No. 04-30356

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

EVANGELINE PARISH CHAPTER OF THE NATIONAL ASSOCIATION OF NEIGHBORHOOD SCHOOLS, *et al.*,

Proposed Intervenors-Appellants

v.

JOANN GRAHAM, *et al.*,

Plaintiffs-Appellees

UNITED STATES OF AMERICA,

Plaintiff-Intervenor-Appellee

EVANGELINE PARISH SCHOOL BOARD,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States believes that the Court can resolve this case on the briefs and that oral argument is not necessary.

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BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. 1331 and 1343(a)(3) because the case involved civil rights issues arising under the

Constitution and laws of the United States.

On March 26, 2004, proposed intervenors Evangeline Parish Chapter of the National Association of Neighborhood Schools (NANS), and fourteen residents and students in the school district, filed a notice of appeal of the district court's March 16, 2004, order denying intervention as of right and permissive intervention under Federal Rule of Civil Procedure 24(a) and (b). The district court's order denying intervention as of right is correct, and the district court did not abuse its discretion in denying permissive intervention. Accordingly, under this Court's "anomalous rule," the Court should dismiss the appeal for want of jurisdiction. See pp. 18-19, *infra*.

STATEMENT OF THE ISSUES

Whether the district court properly denied appellants' motion to intervene as of right under Federal Rule of Civil Procedure 24(a), or abused its discretion in denying permissive intervention under Federal Rule of Civil Procedure 24(b).

STATEMENT OF THE CASE

1. *Background*

a. This longstanding school desegregation case was initiated on May 4, 1965, by black schoolchildren and their parents alleging that the Evangeline Parish School Board operated a racially segregated school system. On June 4, 1965, the district

court held that the school system was racially segregated, and ordered that the Board file a desegregation plan. (R.E. Tab 4 at 19).[1] The United States intervened in 1971 pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2. (R. 7/9/71).

In June 1992, the United States initiated an investigation of, *inter alia*, employment and student assignment practices of the Board. (R. 10/21/98). Consent decrees remedying certain of these practices followed. (R. 8/1/97; R. 10/21/98). The United States subsequently moved for a status conference on the School Board's efforts to remedy the vestiges of discrimination remaining in the school system. (R. 4). A conference was conducted by the district court on May 30, 2001, which included members of the Board, the School Superintendent, the school system's central office staff, and principals of the system's 14 schools. (R. 13).

On June 28, 2001, the district court adopted a superseding consent decree addressing selection procedures for administrators and supervisory personnel, reassignment of faculty, and the student transfer policy, and ordered the re-

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[1] "R. ___ refers to items listed in the district court docket sheet, either by date or record number. "R.E. Tab __ at __" refers to pages within the tabbed items contained in the Record Excerpts filed with the appellants' opening brief on October 1, 2004. "U.S.R.E. Tab __ at __" refers to the pages within the tabbed items contained in the United States' Record Excerpts filed with this Brief As Appellee. "Br. __" refers to pages of the appellants' opening brief. "Tr. at __" refers to pages of Volumes I and II of the transcribed intervention hearing held by the district court on March 15 and 16, 2004.

establishment of the Biracial Committee to assist the district court in obtaining unitary status for the Evangeline Parish school system. (R. 15, 17). The decree also required the district court to conduct quarterly meetings with the School Board President, the School Superintendent, and counsel for the parties in order to monitor compliance with the decree. (R. 15 at 3). Following its adoption, the district court held meetings with the School Board President, School Superintendent, and attorneys regarding its compliance. (R. 21; R. 27; R. 29; R. 34; R. 37; R. 39; R. 49; R. 57; R. 59; R. 64; R. 69; R. 74; R. 75; R. 97).

b. In February 2003, pursuant to the district court's directive (R.E. Tab 4 at 53), the Superintendent of Evangeline Parish appointed a Committee to develop a plan relating to student assignments and facilities that would meet the School Board's constitutional obligations and improve the educational quality of the school system. (R. 61). The Superintendent stated that the school reorganization plan would "receive[] the input and assistance of the United States Department of Justice, * * * the parties to the long-standing school desegregation case and of the Court." (*Ibid*).

Prior to the school reorganization, Evangeline Parish operated 14 schools serving 6,364 students, of whom 3,762 (59.1%) were white and 2,553 (40.1%) were black. (U.S.R.E. Tab 1). Many of the black students in Evangeline Parish

attend school in Ville Platte. (*Ibid.*). The school system included seven high schools which also served students in the lower grades. In October 2003, the racial composition of students at the seven high schools was as follows:

Table 1

	Grade	White	Black	Other	Total Students
Basile High School	4-12	366 (81.32%)	76 (16.8%)	8	450
Bayou Chicot High School	4-12	386 (79.7%)	93 (19.2%)	5	484
Chataignier High School	4-12	177 (54%)	151 (46%)	0	328
Mamou High	9-12	185 (62.5%)	110 (37.1%)	1	296
Pine Prairie High	1-12	757 (98%)	13 (1.7%)	4	774
Vidrine High School	1-12	488 (80%)	118 (19.3%)	3	609
Ville Platte High	7-12	184 (26.5%)	503 (72.6%)	5	692

(*Ibid.*).

Three of the high schools, Basile, Pine Prairie, and Vidrine, enrolled a predominant number of white students, and Ville Platte enrolled predominantly black students. The average ACT and other standardized test scores for Evangeline Parish students have been below state and national averages, and several of the 14 schools have been in corrective action due to educational deficiencies under the Louisiana School Accountability Program. (U.S.R.E. Tab 2 at 3). Twenty-eight percent of graduating seniors attend four-year colleges, and only a small percentage of those students graduate from college. (*Ibid.*).

The educational enhancements contained in the school reorganization plan centered on the high schools. (U.S.R.E. Tab 2 at 5). The plan developed by the Superintendent reduced the number of high schools from seven to four. (*Ibid.*). The plan maintained Basile High School, Mamou High School, Pine Prairie High School, and Ville Platte High School, which include students in lower grades. (*Ibid.*). Under the plan, the racial composition of student enrollment at the high schools would be as follows:

Table 2

	Grade	White	Black	Other	Total Students
Basile High School	5-12	358 (81.74%)	73 (16.67%)	7	438
Mamou High School	5-12	537 (61.94 %)	328 (37.83 %)	2	867
Pine Prairie High School	PK-4 9-12	650 (83.55 %)	123 (15.81 %)	5	778
Ville Platte High School	5-12	263 (29.09 %)	635 (70.24 %)	6	904

The school plan increases black student enrollment at Pine Prairie High School and increases white student enrollment at Ville Platte High School. The high school consolidations also create larger schools and increase class sizes to provide more curricular and extra-curricular opportunities for students. (U.S.R.E. Tab 2 at 5-6). The plan contains two enhancement programs for high school students. Under the plan, a visual and performing arts academy would be added to

Pine Prairie High School's academic curriculum. (U.S.R.E. Tab 2 at 6). Admission to the academy would be available to students throughout the school system who are interested in choir, band, drama, and other performing arts activities. (*Ibid.*). The plan is intended to "attract minority students to [Pine Prairie High] [S]chool." (*Ibid.*). The plan also creates a medical science academy at Ville Platte High School, offering "advanced course work in science and math, such as Chemistry II, Physiology, Anatomy, Calculus and Trigonometry." (*Ibid.*). The academy at Ville Platte High School "would be the only school in the parish where students * * * could earn high school and college credits simultaneously." (*Ibid.*). The plan states:

> Again, it is expected that these programs will provide the curriculum at the school and it is hoped that they will be successful in attracting Caucasian students to that facility. Students from throughout the Parish will be eligible to apply based on entrance criteria to be established.

(*Ibid.*; see also U.S.R.E. Tab 2 at 60).

The plan creates educational enhancements for struggling students who are at risk of dropping out school by allowing them to exit the regular diploma track to pursue a General Education Diploma or Certificate of Skills Completion. (U.S.R.E. Tab 2 at 6-7, 61). The plan was designed to "retain [] the cultural integrity of the communities of the Parish," and to ensure that, with two exceptions, "all students in

grades Pre-K - 8 under the School Reorganization Plan will attend schools in their own communities." (U.S.R.E. Tab 2 at 7). The plan ensured that the Board would continue following the guidelines on majority-to-minority student transfers set out in the June 2001 and prior consent decrees. (U.S.R.E. Tab 2 at 59).

c. On September 19, 2003, the Evangeline Parish Chapter of the National Association of Neighborhood Schools (NANS), and 14 parents and their children who reside in the Evangeline Parish school district, moved to intervene as of right and permissively to oppose the school reorganization plan. (R.E. Tab 5). The mission of NANS is to "preserve and restore the neighborhood school concept and to preserve the rights of all parents to send their children to, and of all students to attend, the public school closest to their homes rather than be assigned to schools on the basis of racial, ethnic and/or socioeconomic factors." (R.E. Tab 5 at ¶ 2(a)). Proposed intervenors "oppose * * * the 'consolidation' of schools (the closure or combination of existing schools), [and] the mandatory assignment of the students who are the children of applicants for intervention and of others similarly situated, because of their race." (R.E. Tab 5 at ¶ 4; see also Memo. In Support of Motion at 2). Proposed intervenors asserted their interest in "preserv[ing] the right of parents to enroll their children in, and of all students to attend, the public school nearest their home and to preserve the identity and traditions of their local communities,

neighborhoods, towns and villages – the heart of each of which is the public school." (R.E. Tab 5 at ¶ 6; see also Memo. at 2). Proposed intervenors complained that the parties prevented them from participating in the development of the School Board's reorganization plan, and claimed that the district court lacks authority to authorize the plan because the school district has reached unitary status and should be released from judicial supervision. (R.E. Tab 5 at ¶¶ 8-17; see also Memo. at 5-8). Proposed intervenors stated that the existing parties do not adequately represent their interests because they are not affected by the mandatory assignment of students based on race. (*Ibid.*; see also Memo. at 13). The United States and private plaintiffs opposed the motion. (R. 80, 87). The School Board took no position on the motion to intervene, but responded that it has adequately represented the interests of the school system. (R. 88).

d. The Superintendent submitted the plan to the parties for review. (R.E. Tab 4 at 54-55). On January 7, 2004, after the parties expressed no objection, the Superintendent submitted the plan to the Board. (*Ibid.*). The Board held six public hearings so that citizens could provide comments on the plan. (R.E. Tab 4 at 76). On February 18, 2004, the Board rejected the Superintendent's plan by a vote of seven to six. (R.E. Tab 10). Following the Board's rejection of the plan, the district court directed the United States and any other party to submit a plan for

reorganizing the school system. (*Ibid.*). On March 1, 2004, the Board voted again on the plan and accepted it by a vote of eight to five. (R.E. Tab 11). The Board moved for authorization to implement the school reorganization plan on March 5, 2004. (U.S.R.E. Tab 2).

2. *District Court's Hearing And Decision On Intervention*

The district court held a hearing on the motion to intervene on March 15-16, 2004. (R. 123, 124). Following the hearing, the district court denied the motion. (R.E. Tab 2). The district court judge stated at the intervention hearing that "based on the evidence adduced and the documents admitted into evidence, * * * [the court] is going to deny the motion for intervention finding that the requirements of Rule 24 as to permissive intervention or intervention of right have not been established by the applicants." (Tr. at 548). The district court stated that it would "give written reasons for that finding and conclusions of law." (*Ibid.*).

On March 18, 2004, proposed intervenors moved to stay any further proceedings for implementing the school plan pending appeal of the order denying intervention. (R.E. Tab 16). The district court held that proposed intervenors failed to satisfy the elements of Federal Rule of Civil Procedure 62 for a stay pending appeal, and denied the motion. (R. 129; R. 130, Transcript of Hearing at 56-62, 72-73).

The district court entered its written reasons for denying intervention on September 1, 2004. (R.E. Tab 4). The district court observed that the mission of NANS is to "terminate all Federal school desegregation cases" based on the belief that "[t]he practice, often ordered by Federal Courts under the guise of 'desegregation,' results in the disenfranchisement of the public and misuse of taxpayer education funds." (R.E. Tab 4 at 58-59). The NANS mission statement also provides that: "It all starts when a court orders a school district to 'desegregate' its schools and issues a 'remedial' order. But the 'remedial orders' do not remedy. They are destructive." (R.E. Tab 4 at 59). The district court observed that the purpose of the Evangeline Parish Chapter of NANS is to "preserve where ever legally possible the right of parents to send their children to, and all of the students to attend, the public school closest to their homes as opposed to being mandatorily assigned to particular schools on the basis of racial, ethnic or socioeconomic factors." (*Ibid.*).

The district court stated that "parents seeking to intervene" in a school desegregation case "must demonstrate an interest in a desegregated school system." (R.E. Tab 4 at 64 (quoting *United States* v. *Perry County Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978))). The district court held that proposed intervenors "have failed to demonstrate [such] an interest." (R.E. Tab 4 at 65). The district court

stated that proposed intervenors' motion "failed to even mention the term 'desegregation,'" and that, instead, proposed intervenors "based [their] action on their opposition to the student reassignment and consolidation action taken in pursuit of desegregation in Evangeline Parish." (*Ibid.*). The district court noted that witnesses for proposed intervenors at the March 2004 hearing testified that their "primary interest in intervening in this lawsuit was to insure their children have the right to 'go to school * * * where they live and to the nearest school," and that "[t]he purpose of desegregation * * * is so that people can go to whatever school in the neighborhood that they live in." (R.E. Tab 4 at 66). The district court stated that no witness identified "a specific concern with the Plan which would frustrate the goal of desegregation." (*Ibid.*). The district court found that proposed intervenors' witnesses "consistently testified that they believed the School System to be unitary, although they had no understanding of the actual * * * factors required for unitary status" (*ibid.*) set forth in *Green* v. *County School Board*, 391 U.S. 430 (1968), and "were unfamiliar with any specifics of the Plan as it related to bringing the school system into unitary status." (R.E. Tab 4 at 66).

The district court next held that proposed intervenors failed to show that any cognizable interest asserted was inadequately represented by existing parties. The district court stated that the "record clearly reveals that the ultimate goal of the

United States and the School Board is the same as the interest asserted by Applicants for Intervention, that of bringing the Evangeline Parish School System into unitary status." (R.E. Tab 4 at 68). The district court stated that the United States has "vigorously represented the interests of the original plaintiffs" by investigating complaints against the Board alleging its failure in desegregating the school system. (R.E. Tab 4 at 68-69). The district court stated that proposed intervenors "provided nothing more than conclusory allegations that the School Board and United States do not adequately represent their interests." (R.E. Tab 4 at 70).

The district court also held that no evidence shows "any collusion between the existing parties, * * * nonfeasance by the School Board, [or] interest on the part of the School Board or the United States substantially adverse to that of Applicants." (R.E. Tab 4 at 83). The district court observed that pursuant to the June 28, 2001, consent decree, School Board members, the Superintendent, and the parties had quarterly meetings with the district court to monitor the school system's compliance with the decree. (R.E. Tab 4 at 74). Based on these meetings the district court instructed the Superintendent to form a committee of local educators, which included African Americans, to develop a student assignment plan for the Board's consideration. (*Ibid.*). Members of the Board were notified of the

formation of the Committee at their regularly scheduled Board meeting in February 2003. (R.E. Tab 4 at 74-75). After the Superintendent's Committee completed a proposed plan in September 2003, the plan was evaluated by the parties in the case. (R.E. Tab 4 at 76). The district court further noted that, after its subsequent presentation to the School Board and six public meetings where local citizens gave comments, the Board voted initially to reject the plan, then held a second vote and accepted the plan. (*Ibid.*).

The district court determined that there was no evidence that any Board members were intimidated by the district court to accept the plan proposed by the Superintendent. (R.E. Tab 4 at 78-81). The district court observed that only three Board members testified at trial, including the two who had initially rejected the plan and then changed their vote on March 1, 2004, to accept the plan. (R.E. Tab 4 at 79). The district court found that these two members changed their votes to comport with promises they had made to their constituents. (R.E. Tab 4 at 79-80). The district court stated that since the ten other Board members did not testify, "the Court can only conclude that [their] testimony * * * would not have added anything to substantiate Applicants' belief that the members of the School Board were intimidated by the Court into voting for the Superintendent's Committee's Plan rather than submitting an alternative plan of their own." (R.E. Tab 4 at 80).

The district court also found that the public was given ample opportunity to comment on the plan. The district court stated that

> [t]he testimony of the Applicants confirms they were aware of and attended the [six] public meetings and were provided the opportunity to give input and make comment[s] about the Plan. * * * The testimony of Applicants further confirms that although they had known for some time that the Superintendent's Committee was in the process of developing a reorganization plan, Applicants did not attempt to contact counsel for the United States in order to discuss any aspect of student body desegregation before filing their motion to intervene. * * * While each of the Applicants testified that they had knowledge of the *Green* factors * * * none could identify the *Green* factors or the issues which must be considered in determining whether a school system is unitary.

(R.E. Tab 4 at 81-82). Based on these findings, the district court concluded that proposed intervenors "failed to produce evidence that the United States and/or the * * * School Board had any motivation or interest different from that of the Applicants." (R.E. Tab 4 at 82-83).

3. *District Court's Order On The School Reorganization Plan*

On March 25, 2004, the district court held a hearing on the School Board's motion for authorizing implementation of the school reorganization plan. (R. 133). With no opposition by the parties, the district court determined that the plan was "in the interest of justice" (R. 134 at 1), and stated that the plan "becomes not only the obligation of the Evangeline Parish School Board, but the obligation of all * * * of its employees to make sure that it is successfully implemented." (R. 133, Transcript

of Hearing at 15). The district court retained jurisdiction to monitor the school system's compliance with the plan and other orders in the case. (R. 134 at 2).

STANDARDS OF REVIEW

This Court reviews *de novo* a district court's decision to deny an application for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). *Saldano* v. *Roach*, 363 F.3d 545, 550 (5th Cir. 2004), cert. denied, No. 03-1704, 2004 WL 2058958 (Oct. 4, 2004). Factual findings are subject to review for clear error. *Effjohn Int'l Cruise Holdings, Inc.* v. *A&L Sales, Inc.*, 346 F.3d 552, 559 (5th Cir. 2003). Orders denying permissive intervention are subject to review for "clear abuse of discretion," and will be reversed only if "extraordinary circumstances" are shown. *Trans Chemical Ltd.* v. *China Nat'l Mach. Import & Export Corp.*, 332 F.3d 815, 822 (5th Cir. 2003).

SUMMARY OF ARGUMENT

The district court's denial of intervention was proper and, under this Court's "anomalous rule," the appeal must be dismissed for want of appellate jurisdiction. The district court correctly held that proposed intervenors fail to satisfy the criteria to intervene as of right or permissively under Federal Rule of Civil Procedure 24.

Proposed intervenors do not assert a legally cognizable interest that would entitle them to intervene as of right in this school desegregation case. Intervention

as of right in school desegregation cases is very limited, and requires that intervenors demonstrate an interest in desegregation. Proposed intervenors failed to make such a showing. Instead, the interests asserted by proposed intervenors relate to maintaining their neighborhood schools, which this Court has made clear is not a legally cognizable interest that justifies intervention in school desegregation cases. Proposed intervenors also assert an interest in becoming a party to the suit in order to move for unitary status. This interest is also insufficient because, as this Court explained in *United States* v. *Franklin Parish School Board*, 47 F.3d 755 (5th Cir. 1995), it is fully represented by existing parties. Indeed, to the extent that proposed intervenors may be deemed to have any interests related to desegregation, those interests are fully represented by the existing parties to the suit. Proposed intervenors suggest collusion and nonfeasance by the parties and the district court. These claims were rejected by the district court and are belied by the record. Contrary to proposed intervenors' claims, they were fully informed of the development of the school reorganization plan and witnesses for proposed intervenors testified at the hearing on intervention that they participated in the public hearings held by the School Board and provided comments on the school plan. Proposed intervenors thus cannot use the judicial process to overturn a legitimate decision of the School Board to adopt the school plan. Moreover, there

is no evidence to support proposed intervenors' claim that Board members were intimidated by the district court to change their vote to support the plan.

The district court also acted well within its discretion in denying permissive intervention. Clearly, intervention would prejudice the parties by interfering with a school plan voted on favorably by the School Board, and found by the district court to be constitutionally permissible and in furtherance of the remedial orders of the case.

ARGUMENT

BECAUSE INTERVENTION WAS PROPERLY DENIED, THE APPEAL SHOULD BE DISMISSED FOR LACK OF APPELLATE JURISDICTION

This Court's authority to review the denial of a motion to intervene as of right and permissively is derived from this Circuit's "anomalous rule" that "govern[s] the appealability of orders denying intervention." *Stallworth* v. *Monsanto*, 558 F.2d 257, 263 (5th Cir. 1977). In *Stallworth*, this Court explained that

> we have provisional jurisdiction to determine whether the district court erroneously concluded that the appellants were not entitled to intervene as of right under section (a) of Rule 24, or clearly abused its discretion in denying their application for permissive intervention under section (b) of Rule 24. If we find that the district court's disposition of the petitions [to intervene] was correct, or within the ambit of its discretion, then our jurisdiction evaporates because the proper denial of leave to intervene is not a final decision, and we must

> dismiss these appeals for want of jurisdiction. But if we find that the district court was mistaken or clearly abused its discretion, then we retain jurisdiction and must reverse. In either event, we are authorized to decide whether the petitions for leave to intervene were properly denied.

Ibid. See also *Trans Chemical Ltd.* v. *China Nat'l Mach. Import & Export Corp.*, 332 F.3d 815, 822 (5th Cir. 2003); *Lelsz* v. *Kavanagh*, 710 F.2d 1040, 1048 (5th Cir. 1983); *Meek* v. *Metropolitan Dade County*, 985 F.2d 1471, 1476-1477 (11th Cir. 1993).

Proposed intervenors sought to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), and permissively under Federal Rule of Civil Procedure 24(b).[2] The district court correctly concluded that proposed intervenors cannot intervene as of right because they fail to assert legally cognizable interests in this

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[2] Federal Rule of Civil Procedure 24(a)(2) provides as follows:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: * * * when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(b)(2) provides as follows:

> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action * * * when an applicant's claim or defense and the main action have a question of law or fact in common.

desegregation lawsuit, and any such interests are adequately represented by existing parties. The district court's denial of permissive intervention was not an abuse of discretion. Thus this case should be dismissed for want of jurisdiction.

A. Proposed Intervenors Do Not Satisfy The Criteria For Intervention As Of Right

A party who seeks to intervene as of right under Federal Rule of Civil Procedure 24(a) must establish that: (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit. *Saldano* v. *Roach*, 363 F.3d 545, 551 (5th Cir. 2001), cert. denied, No. 03-1704, 2004 WL 2058958 (Oct. 4, 2004); *Kneeland* v. *National Collegiate Athletic Ass'n*, 806 F.2d 1285, 1287 (5th Cir.), cert. denied, 484 U.S. 817 (1987). All four prerequisites must be met to intervene as of right. *Ibid.* The district court correctly denied proposed intervenors' motion because the movants fail to satisfy the second and fourth factors to intervene as of right under Rule 24(a).

1. Proposed Intervenors Do Not Assert Legally Cognizable Interests

a. Proposed intervenors assert (Br. 33) that they have a substantial legal interest in this case based on their opposition to the school closings. In their

motion to intervene, proposed intervenors assert an interest in opposing the consolidation of their local high schools and student assignments based on race (pp. 8-9, *supra*). Proposed intervenors also asserted an interest in "preserv[ing] the right of parents to enroll their children in * * * the public school nearest their home[s]" (p. 8, *supra*). Witnesses for proposed intervenors at the intervention hearing testified about their interests in preserving neighborhood schools, and seeking unitary status and the withdrawal of court supervision. (See Tr. at 170, 173 (Kurt Guillory); Tr. at 230 (McCaulley); Tr. at 262-263 (McDavid); Tr. at 444-445 (Kent Guillory)). These asserted interests, however, are not legally sufficient to warrant intervention as of right in this school desegregation case.

In *Hines* v. *Rapides Parish School Board*, 479 F.2d 762, 765 (5th Cir. 1973), this Court held that the proper procedure for "parental groups seeking to question current deficiencies in the implementation of desegregation orders is for the group to petition the district court to allow it to intervene[.] The petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent and the ways in which the goal of a unitary system had allegedly been frustrated." *Ibid.* (footnote omitted). This Court in *Hines* stated that where the court determined that the intervenors sought to present issues that "had been previously determined" or that the "parties in the original action were aware of

these issues and completely competent to represent the interests of the new group," intervention could be denied. *Ibid.*

This Court adheres to a "narrow reading" of interests in school desegregation cases, and has made clear that in order for parents to assert a legally cognizable interest in a school desegregation case, the parents must demonstrate "an interest in a desegregated school system." *United States* v. *Perry County Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978); *Pate* v. *Dade County Sch. Bd.*, 588 F.2d 501, 503 (5th Cir.), cert. denied, 444 U.S. 835 (1979). "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." *Perry County*, 567 F.2d at 279-280; see also *United States* v. *Georgia*, 19 F.3d 1388, 1394 (11th Cir. 1994).

The district court was correct to deny intervention as of right. Proposed intervenors seek to intervene to prevent the school consolidations set out in the school reorganization plan that was approved by the School Board, but fail to show how the school consolidations frustrate the goal of desegregation. (R.E. Tab 4 at 65 ("A review of their motion reveals that Applicants failed to even mention the term 'desegregation.'")). The district court's denial of intervention is consistent with this Court's decision in *Perry County*, where the Court dismissed an appeal by parents

who sought to intervene in a school desegregation case to oppose the construction of a high school at the school board's chosen site. The parents in *Perry County* expressed concerns about the "safety and welfare of school children, a large attendance zone that would require considerable travel on the part of some students, and the significant outlay of public funds that would be required." 567 F.2d at 280 n.3. This Court determined, however, that the "parents [were] not seeking to challenge deficiencies in the implementation of desegregation orders" but were "oppos[ing] the [school] location on various policy grounds, which, though important, are unrelated to desegregation and the establishment of a unitary school system." *Id.* at 279-280. This Court, in denying intervention, explained that

> [i]n the context of public school desegregation, there are innumerable instances in which children, parents, and teachers may be deprived of various "rights" (*e.g.*, the "right" to attend a neighborhood school) without having the opportunity to participate directly in the judicial proceedings which divest them of those "rights." When these adversely affected groups have sought to intervene, we have frequently declined to permit it.

Id. at 279. Similarly, in *United States* v. *Mississippi*, 958 F.2d 112, 113-114 (5th Cir. 1992), this Court denied intervention to an association of parents who asserted an interest in opposing a school reorganization plan that consolidated schools to alleviate financial pressures on the school district. The Court held that this asserted interest was "insufficient to trigger a mandatory right of intervention in a school

desegregation case under Rule 24(a)(2)." *Id.* at 115. See also *United States* v. *Marion County Sch. Dist.*, 590 F.2d 146, 149 (5th Cir. 1979) (holding that parent group's motion to intervene to oppose the closing of a certain school was "properly denied").

The asserted interests of proposed intervenors in this case are no different from the interests of the parent groups denied intervention in *Perry County*, *State of Mississippi*, or *Marion County*. While proposed intervenors also seek to intervene based on their complaint that the School Board did not oppose the school reorganization plan, this Court has made clear that proposed intervenors "are not entitled to intervention of right simply because they would have voted differently had they been members of these representative bodies." *Pate*, 588 F.2d at 503 (quoting *Perry County*, 567 F.2d at 280). Indeed, school locations are "matters of policy * * * to be determined by the Board of Education, not by the federal courts." *Perry County*, 567 F.2d at 280. "Location of a school comes within the purview of the federal courts only to the extent that it has an impact on desegregation." *Ibid.*; see also *Tasby* v. *Estes*, 517 F.2d 92, 105 (5th Cir.), cert. denied, 423 U.S. 939 (1975); *Georgia*, 19 F.3d at 1392.

b. Proposed intervenors also assert (Br. 33) an interest in opposing the school reorganization based on their belief that the school system has already

reached unitary status. This Court rejected this argument in *United States* v. *Franklin Parish School Board*, 47 F.3d 755, 756, 757 (5th Cir. 1995). Proposed intervenors argue (Br. 35-36), nonetheless, that *Franklin Parish* does not apply. That argument lacks merit, as the facts in *Franklin Parish* are similar to the facts in this case.

Franklin Parish involved an unincorporated association of parents who sought to intervene in a school desegregation case in order to object to a proposed school consolidation plan that would close certain schools and potentially raise taxes. 47 F.3d at 756. *Franklin Parish* was a 24-year-old desegregation suit brought by the United States. A 1970 desegregation order enjoined the Franklin Parish School Board (FPSB) from operating the school system in a discriminatory manner, and required that it take specific actions to implement the order. *Ibid.* The district court maintained continuing jurisdiction for enforcing or modifying its order. *Ibid.* The FPSB, motivated by economic and educational concerns, approved a plan for consolidating schools. After the plan's development, it was presented to and debated by the community. The parent group in *Franklin Parish* sought to intervene, contending that the school system had achieved unitary status and that the school board failed in its duty to seek orders terminating federal control of the school system. *Ibid.*

Citing *Hines*, *Dade County*, and *Perry County*, this Court held that the parent group failed to assert a legally cognizable interest. The Court held that

> [the parent group] is not entitled to intervene based merely on conclusory allegations that their duly elected representatives on the school board are not aggressively defending the suit. Their remedy for that breach, if any, is embodied in their right to select new representatives. Further, [the parent group] did not allege that continued federal control of the school system injured them in any specific way. To the contrary, [the parent group] wants to invoke the power of the federal court to settle their dispute with the local school board.

Franklin Parish, 47 F.3d at 757 (internal citation omitted). This Court also rejected the parent group's argument that their interests in pursuing unitary status are not adequately represented by existing parties. The Court held that

> there was no evidence that FPSB had any motivation or interest that was different from that of [the parent group]. [The parent group] cites no authority for the proposition that they are entitled to intervene because no other party is asserting their current position that a unitary school system has been achieved. Certainly, after twenty-four years of federal control, FPSB is in a better position to determine when it can successfully seek release from federal court control. Finally, disposition of the action, when there is a final determination that a unitary school system has been achieved, will advance rather than impair [the parent group's] interest in returning control to local authorities.

Id. at 758 (footnote omitted).

c. Despite this Court's case law to the contrary, proposed intervenors argue (Br. 42-43) that their asserted interests satisfy the criteria for intervention

based on the district court's decision in *Capacchione* v. *Charlotte-Mecklenberg Board of Education*, 179 F.R.D. 505 (W.D.N.C. 1998). Proposed intervenors' reliance on *Capacchione* is inappropriate for various reasons.

First, as explained on pages 20-26, *supra*, this Circuit has already spoken on the issues raised by proposed intervenors, and has made clear that the interests they assert – to maintain their local schools and move for unitary status – are not legally cognizable interests warranting intervention. Second, *Capacchione* is a decision of a district court in the Fourth Circuit, and thus carries no precedential weight before this Court. Finally, the facts in *Capacchione* are distinguishable.

In *Capacchionne*, the unitariness of the school system was squarely before the district court. A group of six parents with minor children enrolled in the school system sought intervention to advocate their position that the school system is unitary and race should not be used as a factor in student assignments. 179 F.R.D. at 506. Distinguishing the facts in this Circuit's decision in *Franklin Parish*, the district court granted permissive intervention, holding that

> [f]irst, and most importantly, unlike *Franklin Parish*, the precise issue of whether the school district is unitary is currently before this Court and will be determined in this matter. * * * In this case, Proposed Intervenors are not merely arguing that the Defendants are not aggressively defending a suit. Nor are they attempting to advocate a position that is not currently in issue. Rather, they are advocating a position completely opposite to that of the defendants on a primary issue that is immediately before the Court.

Capacchione, 179 F.R.D. at 508. Unlike in *Capacchione*, the question of unitary status was not before the district court when proposed intervenors filed their motion. Rather, the district court was conducting proceedings concerning the School Superintendent's school reorganization plan. Thus *Capacchione* is plainly distinguishable.[3]

2. Any Legally Cognizable Interests Asserted By Proposed Intervenors Are Adequately Represented By Existing Parties

a. Proposed intervenors also argue (Br. 33-34) that they are not adequately represented by the existing parties. This argument lacks merit.

"When the 'party seeking to intervene has the same ultimate objective as a party to the suit, the existing party is *presumed* to adequately represent the party seeking to intervene unless that party demonstrates adversity of interest, collusion, or nonfeasance.'" *Franklin Parish*, 47 F.3d at 757 (emphasis added); see also *Kneeland*, 806 F.2d at 1288. To the extent that proposed intervenors could be deemed to assert any legally cognizable interests in desegregating the Evangeline Parish school system, those interests are fully represented by the United States and

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[3] Proposed intervenors cite (Br. 12 n.6) to *Belk* v. *Charlotte-Mecklenburg Board of Education*, 269 F.3d 305 (4th Cir. 2001), cert. denied, 535 U.S. 986 (2002), as further support for their argument that their interests warrant intervention. The court of appeals' decision in *Belk* is inapplicable, however, because that decision does not address the merits of the district court's decision on intervention.

the other parties. This Court's "presumption" that any interest proposed intervenors have in furthering desegregation is fully represented by existing parties is "especially appropriate" in this case, where the United States is a party to the litigation. Under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, the United States 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) (intervention of national organization that sought to represent black students in school desegregation case denied where organization and United States shared same objectives); cf. *United States* v. *City of Miami*, 278 F.3d 1174, 1178-1179 (11th Cir. 2002) (intervention denied to police association in employment discrimination case where association shared same goals as, and was adequately represented by, the United States).

Moreover, as explained on page 26, *supra*, this Court in *Franklin Parish* has made clear that proposed intervenors' interest in having the school system achieve unitary status and control returned to local authorities is adequately represented by existing parties. That is fully reflected in the fact that the school reorganization plan furthers desegregation by increasing the white student population at a predominantly black school (Ville Platte), and increasing the black student population at a predominantly white school (Pine Prairie). The development of

enhancement programs at these schools will also further desegregation by providing greater incentives for majority-to-minority student transfers at these schools. (U.S.R.E. Tab 2 at 5-6).

b. Proposed intervenors also suggest (Br. 40) collusion and nonfeasance by the parties and the district court. These suggestions were rejected by the district court and, in any event, are belied by the record.

For example, proposed intervenors complain (Br. 15, 18) that they were unable to get information on the development of the school reorganization plan from the Department of Justice or any other party in the case until it was released for public review. This, however, is not evidence of collusion or nonfeasance on the part of the parties. As the district court explained, the June 28, 2001, superseding consent order required the School Board President and School Superintendent to meet quarterly with the parties to "monitor compliance with this Superseding Consent Decree." (R.E. Tab 4 at 73). Pursuant to the 2001 order, the district court met with the School Board President, School Superintendent, and the attorney for the original plaintiffs "on at least a dozen occasions." (*Ibid.*). School Board members were invited, but were not required to attend the quarterly meetings. (R.E. Tab 4 at 75 n.25). Based on discussions at these numerous meetings, the district court directed the School Superintendent in December 2002 to

form a racially diverse committee of educators to develop a school reorganization plan that would further comport with the remedial orders of the case. (R.E. Tab 4 at 74). A month later, in January 2003, the district court conducted a conference with all School Board members and formally informed the members of the Superintendent's Committee and its tasks. (R.E. Tab 4 at 75).

The district court requested confidentiality by the Superintendent and his Committee until after a plan was developed and ready for disclosure to School Board members and the public. (R.E. Tab 4 at 80). Development of the school plan was announced to the public at an open school board meeting in February 2003. (R.E. Tab 4 at 75-76). The school plan was completed by the Superintendent's Committee seven months later in September 2003. (R.E. Tab 4 at 76). After its completion, the plan was reviewed and approved by the Justice Department, and then presented to the School Board. (*Ibid.*). The School Board conducted six public hearings, which proposed intervenors attended. (*Ibid.*). The School Board modified the plan based on comments at the hearings. (*Ibid.*).

Based on this sequence of events, there is clearly "nothing secret or sudden about what has gone on." *Jones* v. *Caddo Parish Sch. Bd.*, 735 F.2d 923, 937 (5th Cir. 1984). The district court explained that it "instructed the Superintendent's Committee and the School Board attorney to draft a reorganization plan without

outside input so that a plan could be presented to the School Board that was constitutional, educationally sound and to the extent possible, respected the cultural integrity of the towns and villages that makeup Evangeline Parish." (R.E. Tab 4 at 80). School Board members were fully informed that the School Superintendent was preparing a school plan that would seek to further desegregation in the area of student assignments. Moreover, as the district court found, witnesses for proposed intervenors testified that they attended the six public hearings and had the opportunity to provide their comments about the school plan to School Board members. (R.E. Tab 4 at 76).

Proposed intervenors also suggest (Br. at 10, 40) that the district court improperly pressured two Board members to change their votes and support the plan. These assertions are belied by the district court's findings and testimony by proposed intervenors' witnesses at the intervention hearing. The district court found that two School Board members – John David Landreneau and Dr. Bobby Wakeland Deshotel – who changed their votes to favor the plan did not do so because of pressure by the district court, but instead due to pressure from their own constituents.

Landreneau, an elected member of the School Board from District Six, testified on direct examination that he changed his vote to comply with the demands

of his constituents. He stated as follows:

> Q. All right. Now, following that meeting, we know that there was a subsequent school board meeting at which your vote changed; is that correct?
> A. Yes, sir. * * *
> Q. Well, you had actually changed your mind?
>
> * * * * *
>
> THE WITNESS: * * * I did, when I came back home the next morning, I started getting a flood of phone calls. * * * Well, I've got constituents and they flooded my phones just like all these other board members had phone calls. And that is the reason why I decided to change my vote because the people that put me in this chair didn't want what I had done. So I attempted to change the process and change my vote.

(Tr. at 327-328; see also Tr. at 341-342, 344 (Landreneau)). Landreneau also testified that the district court *never* told him that if he did not accept the plan a more stringent plan would follow. Landreneau testified:

> Q. Did you tell him that the Judge told you, in addition to that, that don't you know that the Justice Department is going to come in here and they're going to give you such a worse plan, you won't be happy with it? Did he tell you that?
> A. Who told me that?
> Q. No. Did you tell – did you tell Mr. Sonnier or anybody else that that's what the Judge said to you?
> A. No, sir. The Judge did not tell me that.

(Tr. at 329; see also Tr. at 332-333 (Landreneau)). Landreneau also testified that no one from the Justice Department ever told him that if he rejected the school reorganization plan, a "worse" plan would be developed. (Tr. at 347-348). Landreneau stated that while this concern was raised in a school board meeting, it

did not affect his vote. (Tr. at 349).

Deshotel, a member of the School Board representing District Two (Tr. at 368), testified that, like Landreneau, he changed his vote to make it consistent with the desires of the constituents in his district. Deshotel testified that after the first vote on February 18, he called the district court to request permission for another vote so that he could change his vote, and that the district court informed him that there was nothing that it could do. He stated on direct examination as follows:

> Q. Between the time of your first vote in favor of rejecting the plan and your second vote in favor of accepting the plan, did you have any conversations with Judge Melancon regarding the matter?
> A. The Thursday morning I called Judge Melancon asking him for an extension for me to change my vote.
> * * * * *
> A. He responded and said it was out of his hands. * * *
> Q. Okay. Did you tell Judge Melancon why it was you wanted to change your vote? * * *
> A. I told him because the people – I had lied to my people, or deceived them, a better word. That same afternoon that I voted * * * against the plan, I had told my principals I would vote for the plan. And my principals were in the meeting that night. I voted just the opposite of what I told them. And I felt that in all these years, I had deceived them by telling them that, and that's why I wanted to change it.

(Tr. at 371-372). Deshotel had no other conversations with the district court. (Tr. at 378).

B. The District Court Did Not Abuse Its Discretion By Denying Permissive Intervention

This Court has made clear that permissive intervention is "wholly discretionary * * * even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *Kneeland*, 806 F.2d at 1289. The district court did not abuse its discretion by denying permissive intervention to proposed intervenors.

The district court observed that a factor that district courts may consider in determining permissive intervention is "whether the intevenors' interests are adequately represented by other parties" (R.E. Tab 4 at 85 (quoting *Kneeland*, 806 F.2d at 1289)), and "whether intervention will unduly delay the proceedings" (806 F.2d at 1289). Given the district court's holding (pp. 12-13, *supra*) that any cognizable interests are well represented by existing parties, the district court reasonably concluded that intervention would "delay the continued efforts to desegregate the Evangeline Parish schools," since the school reorganization had to be approved by the School Board and authorized by the district court in sufficient time to allow for its "implement[ation] for the 2004-2005 school year." (R.E. Tab 4 at 85). The district court advised proposed intervenors, however, that if the school reorganization plan did not in fact facilitate desegregation, they would "be allowed to develop or engage in developing another plan." (*Ibid.*). The district court thus

acted well within its discretion in denying permissive intervention on the ground that intervention would prejudice the parties by interfering with a school reorganization plan voted on favorably by the School Board, and found by the district court to be constitutionally permissible and in furtherance of the Board's desegregation obligations.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed for want of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached brief complied with the type-volume limitations of Fed. R. App. P. 32(a)(7)(C). The brief was prepared using WordPerfect 9.0 and contains 8,375 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

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