No. 00-11468G

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellant

and

CHARLIE RIDLEY, et al.,

Plaintiff-Intervenors-Appellants,

v.

STATE OF GEORGIA (WAYNE COUNTY), et al.,

Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

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# REPLY BRIEF FOR THE UNITED STATES

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## ARGUMENT

In its brief as appellee, defendant Wayne County School District (School District) concedes (Appellees' Br. 5) that if the district court terminated the consent decree in this case, it did so in violation of clearly established Supreme Court and Circuit precedent. It argues (Appellees' Br. 6-7) that the district court order simply relinquished continuing jurisdiction over the decree, thereby requiring that any enforcement action be brought through a new complaint in a separate law suit. It further argues (Appellees' Br. 16) that the district court correctly held that the plaintiffs and the United States failed to submit a "proper application" to restore the case to the court's active docket because those applications failed to

sufficiently prove a violation of the court orders. None of these arguments supports affirmance of the district court's order in this case.[1/]

As the United States argued in its opening brief (United States' Br. 12), the School District's interpretation of the district court's order is inconsistent with the language of the order. Moreover, even if the School District were correct that the district court simply relinquished jurisdiction, that relinquishment in itself would have violated long-established case law requiring district courts to retain jurisdiction in school desegregation cases until the school district has attained unitary status and the case is finally dismissed. See, e.g., Brown v. Board of Educ., 349 U.S. 294, 301 (1955); Green v. County Sch. Bd., 391 U.S. 430, 439 (1968); Raney v. Board of Educ., 391 U.S. 443, 449 (1968); Lee v. Etowah County Bd. of Educ., 963 F.2d 1416, 1422 (11th Cir. 1992); Pitts v. Freeman, 755 F.2d 1423, 1426 (11th Cir. 1985); Youngblood v. Board of Pub. Instruction, 448 F.2d 770, 770 (5th Cir. 1971). Although the United States made this argument clearly in its brief (United States' Br. 12-13), the School District has failed to respond to

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[1/] The School District also appears to suggest that the United States' appeal was untimely. See Appellees' Br. 3 (stating that the United States "did not file its Notice of Appeal until April 13, 2000, well beyond the thirty day time period allowed by Rule 4 of the Federal Rules of Appellate Procedure"). Of course, Rule 4(a)(1)(B) permits 60 days for filing a notice of appeal "[w]hen the United States * * * is a party" and the United States' notice of appeal was clearly timely under that Rule.

it or offer any reason why these cases do not mandate reversal even under the School District's interpretation of the order.[2/]

As the School District also concedes (Appellees' Br. 6), its interpretation of the district court's order would require the school district to commence a new lawsuit in order to be relieved of its obligations under the dismissed case. The School District cites no precedent for such an order. The anomalous result such an interpretation would create is reason enough to reject this view.

Nor has the School District offered a convincing argument that the district court dismissed the case because it found the plaintiffs' motions to reactivate insufficiently detailed to meet the "proper application" standard set forth in the consent decree. The district court gave no reason for its denial of these motions, other than the fact that it had decided to dismiss the case entirely. Order at 2 (R4-89). Moreover, the district court did not have before it the evidence the School District relies upon in its appellate brief (Appellees' Br. 11-15) and, therefore, could not have based its decision on those grounds.

In any case, the United States did make a "proper application" for reactivation. The School District concedes that the United States presented evidence of possible violations and

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[2/] The School District has also failed to respond to the United States' argument (United States' Br. 13-14) that the School District's interpretation of the district court's order also amounts to a modification of the consent decree without meeting the procedural or substantive standards for such modifications.

spends a quarter of its brief attempting to rebut that evidence with additional facts not presented to or considered by the district court in making its decision (Appellees' Br. 11-15). That exercise simply illustrates the futility of converting a motion to restore a case to the court's active docket into a mini-trial on the merits. For example, in its application for reactivation, the United States pointed to evidence that one elementary school had gone from racially integrated to almost all-white. See R4-86-4-5 & Exhibits; United States' Br. 16. The School District responds (Appellees' Br. 13) that the changes in the composition of the student body were probably caused by demographic shifts, although it identifies no evidence supporting this supposition.[3/] The reduction of minority enrollment also may have been caused by other actions of the School District, such as non-compliance with the consent decrees provisions regarding intradistrict student transfers. See Consent Order ¶ 1(c) (R1-5). Because the School District operated a de jure segregated system, it is not entitled to a presumption that the emergence of a racially identifiable school is the result of innocent causes. See Lockett v. Board of Educ., 111 F.3d 839, 843 (11th Cir. 1997). The purpose of reactivation is to find out whether the change in the racial composition of this school was

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[3/] The School District also argues (Appellees' Br. 12-13) that most of the schools in the district are "racially balanced," but that is hardly a reason to deny reactivation if the School District has violated the consent decree with respect to one of the schools.

caused by violations of the consent decree or the Constitution, or by other factors.

The School District argues (Appellees' Br. 16) that access to information needed to monitor compliance and resolve such issues was not intended as part of the consent decree because the United States Department of Education has access to certain relevant information under Title VI of the Civil Rights Act, 42 U.S.C. 2000d, and its implementing regulations, 34 C.F.R. 100.6, 100.7. This is not a basis for reading the consent decree to preclude any access to compliance information as part of the action itself. First, the consent decree applies equally to private plaintiffs and the United States. Consent Order at 2 (R1-5). The ability of the United States Department of Justice to potentially gain access to needed information through a sister government agency would not have been grounds for leaving the private plaintiffs without any means of investigating indications of noncompliance.

Second, it is unlikely that the Department of Justice would have negotiated a consent decree under which compliance monitoring duties would be assigned to a different agency. As a simple logistical matter, it would be unreasonable to expect that the Department of Education, with its obligation to monitor compliance with Title VI nationwide, would be assigned the task of monitoring a consent decree negotiated by a separate agency.

Third, given that the School District argues that the United States has a legal right, under Title VI, to the information we

seek through reactivation, it would seem to make little difference to the School District's interests whether that access was made available through reactivation or under the aegis of Title VI compliance monitoring. In fact, as discussed below, providing this information through reactivation offers the School District the benefit of judicial supervision to guard against unduly burdensome or otherwise improper discovery.

Fourth, the statute and regulations upon which the School District relies do not give the Department of Education clear access to all the information that would be necessary to adequately monitor the consent decree. For example, the consent decree contains provisions regarding special steps the School District must take to encourage integration by facilitating student transfers when such transfers will increase integration. See Consent Order ¶ 1(c) (R1-5). As the School District acknowledges (Appellees' Br. 12 n.9), the failure to abide by such provisions would not, in itself, constitute a violation of the Constitution or Title VI. But the Department of Education's authority is limited to seeking information "as may be pertinent to ascertain compliance with" Title VI. 34 C.F.R. 100.6(c); see also 34 C.F.R. 100.7(a) (authorizing periodic reviews "to determine whether [recipients] are complying with this part"); 100.7(b) (authorizing the Department to receive complaints regarding "discrimination prohibited by this part"); and 100.7(c)(authorizing investigations of complaints to determine "whether the recipient has failed to comply with this part").

Finally the major premise of the School District's brief (Appellees' Br. 8, 15) is that reactivation should be granted only in light of clear proof of violations of the consent decree because any other rule would subject the School District to unduly burdensome or otherwise inappropriate discovery. This argument assumes, however, that the district court will be lax in its supervision of the case after reactivation or that the district court lacks authority to control discovery to prevent undue burdens or other abuses. Neither premise is true. If the district court accepted the School District's allegations (Appellees' Br. 7, 11, 15) regarding private plaintiffs' motives in seeking reactivation, the proper response would be to limit the use of discovery obtained in the desegregation case, not to dismiss the desegregation case altogether. And if the district court agreed with the School District that the private plaintiffs' discovery request is an inappropriate "massive and costly 'fishing expedition' into every aspect of the Wayne County School District's operations" (Appellees' Br. 8), the proper response would be to limit the scope of the private plaintiff's discovery request, not to deny the United States access to any information whatsoever.

## CONCLUSION

This Court should reverse the district court's sua sponte dismissal of this action and denial of plaintiffs' motions to restore the case to its active docket with respect to the Wayne County School District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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