circuit precedent that prohibited such a withdrawal of consent. * * * The Board has had sufficient time to prepare for, and begin closing, the two schools.

Id. at 3-4.

The district court denied the proposed intervenors' motions for reconsideration on intervention and for a new trial. The district court stated that proposed intervenors in a school desegregation action must demonstrate that they seek to "further the goal of removing all vestiges of prior discrimination, and thereby achieving 'unitary status,' rather than seeking to advance other interests, such as their desire to keep a particular school open or to retain a particular school attendance pattern." *Id.* at 4. The district court held that proposed intervenors failed to identify how they meet this standard, and that the "factual allegations of the proposed intervenors are so devoid of merit that they justify summary denial of intervention." *Ibid*.

The district court also rejected the proposed intervenors' request for a hearing under Fed. R. Civ. P. 23(e). The district court observed that in view of the denial of intervention, proposed intervenors have no standing to move for reconsideration of the court's enforcement order, and that the Board has not

requested any additional hearing with respect to the consent decree. *Id.* at 5. The district court held that Rule 23(e) does not require a fairness hearing at each interim step in the course of ongoing litigation, and that instead such hearings are afforded "prior to the termination of class actions" to give "sufficient protection of the interests of absent class members." *Ibid.*

ARGUMENT

I. PROPOSED INTERVENORS' MOTION FOR A STAY OF THE ORDER DENYING INTERVENTION IS NOT PROPERLY BEFORE THIS COURT

Under Fed. R. App. P. 8(a), "[a] party must ordinarily move first in the district court for" an injunction pending appeal unless the movant "(i) show[s] that moving first in the district court would be impracticable; or (ii) state[s] that, a motion having been made, the district court denied the motion or failed to afford the relief requested." See also Fed. R. Civ. P. 62(c) (When an appeal is taken from an interlocutory judgment, the district court "in its discretion may * * * grant an injunction during the pendency of the appeal"). The requirement that motions for a stay pending appeal be initially considered by the district court is "[t]he cardinal principle with respect to stay applications." 16A Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure 3954 (3d ed. 1999); see also *Baker* v. *Adams County/Ohio Valley Sch. Bd.*, 310 F.3d 927, 930 (6th Cir.

2002).

Proposed intervenors concede that they did not move the district court to stay the intervention order pending appeal as required by Rule 8(a), see Motion For Stay of Order Denying Intervention at 2 (Tab C), but argue that such a motion would have been impracticable because the district court "refused to reconsider or grant a motion for new trial." *Ibid.* The district court's ruling on proposed intervenors' motion for a new trial does not render compliance with Rule 8(a) impracticable. The issues presented in a motion for new trial and a stay of the enforcement order pending reconsideration are different from the stay motion filed by proposed intervenors before this Court, which seeks a stay of the intervention order and reconsideration of the denial of a fairness hearing under Fed. R. Civ. P. 23(e). Moreover, proposed intervenors' motions in district court for a new trial and to stay enforcement of the consent decree cannot serve as a substitute for complying with Rule 8(a). The "district court should have the opportunity to rule on the reasons and evidence presented in support of a stay" presented directly to this Court. *Ruiz* v. *Estelle*, 650 F.2d 555, 567 (5th Cir. 1981). Proposed intervenors' motion thus is not properly before this Court.

II. PROPOSED INTERVENORS DO NOT SATISFY THE FACTORS FOR GRANTING A STAY PENDING APPEAL

Even if proposed intervenors' motion for stay is properly before this Court, they fail to satisfy the factors for granting a stay. This Court considers four factors to determine whether a movant has made a sufficient showing to stay an injunction pending appeal:

> (1) whether the movant has made a showing of likelihood of success on the merits, (2) whether the movant has made a showing of irreparable injury if the stay is not granted, (3) whether the granting of the stay would substantially harm the other parties, and (4) whether the granting of the stay would serve the public interest.

Ruiz v. *Estelle*, 650 F.2d 555, 565 (5th Cir. 1981); see also *Coastal States Gas Corp.* v. *Department of Energy*, 609 F.2d 736, 737 (5th Cir. 1979). The movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay." *Ruiz*, 650 F.2d at 565. Proposed intervenors in this case cannot show a likelihood of success on the merits, and granting the stay would substantially harm the other parties and does not serve the public interest.

A. *Proposed Intervenors Cannot Show A Likelihood Of Success On The Merits.*

1. *Intervention order.* Under Fed. R. Civ. P. 24(a)(2), a party who seeks to intervene as of right must establish, among other things, "that he has a legally

protectable interest in the litigation which is inadequately represented by the existing parties to the lawsuit." *United States* v. *Georgia*, 19 F.3d 1388, 1393 (11th Cir. 1994). Permissive intervention under Fed. R. Civ. P. 24(b) is appropriate where a party's claim or defense and the main action have a question of law or fact in common and the intervention will not unduly prejudice or delay the adjudication of the rights of the original parties. *Walker* v. *Jim Dandy Co.*, 747 F.2d 1360, 1365 (11th Cir. 1984). This Court adheres to a "narrow reading" of interests under Rule 24, and in the context of a school desegregation case the interests of parents that justify intervention is an interest in "the goal of a unitary system." *United States* v. *Perry County Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978), citing *Hines* v. *Rapides Parish Sch. Bd.*, 479 F.2d 762, 765 (5th Cir. 1973). Neither the Bibb Graves proposed intervenors nor the Mellow Valley proposed intervenors have a legally cognizable interest in the litigation that is not otherwise fully represented by the parties, and the district court was correct to deny intervention.

a. *Bibb Graves Proposed Intervenors*. The July 17, 2002, order denying intervention to a similar group of Bibb Graves parents and students is law of the case and precludes proposed intervenors from attempting to intervene a second time for the same reasons. "A court should not reopen issues decided in

earlier stages of the same litigation." *Agostini* v. *Chancellor, Bd. of Educ.*, 521 U.S. 203, 236 (1997), citing *Messenger* v. *Anderson*, 225 U.S. 436, 444 (1912). Both intervention motions filed by the Bibb Graves parents in June 2002 and March 2003 sought intervention to oppose the closing of Bibb Graves School. The district court denied the June 2002 motion. The district court therefore correctly applied the law of the case in denying intervention to the Bibb Graves proposed intervenors in May 2003. See also *Hopwood* v. *Texas*, 78 F.3d 932, 961 (5th Cir. 1996) (law of the case bars proposed intervenors challenging a second time district court's denial of intervention), cert. denied, 518 U.S. 1033 (1996).

The district court's denial of intervention is also correct because the interests of the Bibb Graves proposed intervenors are already fully represented by the United States and private plaintiffs. This Court presumes "that a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention." *Georgia*, 19 F.3d at 1394 (internal quotations and citation omitted); *United States* v. *City of Miami*, 278 F.3d 1174, 1178-1179 (11th Cir. 2002). The presumption is "especially appropriate" in this case where the United States is a party to the litigation, and under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, is charged with

representing the interests of public school children by challenging state-imposed segregation in education. See *United States* v. *South Bend Cmty. Sch. Corp.*, 692 F.2d 623, 628 (7th Cir. 1982).

In its pleading opposing intervention, the United States explained to the district court that the consent order's closure of Bibb Graves School "did not 'perpetuate or re-establish the dual system'" (see United States Response To Motion To Intervene at 10 (filed Apr. 11, 2003), quoting *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 21 (1971)). The United States explained that

> [w]ith respect to student assignment, the Board's proposal will move Bibb Graves students from one desegregated school to other desegregated schools. If anything, the resulting consolidated schools in Ashland and Lineville will have student bodies that are slightly *more* representative of the overall district racial composition than is currently enrolled at Bibb Graves. With respect to transportation, extracurricular activities, and the other factors * * * the United States and private plaintiffs concluded that although there are certainly burdens associated with any school closing, the Board's plan to close Bibb Graves will distribute those burdens equitably across racial groups. * * * Indeed, the overwhelming majority of students effected by the closings are white, and there is no reason to expect that black students will bear the consequences of closing Bibb Graves any more than their white classmates.

Id. at 10-11; see also p. 4 n.2, *supra* (footnote sets out proposed student populations following school closings).

To the extent that the Bibb Graves proposed intervenors articulated interests

in opposing the closure of their neighborhood school for reasons unrelated to desegregation, such as to preserve their community athletic program (Motion For Stay at 3 (Tab C)), they cannot intervene. "An interest in maintaining local community schools, without any showing that consolidation would hamper the avowed goal of eliminating the vestiges of past discrimination, fails to constitute a legally cognizable interest in a school desegregation case." *Georgia*, 19 F.3d at 1394; *Perry County*, 567 F.2d at 279-280. The Bibb Graves proposed intervenors "are not seeking to challenge deficiencies in the implementation of desegregation orders" but instead "oppose such implementation." *Pate* v. *Dade County Sch. Bd.*, 588 F.2d 501, 504 (5th Cir. 1979), cert. denied, 444 U.S. 835 (1979). Under these circumstances, the district court correctly determined that the Bibb Graves proposed intervenors failed to satisfy the standard for intervention as of right, and did not abuse its discretion by denying permissive intervention.

b. *Mellow Valley Proposed Intervenors*. The parents, taxpayers, and students of Mellow Valley sought to intervene to oppose the consent decree's proposed closure of Mellow Valley, which is 99.5% white. Their interest in maintaining the status quo and preventing the forced relocation of Mellow Valley School students to more integrated schools is not a valid "interest in a desegregated school system" warranting intervention. *Perry County*, 567 F.2d at 279; see also

Swann, 402 U.S. at 26 ("The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools."); *Pate*, 588 F.2d at 503 ("The parental interest that justifies permissive intervention is an interest in a desegregated school system."). The district court was correct in denying intervention as of right, and did not abuse its discretion by denying permissive intervention.

2. *Hearing under Fed. R. Civ. P. 23(e).* In their motion for a new trial and to stay enforcement of the consent decree, proposed intervenors argued that the district court was required to hold a fairness hearing under Fed. R. Civ. P. 23(e) prior to adopting the consent decree. The district court rejected that argument on the basis that proposed intervenors "fail to cite, and research fails to reveal, a single case where Rule 23(e) has been construed to mandate notice and fairness hearings" preceding the adoption of incremental remedial measures in school desegregation cases. District Court's May 30, 2003, Order at 5 (Tab G). The district court's ruling was correct.

Rule 23(e) provides that "a class action shall not be dismissed or compromised without the approval of the court." The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been

given adequate consideration during the settlement negotiations that lead to the dismissal of the case. See, *e.g.*, *Communication Workers of Am.* v. *New Jersey Dep't of Pers.*, 282 F.3d 213 (3d Cir. 2002); *Christina A.* v. *Bloomberg*, 315 F.3d 990, 991 (8th Cir. 2003). In this case, the consent order does not relinquish the district court's jurisdiction or end the litigation. Pursuant to the July 11, 1974, order, pp. 2-3, *supra*, the district court will retain the power to revise its desegregation orders and reopen the Board's school closing decisions if necessary. In any event, proposed intervenors fully briefed the district court on the bases for their opposition to the consent decree despite the denial of intervention, and the district court had ample facts before it when it adopted the decree. See, *e.g.*, *Lee* v. *Macon County Bd. of Educ.*, 483 F.2d 244, 245 (5th Cir. 1973) (district court reasonably exercised discretion by approving desegregation plan without further evidentiary hearing after considering all facts concerning alternatives for desegregating schools, and objections raised by private plaintiffs who claimed they were entitled to a further hearing).

B. *A Grant Of The Stay Would Substantially Harm The Other Parties And Is Contrary To The Public Interest.*

Proposed intervenors claim an interest in opposing the consent order, which calls for closing two schools in Clay County and relocating those students into integrated schools. The students in Clay County have a right to attend

desegregated schools, and that right is paramount in this litigation. Enforcement of the July 1974 order through implementation of the consent order will achieve that objective. This Court should deny the stay because time is of the essence with respect to desegregating the Clay County schools prior to the start of the 2003-2004 school year. The longer the Board must wait to complete the necessary arrangements, the more difficult the transition will be for the Clay County students, parents, teachers, and staff.

CONCLUSION

For the foregoing reasons, proposed intervenors' motion for stay of order denying intervention pending appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF INTERESTED PERSONS

Counsel for the United States of America hereby certifies, in accordance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, that the following persons may have an interest in the outcome of this case:

Bibbs Graves proposed intervenors

Arthur Adair and Minnie Adair as parents of Demetrius Adair

Charlotte Marbury as parent of Bobby Curry, Shacorri Marbury, and Mario Stripling

Shevon Dawson as parent of April Dawson

Edward DuPree and Legaither DuPree as parents of Ashley DuPree and Britney DuPree

Sonia Gaddis as parent of Devin Gaddis

Tracie Gardner as parent of Lakenya Gardner and Keaunna Gardner

CheRhonda Hernandez as parent of Checorya Gibbons and Jade Gibbons

Edward Earl Johnson as parent of Qumorris Johnson

LaMarcus Jones and Rita Jones as parents of Lamar Jones, Brandon McCain, and Shawanda McCain

Antoinette Marbury as parent of Ledra Leonard, Annquanetta Marbury, Satdrina Marbury, and Antonio Marbury

Benitta Marbury as parent of Alexis Marbury, Anastazia Marbury, and JuDarius Marbury

Mulvine McCain as parent of April McCain

Alison Meadows as parent of Rikkila Meadows

Emma Noble as parent of Krystal Noble

Patricia Norris as parent of Shandrea Norris

Lillian Phillips as parent of Symba Phillips and Julissa Wilson

Pat Ware and Robert Ware as parents of Deidra Ware

Vanessa Williams as parent of Kayla Williams

Frederick Wilson as parent of LaNell Wilson

Mellow Valley proposed intervenors

Donna Barrett and Randy Barrett as parents of Jake Barrett and Kaitlin Barrett

Bryan Belcher as parent of Trenton Belcher

Jacky Brown as parent of Jacky Brown, Jr.

Janine Brown and Johnny Mack Brown as parents of Tyler Brown and Bradley Brown

Lisa Brown as parent of Emily Brown

Lori Carroll and Sonny Carroll as parents of Jason Edmondon

Tim Carroll as parent of Ethan Carroll and Nathan Carroll

Darlene Casey and Randall Casey as parents of Chasity Casey and Colton Casey

Kelly Cheaney and Michael Cheaney as parents of Caitlin Cheaney and Chase Cheaney

Buddy Childers as parent of Mary Childers and Daniel Childers

Dewey Clifton as parent of Hannah Clifton

Lona Cotney as parent of Dylan Cotney, Stephanie Cotney, and Matthew Cotney

Cindy Crawford and Joey Crawford as parents of Colleen Crawford, Dakota Crawford, and Kayla Crawford

Alan Denney and Freda Denney as parents of Brittney Denney and Misty Dennny

Vivian Eargle as parent of Mickey Eargle

Jody East and Rita East as parents of Colton East and Jordan East

Dawn Elder and Mike Elder as parents of Brett Elder, Chad Elder, and Deric Elder

Janet Farr and Mark Farr as parents of Anna Siggers

Keith Gilbert and Wynema Gilbert as parents of Blain Gilbert and Payton Gilbert

Johnnie Glenn and Wayne Glenn as parents of Tiffany Glenn

Tammy Gortney and Vic Gortney as parents of Ethan Gortney and Shawnee Gortney

Lindell Graham and Virginia Graham as parents of Jennifer Williams and Jamie Williams

Lynn Griffin and Melanie Griffin as parents of Jodi Griffin

Amy Hamlin and Johnny Hamlin as parents of Billy Ray Hamlin

Delane Hodnett as parent of Terry Cantrell, Eric Hodnett, and Tanya Cantrell

Diane Jacobs and Wayne Jacobs as parents of Hannah Jacobs

Jerry Jett and Tina Jett as parents of Carrie Jett

Becky Jones and Winfred Jones as parents of Abbey Jones

Wanda Jones as parent of Shalena Karr, Justin Karr, and Martin Karr

Charles B. Kinde as parent of Terri Ann Bailey

Brenda Kytan and Mark Kytan as parents of Lindsay Kytan, Nathan Kytan, and Jessica Kytan

Alison Lee as parent of Scott Lee and Timothy Lee

Cheryl Lee and Mike Lee as parents of Brandi Lee, Brandon Adam Lee, and Michael Lee

Dianne Looser as parent of Colton Looser

Terry J. Meek as parent of Joseph Meek

Ann Melton as parent of Hannah Melton

Jo Ann Mitchell as parent of Jake Mitchell, Jared Mitchell, and Jeff Mitchell

James Moon as parent of Dylan Moon and Melanie Moon

Michelle Morris as parent of Caitlin Morris

Bob Nolen and Sharilyn Nolen as parents of Autumn Nolen and Holly Nolen

Kenneth Packer as parent of Matthew Packer

Billy Parris, Jr. as parent of Holly Britton and Megan Britton

Daniel Ricketson and Toni Ricketson as parents of Heather McCormick

Vickie Schoggins as parent of Adam Schoggins

James Smith and Janice Smith as parents of Megan Smith

Jill S. Smothers and Kent Smothers as parents of Kurtis Smothers and Rachel Smothers, and Rebecca Smothers

Christie Thompson and Ricky Thompson as parents of Amber Thompson and Katelyn Thompson

Lisa Thompson and Tim Thompson as parents of Danielle Courson, Dean Courson and Daniel Thompson

Anita Waldrep and Tim Waldrep as parents of Amber Waldrep

Lisa Waldrep and Wendell Waldrep as parents of Chasity Waldrep

Angie Watts and Jimmy Watts as parents of Steven Watts

Yvonne Watts as parent of Holly Watts

John Wellborn as parent of Aaron Wellborn, Rachel Wellborn and Rebekah Wellborn

Bonnie Wellborn and Stephen Wellborn as parents of Amber Wellborn, Krislyn Wellborn, and Caleb Wellborn

Dawn Whaley as parent of Rebekah Whaley

Timmie Whaley as parent of Alyssa Whaley

Brenda Wheeles and David Wheeles as parents of Bridget Wheeles

Latricia White and Michael White as parents of Heather White and Anthony White

Paul Wilkerson and Wanda Wilkerson as parents of Kimberly Wilkerson and Jason Wilkerson

Other interested persons and entities

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Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. Department of Justice

Norman J. Chachkin, Attorney with the NAACP Legal Defense and Educational Fund, Inc. representing private plaintiffs

Clay County Board of Education

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Richard Farrow, Member, Clay County Board of Education

Dennis Gautney, Member, Clay County Board of Education

Jeremiah Glassman, Chief, Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice

Bobby Curry, et al., and Jake Barrett, et al. v. *Macon County Board of Education* (11th Cir.) (No case number assigned)

Daniel Gordon, Attorney, Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice

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Anita Kelly, Esq., Attorney, Alabama State Board of Education

Anthony T. Lee, Lead Private Plaintiff

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Macon County Board of Education

Denise McDonald, Member, Clay County Board of Education

Gene Miller, Superintendent, Clay County School System

National Education Association

Arthur Oliver, Member, Clay County Board of Education

C. Lynnwood Smith, Jr., United States District Court Judge, Northern District of Alabama

Donald B. Sweeney, Jr., Esq., Attorney with Bradley, Arant, Rose & White representing Clay Board of Education

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Lisa Wilson Edwards

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2003, a copy of the United States' Opposition To Proposed Intervenors' Motion For A Stay Of Order Denying Intervention was served by overnight Federal Express delivery on each of the following persons:

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