No. 12-30850

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

THERESA D. THOMAS, *et al.*,

Plaintiffs-Appellees

v.

ST. MARTIN PARISH SCHOOL BOARD,

Defendant-Appellant

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

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING APPELLEES AND URGING AFFIRMANCE

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STATEMENT OF THE ISSUE

The United States will address the following issue:

Whether the district court correctly denied St. Martin Parish School Board's motions to dismiss on the ground that a decree previously issued by the court was not a final judgment dismissing the desegregation lawsuit against the Board and divesting the court of subject matter jurisdiction over the litigation.

INTEREST OF THE UNITED STATES

This case concerns the validity of a district court's holding that it retained subject matter jurisdiction over this school desegregation case. The case addresses the steps a district court must undertake before declaring that a school district has achieved unitary status and dismissing a school desegregation lawsuit. The United States has responsibility for enforcing several statutes providing for the desegregation of public schools. See Titles IV, VI, and IX of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6, 2000d, and 2000h-2; and the Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701. This Court's decision will affect that responsibility. The importance of this case is underscored by the United States' participation as litigating amicus curiae in the district court, filing pleadings and participating in oral arguments opposing the Board's motions to dismiss.[1] The United States files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE CASE

1. On August 17, 1965, private plaintiffs filed suit against the St. Martin Parish School Board (Board), alleging that the Board operated a racially segregated

[1] In the most recent proceedings in this case, the district court addressed the United States as plaintiff-intervenor, and consistently included the United States in directives to the parties. The court, however, never officially changed the United States' status from amicus curiae to plaintiff-intervenor.

school system in violation of the Equal Protection Clause. R. 16, 1249, 1251.[2] On August 6, 1969, the district court issued an order (August 6 Order) approving, with modifications, a desegregation plan submitted by the Board that called for setting up school attendance zones, pairing schools, desegregating faculty and staff, creating a majority-minority transfer policy, and filing periodic reports with the court. R. 19, 1251-1252. The August 6 Order also permanently enjoined the Board from discriminating on the basis of race or color in the operation of its school system. R. 1252. On September 9, 1969, the district court granted the United States' motion to appear as amicus curiae, with the right to submit pleadings, evidence, arguments and briefs; to move for injunctive and other necessary and proper relief; and to initiate further proceedings that may be necessary and appropriate. R. 19. The district court subsequently amended the August 6 Order with orders that addressed attendance zones, school construction, desegregation of faculty and staff, transportation, student transfers, annual reporting requirements, plan modifications, and declaratory relief. R. 1252-1253.

In July 1974, the district court issued orders requiring the parties to submit memoranda on the following issues: (1) whether the Board was properly before

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[2] The brief uses the following abbreviations: "R. __" for the page number of the Record on Appeal; "Br. __" for the page number of the Board's opening brief filed with this Court; and "Reply Br. __" for the page number of the Board's reply brief filed with this Court.

the court as a defendant; (2) whether the objective hiring and promotion criteria for faculty and staff complied with *Swann* v. *Charlotte-Mecklenburg School District*, 402 U.S. 1 (1971); (3) whether the school system had achieved unitary status for a period of two years, warranting dissolution of the desegregation decree; and (4) objections to the proposed zone changes. R. 24, 1254. Following submission of the requested memoranda,[3] the court issued a three-page decree on December 20, 1974 (December 20 Decree or Decree) stating that the parties had waived a formal hearing and submitted all questions on the basis of the record, affidavits, and briefs. R. 853, 1257. The December 20 Decree also identified the Board as a proper party before the court and approved the criteria for hiring and promotion of faculty and staff. R. 853, 1257-1258. The Decree then stated:

> It is apparent from the record in this case, including the detailed plan for the operation of St. Martin Parish public schools, and we so find and accordingly decree that the above named defendants have previously achieved a unitary school system and have operated as such for a period in excess of three (3) years prior to this date; accordingly all detailed regulatory injunctions heretofore entered by this Court against said defendants are hereby dissolved.

R. 853-854.

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[3] In its memorandum, the United States argued, *inter alia*, that (1) the proper standard for monitoring a school system's maintenance of a unitary school system is three years, and (2) it would be premature to place this matter on the inactive docket or close it when there is an unresolved issue regarding transportation. R. 1256.

The Decree also "permanently enjoined [the Board] from operating a dual public school system in the Parish of St. Martin," and from taking any discriminatory actions against students, faculty, and staff, on the basis of race, religion, color, or national origin. R. 854, 1258. To ensure compliance with the permanent injunction, the Decree required, among other things, that the Board file the reports required by *United States* v. *Hinds County School Board*, 433 F.2d 611, 618-619 (5th Cir. 1970), for two years. R. 854, 1258. The Decree then provided that the district court would retain jurisdiction for two years and placed the matter on the inactive docket "subject to being reopened on proper application by any party made within said period, or on the Court's own motion should it appear that further proceedings are necessary." R. 855, 1258.

2. On April 20, 2010, the district court reopened the case *sua sponte* and issued a minute entry stating that it appeared that the court had been divested of jurisdiction as of December 21, 1976, because the December 20 Decree stated that the court retained jurisdiction for two years from the date of the decree's entry. R. 5, 1250. The court invited the parties to oppose this reading of the December 20 Decree. R. 5, 1250. The United States filed a response opposing the court's interpretation and arguing that the case remained alive. R. 5, 1250. The court held a status conference on June 29, 2010, at which it ordered the parties to work together to reconstruct the record to assist the court in determining whether it had

divested itself of jurisdiction. R. 7. On February 7, 2011, the parties submitted a detailed history of the case to the court. R. 8, 1250.

On September 14, 2011, the Board filed a motion to dismiss the suit, arguing that further litigation of the desegregation claims brought in 1965 is barred by the doctrine of *res judicata*. R. 9, 1250. On November 16, 2011, after the court established a schedule for the parties to brief this issue, the Board filed a more detailed motion to dismiss on substantially the same grounds. R. 11, 1250. On January 19, 2012, the United States filed a response to the Board's motion to dismiss, arguing that the December 20 Decree did not dismiss the case or divest the district court of jurisdiction. R. 12. The district court held oral argument on the motions on April 19, 2012. R. 13, 1250.

3. The district court issued a memorandum order dated July 12, 2012, denying the Board's motions to dismiss. R. 1248-1279. The court first observed that if the December 20 Decree is a final judgment dismissing the desegregation suit, the court lacks subject matter jurisdiction to take further action. R. 1263. The court then reviewed Supreme Court precedent and determined that a district court order that terminates desegregation litigation must make a precise statement in doing so. R. 1264-1267. The court also reviewed this Court's precedent and concluded that *Youngblood* v. *Board of Public Instruction of Bay County*, 448 F.2d 770 (5th Cir. 1971) (per curiam), requires that a district court maintain jurisdiction

over desegregation suits for at least three years after it declares the school system "unitary" – *i.e.*, has remedied to the extent possible the vestiges of past discrimination – to ensure that the school board does not attempt to resegregate the school system. R. 1267. At the end of the three years, the district court must give plaintiffs notice and the opportunity for a hearing at which they can argue that the suit should not be dismissed. R. 1267. The district court then found that subsequent decisions of this Court confirm that the three-year period should run from the time the district court finds a school system unitary, and that such a finding unaccompanied by a relinquishment of jurisdiction indicates that the school district has not eliminated the vestiges of segregation. R. 1268-1270.

Applying these principles, the district court concluded that the December 20 Decree was not a final judgment dismissing the suit, and therefore retained subject matter jurisdiction over the litigation. First, the district court determined that the Decree did not comply with the procedure set forth in *Youngblood* for dismissing a desegregation suit. R. 1272. In this regard, the court observed that it was unclear why the court that issued the Decree retained jurisdiction if it intended to apply *Youngblood* retroactively and dismiss the suit in 1974, or alternatively, retained jurisdiction for only an additional two years and did not give plaintiffs an opportunity to contest dismissal if it intended to follow the standard *Youngblood* procedure. R. 1272-1273. Next, the court found that the December 20 Decree's

retention of jurisdiction for two years and issuance of a permanent injunction to be inconsistent with a finding that the Board has completely satisfied its constitutional duty, which would warrant its release from federal supervision. R. 1273-1274.

Finally, the district court found that the evidence extrinsic to the Decree did not shed any light on its meaning, although the court observed that a 1978 letter written by the court that issued the Decree addressed to the Board's counsel "suggest[ed] that the 1969 Decree was still in effect and that the Court was actively supervising the case after December 20, 1976." R. 1274-1278. This letter stated, in relevant part, that St. Martin Parish and another parish school district "have been declared unitary, the injunction against them made permanent and the cases ordered placed on the inactive files." R. 878.

Accordingly, the court held that the ambiguity on the face of the December 20 Decree, the retention of jurisdiction by the court that issued the Decree, and the court's failure to follow the *Youngblood* procedure for dismissing a desegregation suit "compel the conclusion that the Decree is not sufficiently precise to constitute a final judgment finding that the School Board has remedied the vestiges of past segregation to the extent practical." R. 1278. The Board filed an interlocutory appeal from the district court's order. R. 1284-1285.

ARGUMENT

THE DECEMBER 20 DECREE WAS NOT A DECLARATION OF UNITARY STATUS AND DISMISSAL OF THE CASE THAT DEPRIVED THE DISTRICT COURT OF SUBJECT MATTER JURISDICTION

A. The District Court That Issued The December 20 Decree Failed To Satisfy The Requirements For Making A Declaration Of Unitary Status And Dismissing The Case Imposed By The Supreme Court And This Court

1. Legal Background

The Supreme Court has declared that "[t]he duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system." *Freeman* v. *Pitts*, 503 U.S. 467, 485 (1992); see also *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *Green* v. *County Sch. Bd.*, 391 U.S. 430, 437 (1968). This responsibility ensures that "the injuries and stigma inflicted upon the race disfavored by the violation [are] no longer present." *Freeman*, 503 U.S. at 485. To achieve this end, a school board operating a "dual" school system that intentionally segregates students by race has the "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green*, 391 U.S. at 437-438. This obligation to eliminate racial discrimination covers student assignment, faculty, staff, transportation, extracurricular activities, and facilities, *id.* at 435, and district courts have the authority "to fashion remedies that address all these components of

elementary and secondary school systems," *Freeman*, 503 U.S. at 486. In addition, the Supreme Court has approved consideration of other indicia, such as quality of education and resource allocation, as important considerations in determining whether a district has fulfilled its desegregation obligations. See *Missouri* v. *Jenkins*, 515 U.S. 70, 99-102 (1995); *Freeman*, 503 U.S. at 474, 492-493.

The Supreme Court has also made clear that school desegregation decrees ordered by district courts "are not intended to operate in perpetuity." *Board of Educ.* v. *Dowell*, 498 U.S. 237, 248 (1991). The goal of a desegregation decree is to remedy the constitutional violations and return control over school affairs to the local school district. See *Freeman*, 503 U.S. at 489-490. Once a court places a school district under a desegregation decree, it will terminate the decree and relinquish judicial supervision when the school board demonstrates that it has "complied in good faith with the desegregation decree since it was entered," and eliminated "vestiges of past discrimination * * * to the extent practicable."[4] *Dowell*, 498 U.S. at 249-250. "Nowhere are these requirements described as anything other than mandatory prerequisites to a determination of unitary status." *Fisher* v. *Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1141 (9th Cir. 2011).

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[4] In *Freeman*, the Supreme Court interpreted the first factor to require "good-faith compliance * * * over a *reasonable period* of time." 503 U.S. at 498 (emphasis added). There is no difference in these formulations for purposes of this brief, as the court issuing the Decree failed to make a specific finding on this factor. See p. 16, *infra*.

The Supreme Court subsequently elaborated upon the first factor identified in *Dowell*, holding that "a [district] court should give particular attention to the school system's record of compliance," because a "school system is better positioned to demonstrate its good-faith commitment to a constitutional course of action when its policies form a consistent pattern of lawful conduct directed to eliminating earlier violations." *Freeman*, 503 U.S. at 491. With regard to the second factor, whether a school system has eliminated the vestiges of discrimination to the extent practicable, the *Dowell* Court reiterated *Green*'s holding that a district court should "look not only at student assignments, but 'to every facet of school operations − faculty, staff, transportation, extra-curricular activities and facilities.'" *Dowell*, 498 U.S. at 250 (quoting *Green*, 391 U.S. at 435). These factors are not intended to be a "rigid framework." *Freeman*, 503 U.S. at 493. A school board bears the burden of proving unitary status. *Id.* at 494.

2. The December 20 Decree Failed To Make A "Rather Precise Statement" That The Board Achieved Unitary Status And Support Such A Statement With Detailed Factual Findings

The Supreme Court has provided the lower courts with specific procedural mandates for terminating a desegregation decree and declaring a school system unitary. A district court must provide plaintiffs and the school district with a "rather precise statement" of the school district's obligations prior to termination or dissolution of a desegregation decree. *Dowell*, 498 U.S. at 246. As the First

Circuit Court of Appeals noted, a clear statement before termination of a decree serves the following purposes: (1) it "means that those subject to a decree know that, absent such a statement, their obligations continue"; (2) it "assures that those who secured or are protected by the decree will be on notice if and when a decree is terminated, so that they can oppose or appeal this crucial decision"; and (3) it "reduces the chance of confusion as to whether the district court has merely reduced its involvement or actually nullified an important legal obligation." *Consumer Advisory Bd.* v. *Glover*, 989 F.2d 65, 67 (1st Cir. 1993) (applying *Dowell*'s "rather precise statement" requirement to consent decree governing operation of state institution for individuals with mental disabilities). In support of its "rather precise statement" terminating a desegregation decree, a district court should make "specific findings" that a school board has complied in good faith with the desegregation decree and eliminated vestiges of past discrimination to the extent practicable. See *Freeman*, 503 U.S. at 498.

The December 20 Decree did not follow these procedural requirements,[5] and thus did not constitute a declaration of unitary status and dismissal of the litigation.

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[5] In addressing the issue of what law to apply, the district court stated that "[i]n cases involving interpretation of a unitary status finding, the Fifth Circuit has relied on cases decided subsequent to the finding of unitary status. Accordingly, the Court will adopt the same approach and apply the jurisprudence as it currently exists to the question of whether the Dec. 20, 1974 Decree dismissed the suit." R. 1265 n.4 (citing *Monteilh* v. *St. Landry Parish Sch. Bd.*, 848 F.2d 625, 629 (5th

(continued…)

First, the Decree failed to make a "rather precise statement" of the obligations of the Board prior to terminating the outstanding desegregation decree and dismissing the case, as *Dowell* requires. The Decree stated, in relevant part, the following:

> It is apparent from the record in this case, including the detailed plan for the operation of St. Martin Parish public schools, and we so find and accordingly decree that the above named defendants have previously achieved a unitary school system and have operated as such for a period in excess of three (3) years prior to this date; accordingly, all detailed regulatory injunctions heretofore entered by this Court against said defendants are hereby dissolved.

R. 853-854. A declaration of unitary status must be unambiguous. See *Dowell*, 498 U.S. at 244-245 ("[T]he District Court's unitariness finding was too ambiguous to bar respondents from challenging later action by the Board."). This Court must not hypothesize the intent of the district court that issued the Decree or guess at the material facts upon which this case turns. See *Little Rock Sch. Dist.* v. *Arkansas*, 664 F.3d 738, 758 (8th Cir. 2011):

> [W]here there is a need for detailed articulation of findings, we should not attempt to assemble an adequate record from the various reports that have been filed by the parties or by court-appointed committees followed by district court orders. * * * Similarly, the briefings and

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(…continued)
Cir. 1988), and *United States* v. *Lawrence Cnty. Sch. Dist.*, 799 F.2d 1031, 1034 (5th Cir. 1986)). This approach was correct. See, *e.g.*, *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.").

> status hearing referred to by the State in this case cannot be cobbled together to form an "adequate record," particularly in the absence of detailed findings by the district court. Instead, if the State wishes to obtain relief from its funding obligations, there must be a formal evidentiary hearing on the issue "followed by comprehensive and detailed findings of fact and conclusions of law," as envisioned by *Jenkins* [v. *Missouri*, 216 F.3d 720, 727 (8th Cir. 2000)] and *Liddell* [*ex rel. Liddell* v. *Board of Educ. of the City of St. Louis*, 121 F.3d 1201, 1216 (8th Cir. 1997)].

Because the December 20 Decree was ambiguous – there were no findings by the court or evidence that the Board fulfilled any of its affirmative obligations – the Decree failed to establish that the school system had achieved the unitary status needed to terminate federal judicial supervision. See *Dowell*, 498 U.S. at 245-246 (declining to dismiss desegregation litigation because district court's order was "unclear with respect to what it meant by unitary and the necessary result of that finding"); *United States* v. *Lawrence Cnty. Sch. Dist.*, 799 F.2d 1031, 1037 (5th Cir. 1986) (holding that the phrase "is being maintained as a unitary school district" in the district court's order "did not imply a judicial determination that the school system had finally and fully eliminated all vestiges of *de jure* segregation").

A proper interpretation of the Decree's use of "unitary" is that the Board was no longer operating a dual school system and was complying with the district court's outstanding order. See *Lawrence*, 799 F.2d at 1037. The Board "d[id] not become unitary merely upon entry of a court order intended to transform it into a unitary system." *Ibid.* This view is buttressed by the absence in the Decree of a

statement that the desegregation decree was terminated, or a similar phrase indicating termination.[6] See *Glover*, 989 F.2d at 67. Without such a clear statement of termination, the continuing obligations of the Board were unclear, the parties protected by the desegregation decree were not on notice that it was terminated, and the district court sowed confusion as to whether it nullified an important legal obligation. See *ibid.* The failure of any party to appeal the December 20 Decree or to apply to reopen the case thus supports, rather than undermines, the view that the Decree was too ambiguous to constitute a declaration of unitary status and dismissal of the case.

The Board argues (Br. 11-15; Reply Br. 12-14) that the parties waived any objection to the Decree's finding of unitary status by failing to file a timely appeal, motion to reopen, or Rule 60(b) motion for relief from a final judgment. In support of this argument, the Board cites (Br. 11-15) *Lee* v. *Dallas County Board of Education*, 578 F.2d 1177 (5th Cir. 1978) (per curiam), *Lee* v. *Macon County Board of Education*, 584 F.2d 78 (5th Cir. 1978), and *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976). These cases, however, are readily

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[6] The Decree's dissolution of "all detailed regulatory injunctions * * * against said defendants" does not constitute a clear statement of termination, in light of the Decree's simultaneous statement that the court retained jurisdiction over the case for two years and issuance of a permanent injunction preventing the Board from operating a dual public school system and from taking any discriminatory actions. See pp. 23-28, *infra*.

distinguishable because they all preceded *Dowell*'s establishment of the precise-statement requirement. The Board does not, and cannot, dispute that the Decree failed to satisfy this requirement. Indeed, the Decree's shortcoming in this respect is underscored by the Board's citation (Br. 14) of *DeKalb County School District* v. *Schrenko*, 109 F.3d 680, 692 (11th Cir.), cert. denied, 522 U.S. 1015 (1997), a post-*Dowell* case in which the district court "concluded that DeKalb had achieved unitary status with respect to transportation." Here, the district court made no such precise and unambiguous statement. The Board's argument improperly assumes what it must prove – that the December 20 Decree is a declaration of unitary status from which a party must timely object to preserve its right to challenge the issues decided therein.

The December 20 Decree also failed to set forth specific factual findings to support a declaration of unitary status, as *Freeman* requires. The Decree made no specific finding that the Board had in good faith complied with the desegregation decree since it was entered, or alternatively, for a reasonable period of time, much less any specific findings regarding the Board's record of compliance. See *Anderson* v. *School Bd. of Madison Cnty.*, 517 F.3d 292, 297-298 (5th Cir. 2008) (holding that the district court's finding that the defendant school board worked in good faith to comply with the consent order since its adoption satisfied the first prong).

Likewise, the December 20 Decree did not mention, much less discuss, any of the *Green* factors – student assignment, faculty, staff, transportation, extra-curricular activities, and facilities – that are among the benchmarks for determining whether a school district had eliminated the vestiges of discrimination to the extent practicable. See *Anderson*, 517 F.3d at 298-305 (discussing *Green* factors that the parties disputed were satisfied, including district court's thorough analysis); *United States* v. *Georgia*, 171 F.3d 1344, 1348 (11th Cir. 1999) (concluding that the absence of any mention of vestiges of discrimination in the district court's order indicated that it "could not have been intended as a finding of 'unitary status'"). The latter omission is particularly significant, as the *Green* decision preceded the Decree and the district court was presumably aware of its requirements. The December 20 Decree falls far short of the detailed findings the Supreme Court requires for a declaration of unitary status.

The Board argues (Br. 10) that the "record is replete with abundant evidence" of its good-faith compliance with the district court's orders and its good-faith efforts to desegregate, including a statement in the desegregation decree that the Board's "good faith and intelligent planning is manifest throughout the record." The Board also contends (Br. 16, 25-26) that it satisfied the requirements for proving unitary status, as set forth in *Anderson*, because "the record viewed in its entirety" indicates that it complied in good faith with the desegregation decree.

Finally, the Board contends (Reply Br. 6, 9) that "[a] school desegregation decree is designed to be a temporary remedial measure" and that "there is no perpetual jurisdiction in a school desegregation case."

Neither of the Board's general references to the record satisfies the court's burden under *Freeman* to make specific findings. It goes without saying that the district court's statement in 1969 alluding to the Board's demonstration of good faith *in developing* a desegregation decree does not constitute a finding that the Board has in good faith *complied with* that same decree for a reasonable period of time. Unlike the district court order in *Anderson*, moreover, the December 20 Decree did not make a specific finding regarding compliance with the desegregation decree at all. In any event, good-faith compliance is only the first prong of the unitary status analysis. The Board does not, and cannot, contend that the Decree addressed the second prong – *i.e.*, whether the Board had eliminated vestiges of past discrimination to the extent practicable. In the absence of the mandatory factual findings, the Board's proclamation that a school desegregation decree is intended to be temporary does not warrant a declaration of unitary status and divest the district court of jurisdiction. See *Fisher*, 652 F.3d at 1143 (holding that principles of local autonomy of school districts and temporary nature of federal supervision over such districts "do not permit a federal court to abdicate its

responsibility to retain jurisdiction until a school district has demonstrated good faith and eliminated the vestiges of past discrimination to the extent practicable").

3. The Court Issuing The December 20 Decree Failed To Comply With The Procedures This Court Has Established For Declaring A School System Unitary

"Because the potential consequences of a judicial declaration that a school system has become unitary are significant," *Lawrence*, 799 F.2d at 1037, this Court has also established procedures – first set forth in *Youngblood* v. *Board of Public Instruction of Bay County*, 448 F.2d 770, 771 (5th Cir. 1971) (per curiam), in response to a district court's *sua sponte* dismissal of a school desegregation case – that a district court must follow before declaring a school system unitary. First, the school board must report to the district court for at least three years. *Monteilh*, 848 F.2d at 629. These reports are to be filed semi-annually, and notify the court of the status of desegregation in the school system. *Youngblood*, 448 F.2d at 771 (citing *United States* v. *Hinds Cnty. Sch. Bd.*, 433 F.2d 611, 618-619 (5th Cir. 1970)). At the end of this three-year period, the court must afford plaintiffs "an opportunity to show why the system is not unitary and why continued judicial supervision is necessary." *Monteilh*, 848 F.2d at 629. If no cause is shown, "the case may be dismissed, not merely declared inactive." *Lawrence*, 799 F.2d at 1038. "Only

after these procedures are followed may a district court be sufficiently certain that a school system is unitary and dismiss the case."[7] *Monteilh*, 848 F.2d at 629.

The December 20 Decree's placement of the case on the inactive docket and retention of jurisdiction for an additional two years – rather than dismissal of the case, as *Lawrence* advises – indicates that the Decree is not a declaration that the Board achieved unitary status. See *Georgia*, 171 F.3d at 1348 (concluding that placement of case on inactive docket subject to reactivation by any party in district court's order was inconsistent with position that order was declaration of unitary status and end of federal supervision). The Board argues (Br. 19) that *Riddick* v. *School Board of City of Norfolk*, 784 F.2d 521, 525 (4th Cir.), cert. denied, 479 U.S. 938 (1986), indicates that declaring the case inactive did not "vitiate" the Decree's finding of unitary status, and merely delayed the end of federal

[7] Some of this Court's cases indicate that the three-year period for the school district to file reports with the district court occurs *after* the court declares the school system unitary. See, *e.g.*, *Flax* v. *Potts*, 915 F.2d 155, 158 (5th Cir. 1990) ("A district court in this circuit does not dismiss a school desegregation case until at least three years after it has declared the system unitary."); *United States* v. *Overton*, 834 F.2d 1171, 1175 n.12 (5th Cir. 1987) ("In *Youngblood* we required the district court to retain jurisdiction over a school desegregation case for three years after the court had declared the system unitary and dismissed the case."). The district court appeared to take this position. See R. 1267-1273. In our view, the best way to reconcile these seeming inconsistencies is to view the unitary-status declaration of cases like *Flax* and *Overton* to be an initial determination that a court must confirm with three years of reports and the opportunity for plaintiffs to show that the school district is not unitary. Only after the court makes a final determination that a school district has in fact achieved unitary status may it dismiss the case.

supervision by two years. *Riddick*, however, is readily distinguishable because the district court in that case *dismissed* the action with leave to any party to reinstate it for good cause shown. See 784 F.2d at 525. A dismissal is a clear ending to a case, and therefore fully consistent with a declaration of unitary status. See *Georgia*, 171 F.3d at 1348 (stating that "dismissing the case * * * would be appropriate upon a finding of 'unitary status' and an end of federal jurisdiction and supervision"); *Overton*, 834 F.2d at 1174 ("The *Riddick* court explained that a district court was required to retain jurisdiction only until it determined that the district had become unitary[.]"). Retention of jurisdiction and placement of a case on the inactive docket is not, because it accentuates the Decree's ambiguity regarding whether it declared that the Board had achieved unitary status. See pp. 12-15, *supra*.

No more persuasive is the Board's suggestion (Br. 25-26) that this Court in *Anderson* renounced the "formalistic time table" of *Youngblood* and its progeny in favor of requiring only "'good faith compliance' with the district court's desegregation orders 'in light of the record viewed in its entirety.'" This argument improperly conflates the Supreme Court's requirements for declaring unitary status with this Court's *separate* procedural requirements for declaring unitary status set forth in *Youngblood* and subsequent cases. See also Br. 16 (arguing that a district court's failure to comply with *Youngblood* is not a bar to dismissal of a

desegregation case because the Supreme Court "ha[s] never adopted a rigid time table of procedures that a district court must follow before reaching the conclusion that a school district had" achieved unitary status). In *Anderson*, the district court held a hearing on the school district's motion for unitary status, thus complying with *Youngblood*'s hearing requirement. See 517 F.3d at 295. On appeal, the *Anderson* Court stated that a school district must report to the district court for three years, thus reiterating *Youngblood*'s reporting requirement. *Id.* at 297. This Court then held that the district court's finding that the school district complied in good faith with the consent decree since its adoption satisfied the first prong of the unitary-status analysis. *Id.* at 298. This Court thus correctly applied the law set forth by the Supreme Court, see pp. 10-11, *supra*, *and* recognized the obligation of district courts to follow the *Youngblood* procedure in declaring that a school district had achieved unitary status.

In sum, the district court's failure to follow *Youngblood* – of which it was presumably aware – indicates that it did not declare that the Board had achieved unitary status and dismiss the case when it issued the December 20 Decree in 1974. See *Monteilh*, 848 F.2d at 629 ("[B]ecause our procedures had not been followed before the court in 1971 declared St. Landry to be unitary, we find that neither the district court nor the panel affirming its order intended to declare that the district was unitary, in the sense of having eliminated all vestiges of past discrimination.").

In the alternative, if the court made an initial determination that the Board had achieved unitary status, see p. 20 n.7, *supra*, it is unclear why it retained jurisdiction for two years rather than the three called for by *Youngblood*, and did not give the parties notice or the opportunity to contest dismissal of the case at the end of the two years.

B. The December 20 Decree's Retention Of Jurisdiction Over The Case And Issuance Of A Permanent Injunction Are Inconsistent With A Declaration Of Unitary Status And Dismissal Of The Case

1. Finally, several other parts of the December 20 Decree support the view that the Decree was not a declaration of unitary status and dismissal of the case. It is well-settled in this Court that a court will not continue to assert jurisdiction over a school district that it has declared unitary and dismissed. In *Overton*, this Court held that a consent decree settling desegregation litigation could not be enforced because, among other things, the district court's retention of jurisdiction over a school district "cannot be reconciled with the declaration that the district has achieved unitary status and is free of judicial superintendence." 834 F.2d at 1174. The Court further stated that "the end of judicial superintendence that accompanies unitary status * * * must also be accompanied by a release of a unitary district from the burden of proving that its decisions are free of segregative purpose " – which occurs only when the district "eliminates the vestiges of a segregated system." *Id.* at 1175. It follows that a unitary-status declaration must be

accompanied by the relinquishment of jurisdiction. See *id.* at 1177 ("In sum, the idea that a school district can be declared unitary and yet be answerable to the federal courts for failure to abide by desegregation plans, regardless of segregative purpose, is at war with itself.").

Along similar lines, in *Monteilh*, this Court reversed a district court's dismissal of a desegregation suit that was based upon a decades-old district court declaration that the school district was unitary, which was affirmed on an appeal directing the lower court to maintain jurisdiction for at least three years. 848 F.2d at 629. The Court reasoned that if the district court's finding of unitary status was meant to be a dismissal of the case, "the retention of jurisdiction would have been anomalous." *Ibid.* (quoting *Lawrence*, 799 F.2d at 1037).

Applying this longstanding precedent to this case, it is clear that the district court's retention of jurisdiction for two years after the date of the Decree is inconsistent with the Board's view that the Decree declared that the Board had achieved unitary status. The Board provides no support for its contention (Br. 23-24; Reply Br. 1-2) that the district court could declare the school system unitary and retain jurisdiction for two years before its jurisdiction terminated. The Board errs in analogizing this case to *Overton* (Reply Br. 2), in which a decree declared that the school district had achieved unitary status *after* the court's retention of jurisdiction ended. See *Overton*, 834 F.2d at 1173. *Monteilh* is even less

supportive, as it stands for the opposite proposition – that a district court cannot simultaneously declare that a school district has achieved full unitary status and retain jurisdiction over that district even for a limited period of time. See *Monteilh*, 848 F.2d at 629.

The Board correctly observes (Br. 19) that *Overton* "specifically approved" *Riddick*. However, as the Reply Brief acknowledges (Reply Br. 2-3), it did so for the proposition that "once the goal of a unitary school system is achieved, the district court's role ends." *Overton*, 834 F.2d at 1174 (quoting *Riddick*, 784 F.2d at 535). This contradicts the Board's position that the Decree declared that the Board achieved unitary status *and* retained jurisdiction for two years. Accordingly, this retention of jurisdiction indicates that the Board did not satisfy its constitutional duty to eliminate the vestiges of the former *de jure* system, and did not warrant a release from federal supervision.

2. It is also well-settled that a finding that a school district has achieved unitary status and dismissal of the case cannot be reconciled with the simultaneous existence of a permanent injunction. In *Overton*, this Court observed that it has "set aside a permanent injunction issued by a district court explaining that such injunctions 'should be effective only so long as might be necessary to achieve the purpose' and should end when the district is unitary." 834 F.2d at 1175 (quoting *Augustus* v. *School Bd. of Escambia Cnty.*, 507 F.2d 152, 158 (5th Cir. 1975)); see

also *Georgia*, 171 F.3d at 1347-1348 ("Of course, a finding of 'unitary status' and an order dismissing the case, thus ending federal court jurisdiction over and supervision of the school district, would be wholly inconsistent with the continuation of any federal court injunction.").

The reasoning behind this principle is clear. A permanent injunction should issue only if a court finds "a danger of future violations," and is therefore "in tension" with the "fresh start" of a unitariness finding that affords the school board "an opportunity to operate * * * in compliance with the Constitution." *Belk* v. *Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 347 (4th Cir. 2001), cert. denied, 535 U.S. 986 (2002).

Applying these established principles to the facts of this case makes clear that the Decree's permanent injunction precluding the Board from operating a dual school system and taking discriminatory actions against students, faculty, and staff is inconsistent with the Board's view that the Decree declared that the Board had achieved unitary status. The Board acknowledges these principles. See Reply Br. 4 ("[P]ermanent injunctive provisions against [the Board] after it achieved unitariness in its entire school system were unenforceable."), 5 (quoting *Escambia* for the proposition that "any ancillary orders entered to aid the implementation of the court-ordered remedy should no longer be necessary" when the school system achieves unitary status), 9 (quoting *Overton*).

Furthermore, the Board's argument (Reply Br. 4-7, 9-12) that the permanent injunction remained in place only until December 20, 1976 − the date the district court's retention of jurisdiction ended by the terms of the Decree − is belied by the facts. In April 1978, the court wrote a letter to the Board's counsel stating that St. Martin Parish and another parish school district "have been declared unitary, the injunction against them made permanent and the cases ordered placed on the inactive files." R. 878. The court thus recognized the existence of the continuing injunction *nearly one-and-a-half years after* the district court's jurisdiction terminated under the Board's theory.

The Decree's permanent injunction, moreover, was not merely a directive to follow the law as the Board contends (Reply Br. 7-8), but imposed obligations on this District – obligations that would not be imposed upon a school system that had achieved unitary status. See *Georgia*, 171 F.3d at 1348 n.4. The permanent injunction precluded the Board from operating a dual system and from taking any discriminatory actions, required monitoring by the district court, and was identical to language in the court's approval of the Board's plan in 1969. R. 1273-1274. The Decree also left the injunction in place indefinitely, indicating that it left the issue of dismissal for another time, such as upon reactivation of the case by the court or a party. See *Georgia*, 171 F.3d at 1349. Accordingly, the permanent injunction is further evidence that the Board did not satisfy its constitutional duty

to eliminate the vestiges of the former *de jure* system, and did not warrant the end of federal supervision.

CONCLUSION

This Court should affirm the district court's denial of the Board's motions to dismiss and retention of jurisdiction, and remand the case for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2013, I electronically filed the foregoing Brief for the United States as Amicus Curiae Supporting Appellees and Urging Affirmance with the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) and Federal Rule of Appellate Procedure 29(d), because it contains 6,862 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Word 2007 in 14-point Times New Roman font.

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