No. 16-31052

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

WILLIE BANKS, on behalf of W.B. and J.B., MAMIE DAVIS, on behalf of J.D., S.D., and G.D., RAYMOND JOSEPH, SR., on behalf of E.J., AND ALEXANDER JACKSON, on behalf of B.J. and B.J., *Plaintiffs-Appellants*,

v.

ST. JAMES PARISH SCHOOL BOARD, *Defendant-Appellant*,

v.

GREATER GRACE CHARTER ASSOCIATION, INC., *Intervenor-Appellee*.

On Appeal from the United States District Court for the Eastern District of Louisiana, No. 2:65-cv-16173, SECTION F
(Hon. Martin L.C. Feldman)

BRIEF FOR THE PLAINTIFFS-APPELLANTS

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November 29, 2016

CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. St. James Parish School Board, Defendant-Appellant
2. Members of the St. James Parish School Board, Defendants-Appellants
3. Superintendent of the St. James Parish School District, Defendant-Appellant
4. Willie Banks, on behalf of W.B. and J.B., Plaintiff-Appellant
5. Mamie Davis, on behalf of J.D., S.D., and G.D., Plaintiff-Appellant
6. Raymond Joseph, Sr., on behalf of E.J., Plaintiff-Appellant
7. Alexander Jackson, on behalf of B.J. and B.J., Plaintiff-Appellant
8. Kathleen Davis, Substitute Plaintiff, Motion Pending in District Court
9. Rhoda Johnson, Substitute Plaintiff, Motion Pending in District Court
10. Miyoka Johnson, Substitute Plaintiff, Motion Pending in District Court
11. NAACP Legal Defense & Educational Fund, Inc., Counsel for Appellants
12. Sherrilyn A. Ifill, Counsel for Plaintiffs-Appellants
13. Janai S. Nelson, Counsel for Plaintiffs-Appellants
14. Christina Swarns, Counsel for Plaintiffs-Appellants

15. Deuel Ross, Counsel for Plaintiffs-Appellants

16. Rachel Kleinman, Counsel for Plaintiffs-Appellant

17. Christopher Kemmitt, Counsel for Plaintiffs-Appellant

18. Gideon T. Carter, III, Counsel for Plaintiffs-Appellants

19. United States, Plaintiff-Intervenor

20. Emily H. McCarthy, Counsel for Plaintiff-Intervenor

21. James A. Eichner, Counsel for Plaintiff-Intervenor

22. Pamela Wescovich Dill, Counsel for Defendant-Appellant

23. Robert L. Hammonds, Counsel for Defendant-Appellant

24. Tyrell Theodore Manieri, III, Counsel for Defendant-Appellant

25. The Parties listed by Appellant St. James Parish School Boarrd

26. Greater Grace Charter Academy, Inc., Intervenor-Appellee

27. Michael P. Higgins, Counsel for Intervenor-Appellee

Counsel is unaware of any other persons with an interest in this brief.

/s/ Deuel Ross
Deuel Ross
Counsel of Record for Appellants

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 28 of the Federal Rules of Appellate Procedure and Fifth Circuit Rule 28.2.3, Plaintiffs respectfully request oral argument, which would be helpful in deciding the merits of this appeal. This appeal concerns the legal and factual standards to be applied by district courts in considering whether to grant a public charter school's motion for authorization to operate a virtually all-Black school in a school district under a desegregation order. The resolution of the issues presented by this case will likely have an effect on other pending desegregation cases which involve charter schools. Therefore, Plaintiffs submit that oral argument would be beneficial to this Court's resolution of these important legal issues.

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STATEMENT OF JURISDICTION

Plaintiffs filed this lawsuit pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, seeking to desegregate the public schools in St. James Parish, Louisiana. The district court has jurisdiction over the lawsuit under 28 U.S.C. § 1343(a)(3). Plaintiffs challenge the district court's grant of Greater Grace Charter Academy's Motion for Authority to Operate a Charter School (the "Charter Motion"). Plaintiffs filed a timely notice of appeal on October 3, 2016. This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

Whether the district court committed an error of law by granting Intervenor-Appellee Greater Grace Charter Academy ("GGCA") the authority to operate a 93% Black charter school located in a predominantly Black area where its decision was not supported by the requisite legal analysis and whether the district court abused its discretion in allowing GGCA to open where the evidence clearly showed that the school's opening would promote segregation in the St. James Parish public schools.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

In 1965, the private Plaintiffs ("Plaintiffs") filed a class action on behalf of African-American students and their parents against Defendants, St. James Parish School Board and its Superintendent (the "District"), to enjoin them from operating

a racially segregated public school system. On January 18, 1966, the United States intervened. On July 21, 1967, the district court ordered that "any new school" shall be located "with the objective of eradicating the vestiges of the dual system" and, on June 9, 1969, it approved a new student assignment plan.[1] Since that date, the District has remained under the 1967 and 1969 desegregation orders, although the student assignment plan has been modified over the years to further desegregation in the school district by consolidating schools and creating magnet programs. *See* ROA.498-99 (June 25, 1974 Order consolidating schools formerly segregated by sex); ROA.501 (Oct. 27, 1977 Order restructuring grade levels); ROA.503 (Jan. 3, 2002 Order authorizing magnet program); ROA.505 (Aug. 6, 2003 Order reassigning certain junior high students and expanding magnet program); ROA.30 (Mar. 14, 2012 Order authorizing magnet program).

The District has never sought unitary status, and the question of whether the District is unitary is not before this Court.

Plaintiffs, the United States, and the District are currently in the process of finalizing a proposed consent decree, which they intend to submit to the district court, that addresses the District's outstanding desegregation obligations in the areas of student assignment, facilities, disciplinary practices, and other areas and the measures necessary to successfully satisfy them.

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[1] The district court's 1967 and 1969 orders are attached as addendum to this brief.

On March 29, 2016, GGCA was permitted to intervene in this case for the sole purpose of seeking judicial authorization to operate the Greater Grace Charter Academy school (hereinafter, "the GGCA school") in the 2016-17 school year. ROA.214. The parties then engaged in informal discovery and negotiations to resolve the issues raised by GGCA.

On June 29, 2016, after Plaintiffs, the United States, and the District indicated their opposition to the establishment of the GGCA school, GGCA filed a motion for a scheduling conference, requesting that the district court set "the deadline for pleadings and to schedule a hearing on Intervener's Motion for Authority to Operate a Charter School." ROA.215. In its motion, GGCA indicated that the GGCA school "has a planned opening date of August 4, 2016, leaving little time for the resolution of this matter." ROA.215. On July 6, 2016, the district court summarily denied GGCA's request for a scheduling conference. ROA.218.

On July 19, 2016—nearly four months after it was given permission to intervene in this case—GGCA formally filed the Charter Motion and supporting documentation. ROA.219. GGCA's Charter Motion did not mention any need for an expedited decision. In the accompanying exhibits and memorandum of law, GGCA stated that it had a projected enrollment for the 2016-2017 school year of 171 students for 180 available seats. ROA.220-21.

Importantly, GGCA admitted in its filing that 93% of the students it planned to enroll identified as Black, and that GGCA's "student population is more heavily African-American than the overall student numbers" for the District. ROA.442. GGCA further admitted that while it had "undertake[n] efforts to attract a more diverse student body, . . . such efforts did not result in a more diverse applicant pool." ROA.443. In an attempt to absolve itself of its obligation to comply with the desegregation order, GGCA stated that, under its state-mandated open admissions policy, it could "only admit those students who apply to the school" and did "not have the ability to modify its own admissions policy to create a more diverse student body." ROA.443.

On July 26, 2016, at the request of the District, and with GGCA's consent, ROA.450, the district court extended the deadline for opposition briefs until August 3, 2016, and set a hearing for August 17. ROA.454. Thereafter, however, on August 2, the day before opposition briefs were due, GGCA filed an emergency motion to expedite. ROA.506. GGCA's emergency motion was premised on the grounds that the Louisiana Board of Elementary and Secondary Education ("BESE") had "unexpectedly" indicated to GGCA in a letter dated July 29, 2016, ROA.511, that its funding was contingent on the district court's approval to operate the school by August 8, 2016. ROA.506. GGCA's emergency motion failed to inform the court, however, that this was not the first time BESE had issued a deadline, and that BESE

had extended this deadline at least once already. In an earlier letter dated June 24, 2016, BESE had set a July 15, 2016 deadline by which GGCA was required to have obtained judicial approval to operate. ROA.608. Further, BESE had informed GGCA as early as January 13, 2016 that it was required by state law as a condition for operating to obtain the district court's approval. ROA.608. Thus, despite GGCA's representations, BESE's August 8 deadline came as no surprise.

Nonetheless, the next day (August 3), the district court granted both the Charter Motion and the expedited hearing motion. ROA.514. The court issued its order before either Plaintiffs or the District had the opportunity to file their opposition briefs and supporting exhibits and affidavits, and without the benefit of a hearing. *See* ROA.516 (Plaintiffs' response); ROA.626 (District's response). The district court's order did not include the requisite analysis regarding whether opening GGCA was consistent with the desegregation order. The district court merely granted the motions and adopted, verbatim, the set of conditions suggested by GGCA. ROA.514; *see also* ROA.219.

The following day (August 4), the district court issued a short, six-page opinion responding to the timely filed opposition briefs from Plaintiffs, the United States, and the District. ROA.646. The district court held no hearing before issuing its opinion on the Charter Motion.

II. FACTS

A. The St. James Parish School District

St. James Parish School District is a small, rural district of approximately 3,800 students, located in and entirely inclusive of St. James Parish, Louisiana. ROA.227. The Mississippi River runs through the District and dictates high school attendance zones. Currently, students in grades 7–12 residing on the West Bank attend St. James High School, and students in grades 7–12 residing on the East Bank attend Lutcher High School. The District is currently constructing a new St. James High School that will serve grades 6-12. *See generally* ROA.61; *see also* ROA.161 (May 19, 2015 Order authorizing the District to implement a capital improvements plan).

Each bank is divided into three elementary school attendance zones for students in pre-kindergarten through sixth grade. On the West Bank, elementary students are assigned to Fifth Ward Elementary School, Sixth Ward Elementary School, or Vacherie Elementary School. On the East Bank, students are assigned to Paulina Elementary School, Lutcher Elementary School, or Gramercy Elementary School. ROA.227. In addition, a magnet program is located at Gramercy Elementary School that enrolls students from throughout the District. ROA.21; *see also* ROA.30, (Mar. 14, 2012 Order authorizing magnet program).

As of the final day of the 2015-2016 school year, District-wide student

enrollment was 61.9% Black, 35.4% white, and 2.7% other races. Student enrollment on the East Bank is almost evenly divided between Black and white students.[2] On the West Bank, less than one fifth of the student population is white, and over three quarters of the student population is Black.[3] ROA.227-28.

Of the three elementary schools on the East Bank only Lutcher, the smallest school, is a one-race Black school.[4] On the West Bank, all but one of the elementary schools remain identifiably one-race Black schools and about 73% of that Bank's Black elementary school students are enrolled in one-race Black schools. *Id*.

The three schools now known as Lutcher, Fifth Ward, and Sixth Ward are each located in historically segregated areas. Today, only 62% of the District's total student population is Black, but the schools at Lutcher, Fifth Ward, and Sixth Ward remain "one-race" elementary schools with student populations that are over 96% Black. ROA.227-28. Thus, Black enrollment at these schools is over 30 percentage points higher than the District's total.

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[2] East Bank student enrollment was 53.2% Black, 44.8% white, and 2% other.

[3] West Bank student enrollment was 76.4% Black, 19.9% white, and 3.6% other.

[4] In general, "one-race schools" refer to "schools with a student body of at least 90% one race." *Cowan ex rel. Johnson v. Bolivar Cty. Bd. of Educ.*, No. 2:65-CV-31, _ F. Supp. 3d _, 2016 WL 2851330, at *29 (N.D. Miss. May 13, 2016) (internal alterations and citations omitted).

Table 1: Student Enrollment by School (Last Day of 2015-2016)[5]

School	Grade	Black	%B	White	%W	Other	%O	Total
East Bank	**PK-12**	**1266**	**53.2%**	**1066**	**44.8**	**48**	**2.0**	**2380**
Gramercy ES	PK-6	348	58.4%	236	39.6%	12	2.0%	596
Lutcher ES	PK-5	142	95.9%	6	4.1%	0	0.0%	148
Paulina ES	PK-6	280	43.3%	347	53.6%	20	3.1%	647
Lutcher HS	7-12	496	50.2%	477	48.2%	16	1.6%	989
West Bank	**PK-12**	**1096**	**76.4%**	**286**	**19.9%**	**52**	**3.6%**	**1434**
Fifth Ward ES	PK-6	123	97.6%	3	2.4%	0	0.0%	126
Sixth Ward ES	PK-6	305	97.1%	3	1.0%	6	1.9%	314
Vacherie ES	PK-6	162	47.5%	148	43.4%	31	9.1%	341
St. James HS	7-12	506	77.5%	132	20.2%	15	2.3%	653
Total		**2362**	**61.9%**	**1352**	**35.4%**	**100**	**2.7%**	**3814**

Furthermore, the one-race character of the Lutcher, Fifth Ward, and Sixth Ward schools is reinforced by the significantly higher concentration of Black faculty and staff at those schools, as compared to the other schools in the District. While the racial makeup of faculty and staff employed districtwide is just 40% Black, those assigned to Lutcher, Fifth Ward and Sixth Ward schools are 57.1%, 64.2%, and 62.7% Black respectively, far higher than the districtwide numbers. ROA.551.

[5] ROA.227-28.

Table 2: Faculty and Staff Assignment by School (2015-2016 school year)[6]

School	Grade	Black	%B	White	%W	Other	%O	Total
Gramercy ES	PK-6	22	30.1%	51	69.8%	0	0%	73
Lutcher ES	PK-5	16	57.1%	12	42.8%	0	0%	28
Paulina ES	PK-6	24	32.0%	51	68%	0	0%	75
Lutcher HS	7-12	41	33.6%	81	66.3%	0	0%	122
Fifth Ward ES	PK-6	18	64.2%	10	35.7%	0	0%	28
Sixth Ward ES	PK-6	32	62.7%	18	35.2%	1	1.9%	51
Vacherie ES	PK-6	17	32.9%	35	67.3%	0	0%	52
St. James HS	7-12	45	43.6%	57	55.3%	1	0.9%	103
No Location		3	37.5%	5	62.5%	0	0%	8
Total		**218**	**40%**	**320**	**59%**	**2**	**0.3%**	

B. The GGCA Charter School

Since 1995, Louisiana has permitted the creation and operation of public charter schools. *See* La.R.S. § 17:3971, *et seq*. Non-profit corporations interested in operating charter schools must submit applications to either the local district or BESE. If approved, a contract is awarded to operate a public charter school, and that school must comply with any existing desegregation orders. *Id.* at § 17:3991(C)(3).

In January 2016, BESE granted authorization to GGCA to open a type 2 charter school, i.e., one that is overseen by BESE subject to certain conditions. *See* ROA.546-47. Included in the BESE's enumerated conditions were GGCA's duty to

[6] These numbers were calculated using the data provided by the District. *See* ROA.551.

obtain "the appropriate approval to open due to St. James Parish's desegregation status" and that it execute "the charter contract prior to the beginning of the 2016-2017 school year," which was scheduled to begin on August 8, 2016. ROA.547.

GGCA is a K-8 open enrollment charter school that combines online and classroom instruction. ROA.235-38. At the time that GGCA intervened in this case, its expected enrollment for the 2016-17 school year was 171 students out of 180 available seats. ROA.229. Of those students, 159, or 93%, are Black. ROA.229. Thus, Black enrollment at GGCA is over 30 percentage points higher than the districtwide Black enrollment.

In addition, at the time GGCA filed the Charter Motion, thirty-four students (at least twenty-two of whom are Black)[7] were expected to leave the more integrated settings of St. James High School and the Vacherie, Gramercy and Paulina elementary schools to enroll in the segregated GGCA school. ROA.229.

Finally, the one-race character of GGCA is reinforced by its location and the anticipated faculty and staff assignment. The school is located on the West Bank, in a largely Black neighborhood, and just four miles away from the one-race Black Sixth Ward school. Thirteen (76%) of GGCA's sixteen faculty employees are Black.

[7] Based on the chart provided by GGCA, ROA.229., it is apparent that at least 22 of the students that were projected to enroll in the GGCA school were Black students from integrated schools in the District. Another 12 students also came from integrated schools. While most of these 12 students were also likely Black, the data does not make it easy to discern these students' race.

ROA.233. And all nine of the schools' administrators and support staff are Black. ROA.233.

STANDARD OF REVIEW

This Court reviews the district court's conclusions of law *de novo*, *Cowan v. Cleveland Sch. Dist.*, 748 F.3d 233, 238 (5th Cir. 2014), and it reviews the order approving GGCA's Charter Motion for abuse of discretion. *United States v. Hendry County Sch. Dist.*, 504 F.2d 550, 553 (5th Cir. 1974).

SUMMARY OF THE ARGUMENT

In the decades since *Brown v. Board of Education*, 347 U.S. 483 (1954), the Supreme Court has repeatedly made clear it is the "responsibility" of the United States District Courts to enforce desegregation orders by serving as a safeguard against any action which would "perpetuate or re-establish" segregation. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 460 (1979). Therefore, when presented with proposed changes to a school district under a desegregation order, the district court has "a constitutional duty to . . . scrutiniz[e]" the proposed changes. *Cleveland v. Union Parish Sch. Bd.*, 570 F. Supp. 2d 858, 867 (W.D. La. 2008). "The district judge . . . should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971).

This obligation extends to examining the effect that the opening of a public charter school has on the desegregation order. *Cleveland*, 570 F. Supp. 2d at 867.

At issue here is whether allowing a new one-race charter school to operate is consistent with the existing order to desegregate the District. More specifically, the question is whether GGCA's opening of a new virtually all-Black school in a historically Black neighborhood—far removed from whites, but within a few miles of two other nearly all-Black schools—perpetuates segregation or otherwise impairs desegregation.

Here, the district court failed to scrutinize the segregative effects of GGCA and allowed it to open its doors without conducting the requisite legal and factual analysis. The court justified its grant of the Charter Motion not on its analysis of the school's effect on segregation in the District, but instead on the legally irrelevant and factually unsupported notion that denying the motion would deprive students of the "freedom-of-choice." In doing so, the district court failed to consider the majority of the relevant evidence set forth by the parties that the opening of the school would perpetuate segregation and thwart the ongoing efforts of the District to desegregate.

Accordingly, this Court should: (1) reverse the district court's legally and factually erroneous August 3, 2016 order granting the Charter Motion; (2) hold that GGCA failed to meet its burden in showing that the opening of the GGCA school

would not impede the desegregation efforts; and (3) vacate the prior order and remand to the district court to apply the correct standards and provide proper relief.

ARGUMENT

I. THE DISTRICT COURT COMMITTED AN ERROR OF LAW BY INSUFFICIENTLY SCRUTINIZING THE CHARTER MOTION FILED BY GGCA

This Court reviews the district court's conclusions of the law, including whether the district court applied appropriate scrutiny and conducted sufficient legal analysis, *de novo*. *Cowan*, 748 F.3d at 238. In desegregation cases, "[f]ederal courts are obliged to 'make every effort to achieve the greatest possible degree of actual desegregation.'" *Valley v. Rapides Parish Sch. Bd.*, 702 F. 2d 1221, 1229 (5th Cir. 1983) (quoting *Davis v. Bd. of Sch. Comm'rs*, 402 U.S. 33, 37 (1971)). "[T]he retention of all-black or virtually all-black schools within a dual system is . . . unacceptable where reasonable alternatives may be implemented." *Valley*, 702 F.2d at 1226. Therefore, the district court could grant the Charter Motion only if—after evaluating the facts and conducting a rigorous analysis—it was convinced that the decision—to open a one-race charter school—would "achieve the desired effect: desegregation." *Cowan*, 748 F.3d at 240. This includes an analysis under the "*Green* factors" of the effect of the GGCA school on student assignment, faculty and staff assignments, facilities, transportation, extracurricular activities and other ancillary factors. *Freeman v. Pitts*, 503 U.S. 467, 474 (1992). Where, as here, the district court

fails to adequately evaluate the evidence and "consider, review and explain why it is discarding some remedies in favor of others," it commits an error of law and abuses its discretion. *Cowan*, 748 F.3d at 240. Reversal is therefore required.

It is important to note that the question of whether charter schools or traditional public schools offer a better quality or method of education is irrelevant to the resolution of this matter. *See Cleveland*, 570 F. Supp. 2d at 867 (denying a charter's motion to operate, but "express[ing] no view as to whether charter schools or traditional public schools offer a better quality or method of education."). Rather, "the court's role in assessing the quality of educational programming is limited to the narrow purpose of remedying past discrimination, and the court retains no authority to impose its views of educationally superior programs not directed to that remedy." *Berry v. Sch. Dist. of City of Benton Harbor*, 56 F. Supp. 2d 866, 879 (W.D. Mich. 1999).[8]

A. The District Court Focused on Wholly Irrelevant Factors Rather Than Supporting Its Order with Relevant Legal Analysis

In deciding whether to grant the Charter Motion, the district court was required to analyze whether the opening of the GGCA school would contribute to

[8] As Judge Higginbotham once observed in addressing the similar issues raised by magnet schools, while charter schools might "appeal to our ethic of self determination," the questions regarding the propriety of public charter schools versus traditional public schools "are best answered by persons with training not possessed by judges." *United States v. Pittman by Pittman*, 808 F. 2d 385, 393 (5th Cir. 1987) (Higginbotham, J., concurring).

the ongoing process of "disestablishing the dual system and its effects." *Dayton Bd. of Ed. v. Brinkman*, 443 U.S. 526, 538 (1979). However, the district court did not engage in this analysis. Instead, the court issued an initial order granting the motion to open a one-race school, and adopted word-for-word the conditions proposed by GGCA. ROA.514. This initial order was issued without an evidentiary hearing, and before either Plaintiffs or the District even had the opportunity to file their opposition briefs, each of which described in detail the ways in which the opening of GGCA would undermine desegregation.

In the opinion, issued the day after it received the opposition briefs, the district court cited the other one-race schools in the District and otherwise said it was "not persuaded" by the parties' various arguments. ROA.645. Rather than addressing the binding precedent and supporting evidence cited by Plaintiffs, the United States, and the District, the single authority relied on by district court was *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), which was mentioned in a footnote and only in support of the proposition that desegregation orders must be analyzed under the *Green* factors.

This is a far cry from the kind of detailed legal and factual analysis that has been conducted in other desegregation cases considering similar issues. *See*, *e.g.*, *Cowan*, 748 F.3d at 236 (reversing a district court's adoption of a freedom-of-choice desegregation plan even where the district court held an evidentiary hearing);

Cleveland, 570 F. Supp. 2d at 859 (rejecting a charter school's motion to operate after full briefing, a hearing, and the consideration of a variety of factors, including any alternatives to denying the charter's motion). While "confecting a remedy in these types of cases can be especially difficult," here, the district court's order granting the Charter Motion quite simply "lack[ed] explanation." *Cowan*, 748 F.3d at 239.

The relevant inquiry when a charter school seeks to open in a district operating under an ongoing desegregation decree is whether the new school would increase or continue the harm of segregation. *Swann*, 402 U.S. at 26; *see also Cleveland*, 570 F. Supp. 2d at 867. But rather than looking to relevant precedent, the district court justified its grant of the Charter Motion on the basis of its own perceived interest in allowing students to "attend the school of their choice" and its concern about the employment expectations of GGCA staff—two factors which are wholly irrelevant to the requisite legal and factual analysis of whether the opening of the GGCA school is consistent with the existing desegregation orders. ROA.645.

Although the court correctly found that GGCA would be much more segregated than the District overall, it brushed this concern aside by concluding that with its student population, GGCA merely "echoes th[e] reality" of the three other one-race Black schools—in other words, it is no worse than other segregated schools already in existence in the District. ROA.645. Ignoring the established history of *de*

jure racial segregation in the parish as a whole, and at the three one-race schools in particular, the district court simply stated—without sufficient evidentiary basis[9]—that it was "natural that a predominately African American parish will have predominately African American schools." ROA.645. Similarly ignoring several recent orders in this case—which resulted in facility improvements and a magnet school program—the court dismissed the parties' ongoing efforts to desegregate the District as "nominal at best." ROA.646. Finally, the court stated that it was satisfied by the GGCA school's unsuccessful efforts to recruit white students. ROA.645-46. The district court conducted no further analysis of the effect of GGCA on the desegregation orders or the District overall.

The district court held that its approval of the GGCA school was necessary to ensure that students are allowed to attend "the school of their choice," ROA.645, but, in reaching this decision, the court never grappled with the clear precedent establishing that "freedom-of-choice" programs are strongly disfavored in school desegregation cases. *See Green*, 391 U.S. at 439-40. This is because "freedom of choice . . . has historically proven to be an ineffective desegregation tool." *Cowan*, 748 F.3d at 238. Accordingly, a district court that adopts a freedom-of-choice

[9] Neither the District, nor GGCA presented evidence to the district court showing that demographic changes or private decision-making unrelated to the District's prior actions had created or maintained the racial isolation at Fifth and Sixth Ward. *Cf. Freeman*, 503 U.S. at 495 (affirming a motion for unitary status on student assignment where the school district had provided "evidence tending to show that racially stable neighborhoods are not likely to emerge").

rationale for modifying a desegregation order must "explain why" it is doing so and "consider the contradictory evidence in the record." *Id.* at 240. In the absence of such an effort, the district court's decision lacks sufficient particularity for this Court to affirm. *See id*. (reversing a district court's insufficiently justified desegregation order).

That the district court committed a legal error in granting the Charter Motion is further established by the fact that GGCA did not dispute that its opening would contribute to segregation of the District's schools. To the contrary, GGCA flatly admitted that the opening of its school would not contribute to desegregation, but argued that this outcome was acceptable because its proposed segregated school was *no worse* than the three other one-race schools. ROA.442-43. The district court adopted this faulty logic in its own opinion, even though it fails the most basic test of desegregation law.[10] *See Dayton*, 443 U.S. at 540 (holding that a board "failed in its duty and perpetuated racial separation in the schools" by opening new one-race schools); *Columbus*, 443 U.S. at 462 (finding a constitutional violation where the selection of new school sites had the foreseeable effect of maintaining segregation).

[10] The racial isolation on the West Bank is not predestined. Reasonable alternatives, such as the consolidation of all of the West Bank elementary schools into one school or efforts that stretch across the schools on the East and West Banks are practicable. Although the district court seemed to summarily dismiss these possibilities, the District's recent successes in consolidating two schools on the East Bank and drawing students throughout the District to the Gramercy magnet program proves that the racial isolation on the West Bank cannot be considered apart from the system as a whole. *Cf. Davis*, 402 U.S. at 36-38 (reversing a desegregation plan that erred in treating the banks of a district split by a river in isolation from one another).

B. The District Court Did Not Sufficiently Scrutinize the Negative Effect of the GGCA School on Desegregation in the District

In order to measure the effect of the GGCA school on desegregation in the District, the "fundamental" consideration for the Court should be "the degree of racial imbalance in the school district, that is to say a comparison of the proportion of majority to minority students in individual schools with the proportions of the races in the district as a whole." *Freeman*, 503 U.S. at 474. Until the District achieves unitary status, "official action that has the *effect* of perpetuating or reestablishing a dual school system violates the defendants' duty to desegregate." *Pitts v. Freeman*, 755 F.2d 1423, 1427 (11th Cir. 1985); *accord Dayton*, 443 U.S. at 538 (holding that the measure of the conduct of a school authority under a duty to desegregate is "the effectiveness . . . of [its] actions in decreasing or increasing the segregation"). Likewise, under Louisiana state law, GGCA is also under the duty to comply with "any court-ordered desegregation plan in effect." La.R.S. § 17:3991(C)(3). *See Cleveland*, 570 F. Supp. 2d at 868 ("[T]he State invited the Court into the charter school process for the specific purpose of considering its effects on desegregation.").

Here, the undisputed evidence set forth by parties revealed that (1) the GGCA school would open as a racially identifiable school, (2) it would draw students away from existing schools in a manner that increases segregation, and (3) that there were

alternatives available to the district court that would not hamper the District's ability to pursue the measures necessary to meet its duty to desegregate.

First, as set forth *supra* at 9-10, the GGCA school's enrollment is considerably more segregated than the District as a whole. But the district court was untroubled by the fact that GGCA was seeking to open a one-race school in this racially diverse and non-unitary District; and, in response to the unchallenged evidence that GGCA was a one-race school, the district court only noted that there were other one-race schools already in the District and that this new school would not be any worse than those. This is not the legally correct inquiry when scrutinizing whether a new school will hinder desegregation efforts.

Contrary to the district court's statement, the prior existence of the three other one-race schools in the District in no way excuses the opening of a *fourth* one-race school. Plaintiffs have consistently maintained that the three existent one-race Black schools *also* violate the desegregation order and are working with the District to assist it in fulfilling its constitutional duty to address these inequalities through a new consent order that would desegregate these three schools. *See United States v. Lawrence Cty. Sch. Dist.*, 799 F.2d 1031, 1044 (5th Cir. 1987) (holding that a district's failure to satisfy the duty to desegregate "continues the constitutional violation"). The anachronism of three one-race Black schools in a district under a desegregation order is disconcerting enough; the district court order allowing for the

opening of a fourth one-race school, justified in large part upon the existence of these other one-race schools, is "unacceptable," *Valley*, 702 F.2d at 1226, and only serves to create more segregation at a time where the parties are working together to eliminate it.[11]

Second, the district court ignored the question of whether GGCA would impact the desegregation of other schools in the District. This analysis should have been a key part of the court's review. *See, e.g.*, *United States v. Pittman by Pittman*, 808 F.2d 385, 390 (5th Cir. 1987); *Cleveland*, 570 F. Supp. 2d at 869. However, the district court failed to even acknowledge this issue, let alone perform a rigorous analysis of how the GGCA school would affect the other schools in the district.

As noted *supra* at 10, GGCA has encouraged and allowed nearly three dozen students to transfer from more integrated schools throughout the District to the segregated GGCA school. In so doing, GGCA has increased the percentage and total number of West Bank Black students at one-race schools from about 73% to 74% (or 450). ROA.229. GGCA's actions have led Black students attending integrated schools to enroll in a one-race school in a manner that is wholly contrary to the goal

[11] Indeed, as recently as March 2012 and May 2015, the district court implicitly found—contrary to its own later suggestion that desegregation efforts had been "nominal" ROA.646—that Plaintiffs and the District were in fact continuing to engage in ongoing and consistent desegregation efforts by authorizing the creation of a desegregative magnet school, ROA.30, and improvements to the facilities at the racially identifiable Black schools. ROA.161; *see also* ROA.66, Defs. Mem. (making clear Plaintiffs' position that capital improvements had not "relieve[d] defendant School Board of any of its existing desegregation obligations").

of ensuring the *desegregation* rather than *resegregation* of the District. *Cf. Pittman*, 808 F.3d at 389 (rejecting a desegregation plan where the voluntary enrollment of Black students in a magnet school would have increased "the number of blacks in identifiably black schools"). The fact that these students' enrollment in the GGCA school are made "by choice and not by assignment does not mean that a race-neutral admissions policy cures the constitutional violation of a dual system." *United States v. Fordice*, 505 U.S. 717, 729 (1992). This is because students' choice to enroll and the resulting racial composition of the school are in part controlled by GGCA-determined factors, including its selection of the school's location. *Cf. Davis v. East Baton Rouge Par. Sch. Bd.*, 721 F.2d 1425, 1435 (5th Cir. 1983) (rejecting as "not only factually but legally unsound" a district's attempt to rely on private residential decisions to justify the continued existence of one-race schools where, as here, the district had decided to locate new schools in single-race areas). The evidence before the district court showed that GGCA—in part by its site section and overall location—was enticing Black students in the District to leave integrated schools in order to attend the one-race GGCA school.

Finally, in granting the Charter Motion, the district court did not consider alternative solutions that could have mitigated GGCA's effect on ongoing desegregation efforts, *Valley*, 702 F.2d at 1226, such as delaying its opening until a new consent order was entered, requiring its relocation, or partitioning funding

between GGCA and the District in order to protect funding needed for the District's broader desegregation efforts. The district court could have denied GGCA's motion without prejudice to its refiling once GGCA had made substantial progress in addressing the concerns raised by Plaintiffs, the United States, and the District. *Cf. Cleveland*, 570 F. Supp. 2d at 865-66 (denying a motion to open a charter school that would have opened as a nearly all-white school in an all-white neighborhood); *Cleveland v. Union Par. Sch. Bd.*, No. 12,924, 2009 WL 1491188, at *4-5 (W.D. La. May 27, 2009) (granting the same charter school's motion to open after it increased minority recruitment efforts and relocated to a new site in a racially diverse area).

Instead of addressing the segregative effect of GGCA, the district court simply relied on GGCA's vague promise to increase recruitment through an unspecified plan over an indefinite period of time. ROA.642. This is plainly inadequate and does not ensure that GGCA will take responsibility for either furthering desegregation or reversing the segregation that the establishment of GGCA is entrenching.

II. THE OPENING A ONE-RACE SCHOOL VIOLATES THE DESEGREGATION ORDER AND UNDERMINES THE ONGOING, PRACTICABLE EFFORTS TO DESEGREGATE THE DISTRICT

GGCA bore the "heavy burden" of proving that its opening would not undermine desegregation efforts in the District. *Green*, 391 U.S. at 439; *see Swann*, 402 U.S. at 20. Unfortunately, the opening of GGCA is simply put, a step backwards. Not only does GGCA interfere with real efforts to achieve "the greatest possible

degree of actual desegregation" in the District, it in fact increases segregation in the District through the creation of another one-race school. *Swann*, 402 U.S. at 26.

In order to meet that burden, GGCA was required to demonstrate that it has "complied in good faith with the desegregation decree"[12] and that the opening of the school would contribute to eliminating the vestiges of discrimination "to the extent practicable" under the *Green* factors. *Bd. of Educ. of Oklahoma City Pub. Schs. v. Dowell*, 498 U.S. 237, 249-250 (1991); *see Cleveland*, 570 F. Supp. 2d at 868.

Absent such a showing, the district court committed an error of law and abused its discretion in granting GGCA's motion to operate a one-race school. *Lee v. Autauga Cty. Bd. of Educ.*, 514 F.2d 646, 647 (5th Cir. 1975). As set forth below,

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[12] GGCA should have been required to demonstrate—not merely promise—some amount of "good-faith compliance" with the desegregation order prior to opening. *Cleveland*, 570 F. Supp. 2d at 868. Yet, GGCA has entirely failed to demonstrate the requisite "history of good-faith compliance," *Freeman* 503 U.S. at 498—if anything they have demonstrated the opposite.

While GGCA was allowed to intervene in this case on March 29, 2016, for the sole purpose of seeking authorization to operate a charter school for the 2016-17 school year, ROA.214, GGCA waited until July 19 to file the Charter Motion. ROA.219. On August 2, 2016, a day before the opposition briefs were due, GGCA compounded this bad faith by filing an emergency motion to expedite the district court's consideration of the Charter Motion. ROA.506. GGCA's motion to expedite resulted in the district court prejudicially granting the Charter Motion *before* either Plaintiffs or the District could file opposition briefs.

But, GGCA's motion to expedite was based entirely on the misleading pretense that BESE had just "recently" set a deadline. ROA.506. In fact, however, on June 24, 2016, BESE had given GGCA until July 15, 2016, to obtain judicial approval to open. ROA.608. At the time of BESE's June letter, GGCA was already aware of the other parties' uniform opposition to the GGCA school's opening; however, GGCA failed to file its Charter Motion before even that July 15 deadline. Indeed, after the district court denied GGCA's motion for scheduling order on July 7, 2016, ROA.218, GGCA waited nearly two weeks to file the belated Charter Motion.

had the district court properly analyzed the available evidence, it would have concluded that the GGCA school in its current form, and with its current enrollment, plainly added to the segregation of the District and should not have been opened.

A. The Opening of a One-Race School Impermissibly Promotes Segregation in St. James Parish in Violation of the Desegregation Order

In the past, this Court has reversed proposed changes to a school district that left all-black schools "virtually untouched" and therefore did not do enough to ensure desegregation. *Pittman*, 808 F.2d at 390. The circumstances here are considerably more extreme. Not only does the new school do nothing to alleviate current segregation, it deepens segregation by creating another segregated school.

In particular, three circumstances illustrate this point.

First, districtwide student enrollment in St. James Parish is 61.9% Black, 35.4% white, and 3.6% other races. On the West Bank, student enrollment is 76.4% Black, 19.9% white, and 3.6% other races, compared to student enrollment on the East Bank that is 53.2% Black, 44.8% white, and 2.0% other races.

The racial isolation at the three existing one-race elementary schools is extreme—Lutcher is 96% Black, Fifth Ward is 97.6% Black and Sixth Ward is 97.1% Black. None of the four one-race schools meet a plus or minus ("+/-") 15%

or +/- 20% desegregation standard.[13] *See Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 319 (4th Cir. 2001) (en banc) (endorsing the use of a +/- 15% variance to determine a school's racial identifiability); *Davis*, 721 F.2d at 1431, 1438 (similar). On the West Bank, about 73% of the Black elementary school students are enrolled in one-race Black schools. In the District as a whole, only 42% of Black students attend such schools. The GGCA school has a 93% Black student population, making it the fourth one-race school in the District.

Second, the racial isolation at Fifth Ward, Sixth Ward, Lutcher and the GGCA school are reinforced by the disproportionate numbers of Black faculty and staff assigned to these schools, which has the "clear effect of earmarking" these schools as being only for Black students. *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 202 (1973); *see Freeman*, 503 U.S. at 497 ("[S]tudent segregation and faculty segregation are often related problems.").

Third, the deepening of segregation in the District caused by the opening of the GGCA school is only exacerbated by the schools' geography. The Fifth Ward and Sixth Ward schools are only 13 miles apart *and* the GGCA school is located just four miles from Sixth Ward on the West Bank. Last year, two of the three (or 66%) of the elementary schools on the West Bank were one-race Black. With the addition

[13] A standard of +/- 15% or less is used in more than half of the desegregation plans in which racial balance is measured by a numerical standard, and +/- 15% is the most common standard. David J. Armor, *Forced Justice: School Desegregation and the Law* 160 (1995).

of the GGCA school, three of the four elementary schools (or 75%) are now one-race Black. The existence of so many one-race schools in a small, rural district—and in such a concentrated area—is unjustifiable. *See Cowan*, 748 F.3d at 238-39 (holding that "[t]he retention of single-race schools may be particularly unacceptable where, as here, the district is relatively small" with just a handful of racially identifiable schools located in close proximity to one another); *Lawrence Cty*., 799 F.2d at 1041 (finding that further desegregation is possible in a district that "is relatively small and serves a rural school area").

"The very demographic factors that separate residential areas by race in [the District] are in part a vestige of past segregative practices by the Board." *Lawrence Cty*., 799 F.2d at 1043-44. In the *de jure* segregation era, Black schools in the District were built on sites "to accommodate students by race in areas where population was predominantly of a single race, and as a reasonably inferable result, parents who thereafter selected a place to live chose to reside near the racially segregated neighborhood schools." *Id*. at 1044. The opening of a third one-race school in a Black neighborhood on the West Bank perpetuates this vestige of discrimination.

Indeed, another district court in Louisiana recently denied a type 2 charter school's request to operate after considering "whether opening a virtually all white public charter school . . . would undermine desegregation." *Cleveland*, 570 F. Supp. 2d at 868. The court found that the proposed charter school's one-race student body

and its location in a white neighborhood were unacceptable and had contributed to its failure to recruit an integrated class. *Id*. The issue before this Court is nearly identical to the one in *Cleveland*: whether GGCA's opening of a virtually all-Black charter school in a historically Black neighborhood, far removed from white students, undermines desegregation. *Id*. The answer is clear: the projected enrollment and location of the GGCA school are impeding desegregation.

This Court "cannot tolerate resegregation of a former dual school system," and thus the GGCA school should not have been allowed to open where it "tend[ed] to promote such a relapse." *Hendry Cty.*, 504 F.2d at 554.

B. The Opening of the GGCA School Undermines the Parties' Continued Efforts to Eliminate the Vestiges of Past Discrimination in the District

The district court ignored the fact that the parties have—and continue to make—real progress in desegregating the elementary schools in the District. The district court dismissed the substantial negotiations and efforts to desegregate the school system as "nominal at best." ROA.646. Although the District has yet to desegregate Fifth Ward, Sixth Ward, and Lutcher, it has—with the approval of the district court—recently undertaken significant and effective desegregation actions. For example, since just 2012, the magnet program established at Grammercy Elementary School has led to meaningful integration at a formerly racially identifiable school. ROA.30. This and other examples contradict the court's

unsupported assertion that the parties have not been engaged in serious desegregation efforts.

Even if desegregation efforts have slowed—and Plaintiffs in no way concede that this is the case here—this still would not sanction the district court's decision to allow GGCA to reverse prior gains by opening another one race school. The duty to eliminate segregation and bring this case to its proper conclusion belongs to the district court as much as GGCA and the District.[14] *See Swann*, 402 U.S. at 21 ("[I]t is the responsibility of local authorities *and district courts* to see to it that future school construction and abandonment are not used and do not serve to perpetuate or re-establish the dual system.") (emphasis added); *see also Pittman*, 808 F.2d at 388 n.10 ("The district school board not black parents and their children bears the burden of desegregating schools."). The district court cannot simply wash its hands of its own responsibility by allowing a fourth one-race school to open and thereafter command the parties to simply deal with the additional hurdle that this order created by "includ[ing] [GGCA] in their discussions." ROA.646. Indeed, it is nearly impossible for the parties to address the segregation at the GGCA school as a part of

[14] Unfortunately, it is not uncommon for school desegregation cases to remain dormant for many decades before the parties are able to either reach a comprehensive settlement or to fully litigate the implementation of adequate remedies. *See, e.g.*, *Cowan*, 748 F.3d at 236 (finding that, after fifty years of litigation, the school district had "never . . . meaningfully desegregated" several schools); *Thomas v. Sch. Bd. St. Martin Parish*, 756 F.3d 380, 387 (5th Cir. 2014) (holding that, while no order had been issued since 1974, a desegregation case remained active).

a new consent order since the District lacks control over GGCA (which is supervised by BESE) and practicable options, such as consolidating or pairing the District's various elementary schools, would not impact the composition of the GGCA school.

Thus, by granting GGCA's motion, the district court erroneously dismissed the active good faith efforts of Plaintiffs and the District to further desegregation and instead created a school that exists outside the reach of those efforts: a newly segregated island unto itself.

III. THIS COURT MAY ORDER APPROPRIATE RELIEF

By opposing GGCA, Plaintiffs are not taking any position on the operation of public charter schools as a matter of public policy. Instead, Plaintiffs oppose GGCA because its operation of a one-race Black school on the West Bank would violate the most basic dictates of the existing desegregation order. Thus, Plaintiffs respectfully request that this Court reverse the Charter Motion or, alternatively, remand the case to the district court and order it to consider and adopt a reasonable alternative, such as one of the two suggested here, to address the GGCA school's segregative effect.

The Charter Motion should be reversed and the GGCA school closed until such a time that it can open as a more integrated school. *See Cleveland*, 570 F. Supp. 2d at 870 (denying a charter school's motion to operate after determining that its detrimental effects could not be remedied through other restrictions); *Cleveland*, 2009 WL 1491188, at *5 (granting the same charter's motion to open after it

increased minority enrollment and relocated to a different school site). This would undoubtedly promote desegregation by lessening the number of one-race schools in the District and returning dozens of students to integrated schools and such an order is clearly within a court's "expansive remedial authority." *Valley*, 702 F.2d at 1227.

Thereafter, the case could be remanded to the district court for the parties to present evidence on whether other remedies, such as ordering the relocation of the GGCA school to the East Bank or another site where it might attract a more diverse student body, are appropriate. *Cf. Lee*, 514 F.2d at 648 (reversing the approval of a new school site and ordering the district court and the board on remand to consider alternative sites); *see also Pitts*, 755 F.2d at 1427 (similar). Alternatively, the funding of GGCA could be made contingent on its ability to recruit a more diverse student body and, if it is unable to do so, some portion of the school's state funding could be directed to the District for its use in fulfilling the desegregation order. *See, e.g.*, *Berry*, 56 F. Supp. 2d at 885 (making the funding of a charter school contingent on its ability to attract a sufficiently diverse student body); *Moore v. Tangipahoa Par. Sch. Bd.*, No. 65-15556, 2015 WL 7015711, at *2 (E.D. La. Nov. 10, 2015) (partitioning the state's funding between a school district and a charter school in order to ensure adequate funding for the district's desegregative magnet schools).

The district court's failure to consider any of these plausible and practicable alternative remedies was in error and should be reversed.

CONCLUSION

For the foregoing reasons, the district court's August 3, 2016 order granting GGCA authorization to operate a charter school in the St. James Parish School District should be reversed, and the case remanded for further relief as appropriate.

Respectfully Submitted,

/s/ Deuel Ross

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November 29, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Deuel Ross
DEUEL ROSS

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B)(i).

1. In compliance with Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6), the brief has been prepared in proportionally spaced Times New Roman font with 14-point type using Microsoft Word 2016.
2. In compliance with Federal Rule of Appellate Procedure 32(a)(7)(B), the brief contains 7,981 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Fifth Circuit Rule 32.2. As permitted by Federal Rule of Appellate Procedure 32(a)(7)(C), I have relied upon the word count feature of Microsoft Word 2016 in preparing this certificate.

/s/ Deuel Ross
Deuel Ross

November 29, 2016

ADDENDUM

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

WILFRED BANKS, et al., Plaintiffs, UNITED STATES OF AMERICA Plaintiff-Intervenor, v. ST. JAMES PARISH SCHOOL BOARD, et al., Defendants.	CIVIL ACTION NO. 16173 SECTION F

D E C R E E

CONSIDERING the plaintiff-intervenor's motion for supplemental relief filed on April 7, 1967, and the pre-trial stipulation entered into in the above entitled and numbered cause, the matter having been submitted this date, the law and the evidence being in favor thereof:

IT IS ORDERED, ADJUDGED AND DECREED that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be, and they are permanently enjoined from discriminating on the basis of race or color in the operation of the St. James Parish School Board. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system.

I.

SPEED OF DESEGREGATION

Commencing with the 1967-1968 school year, in accordance with this decree, all grades, including kindergarten grades, shall be desegregated and pupils assigned to schools in these grades without regard to race or color.

II.

EXERCISE OF CHOICE

The following provisions shall apply to all grades:

(a) Who May Exercise Choice. A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) Annual Exercise of Choice. All students, both White and Negro, shall be required to exercise a free choice of schools annually.

(c) Choice Period. Beginning in 1968, the choice period shall commence March 1 and end March 31

preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) Mandatory Exercise of Choice. A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) Public Notice. On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations located in the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

(f) Mailing of Explanatory Letter and Choice Forms. On the first day of the choice period there shall be distributed by first-class mail an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the defendants) of each student, together with a return envelope addressed to the Superintendent. Should the defendants satisfactorily demonstrate to the Court that they are unable to comply with the requirement of distributing the explanatory letter and choice form by first-class mail, they shall propose an alternative method which will maximize individual notice, i.e., personal notice to parents by delivery to the pupil with adequate procedures to insure the delivery of the notice. The text for the explanatory letter and choice form shall essentially conform to the sample letter and choice form appended to this decree.

(g) Extra Copies of the Explanatory Letter and Choice Form. Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

(h) Content of Choice Form. Each choice form shall set forth the name and location and the grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student,

the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested, without approval of the Court.

(i) Return of Choice Form. At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

(j) Choices not on Official Form. The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(k) Choice Forms Binding. When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices from their children under the conditions set forth in paragraph II (a) of this decree and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student. A change in family residence from one neighborhood to another shall be considered an exceptional case for purposes of this paragraph.

(l) Preferences in Assignment. In assigning students to schools, no preferences shall be given to any student

for prior attendance at a school and, except with the approval of the Court in extraordinary circumstances, no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

(m) Second Choice where First Choice is Denied. Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student shall have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

(n) Transportation. Where transportation is generally provided, buses must be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the formerly Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

(o) Officials Not to Influence Choice. At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving

a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counsellors, such persons shall base their guidance and counselling on the individual student's particular personal, academic, and vocational needs. Such guidance and counselling by teachers as well as professional guidance counsellors shall be available to all students without regard to race or color.

(p) Protection of Persons Exercising Choice. Within their authority school officials are responsible for the protection of persons exercising rights under or otherwise affected by this decree. They shall, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference shall include harassment, intimidation, threats, hostile words or acts and similar behavior. The school board shall not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this decree. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

III.

PROSPECTIVE STUDENTS

Each prospective new student shall be required to exercise a choice of schools before or at the time of enrollment. All such students known to defendants shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the

choice period open to it upon application to the school system before that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms shall be available at the office of the Superintendent and at each school during the time the school is usually open.

IV.

TRANSFERS

(a) Transfers for Students. Any student shall have the right at the beginning of a new term, to transfer to any school from which he was excluded or would otherwise be excluded on account of his race or color.

(b) Transfers for Special Needs. Any student who requires a course of study not offered at the school to which he has been assigned may be permitted, upon his written application, at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs.

(c) Transfers to Special Classes or Schools. If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted children, the defendants may assign children to such schools or classes on the basis related to the function of the special class or school that is other than freedom of choice. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

V.

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the defendants shall be conducted without regard to race or color.

VI.

SCHOOL EQUALIZATION

(a) Inferior Schools. In schools heretofore maintained for Negro students, the defendants shall take

steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent feasible, be distributed evenly between schools formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this paragraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice. By October of each year, defendants shall report to the Clerk of the Court pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital improvement costs, and shall outline the steps to be taken and the time within which they shall accomplish the equalization of such schools.

(b) Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have previously attended segregated schools to overcome past inadequacies in their education.

VII.

NEW CONSTRUCTION

The defendants, to the extent consistent with the proper operation of the school system as a whole, shall locate any new school and substantially expand any existing

schools with the objective of eradicating the vestiges of the dual system.

VIII.

FACULTY AND STAFF

(a) Faculty Employment. Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (White or Negro) shall be on a desegregated faculty. Defendants shall take positive and affirmative steps to accomplish the desegregation of their school faculties and to achieve substantial desegregation of faculties in as many of the schools as possible for the 1987-88 school year notwithstanding that teacher contracts for the 1987-88 or 1988-89 school years may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The defendants shall establish as a objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or White pupils in the school.

(b) Dismissals. Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

(c) Past Assignments. The defendants shall take steps to assign and re-assign teachers and other professional staff members to eliminate the effect of the dual school system.

IX.

REPORTS TO THE COURT

(1) Report on Choice Period. The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before September, 1967, and in each subsequent year on or before June 1, a report

tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

In addition, the report shall show the percentage of pupils actually transferred or assigned from segregated grades or to schools attended predominately by pupils of a race other than the race of the applicant, for attendance during the 1967-68 school year, with comparable data for the 1966-67 school year. Such additional information shall be included in the report served upon opposing counsel and filed with the Clerk of the Court.

(e) Report after School Opening. The defendants, shall, in addition to reports elsewhere described, serve upon opposing counsel and file with the Clerk of the Court within 15 days after the opening of schools for the fall semester of each year (commencing in 1967), a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(iii) The number of students by race, in each grade of each school.

This 31st day of July, 1967, New Orleans, Louisiana.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

WILFRED BANKS, ET AL	CIVIL ACTION
VS.	NO. 16173
ST. JAMES PARISH SCHOOL BOARD, ET AL	SECTION F

O R D E R

Upon consideration of the record herein, hearing duly held and the arguments of counsel on Wednesday and Thursday, May 7th and 8th, 1969, and upon consideration of a plan to effect a unitary, non racial school system for St. James Parish, Louisiana, filed by the Educational Resource Center on School Desegregation pursuant to an order of this Court issued on November 27th, 1968, and upon consideration of an alternate plan filed and proposed by defendant-intervenor, The Association of Concerned Citizens, and upon consideration of an amended plan filed by defendant herein also pursuant to said order, said amended plan to become effective and implemented for the 1969-70 school year, the plan offered by the defendant St. James Parish School Board is accordingly approved and it is now

ORDERED, ADJUDGED AND DECREED that defendant St. James Parish School Board implement and effectuate for the 1969-70 school year the plan to effect a unitary, non racial school system for St. James Parish.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plan approved is as follows, to-wit:

EAST BANK OF MISSISSIPPI RIVER

Gramercy Lutcher Paulina [illegible] Area

[illegible] - Grades 1-[illegible]

All students, [illegible] 1-[illegible], from Colonial, [illegible]

Lutcher Elementary, Cypress Grove Elementary and Paulina will be assigned to schools in each area as:

GRAMERCY (Grades 1-5)

All students, grades 1-5, from Colonial Elementary and Gramercy Elementary will attend Gramercy School.

LUTCHER ELEMENTARY (Grades 1-5)

All students, grades 1-5, from Lutcher Elementary and Cypress Grove Elementary, will attend Lutcher Elementary School.

PAULINA (Grades 1-5)

All students, grades 1-5 from the Paulina area (Ward 1 and Belmont area of Ward 2) will attend Paulina School.

GIRLS - Grades 6-12

All girls, grades 6-12, from Colonial, Gramercy, Lutcher Elementary, Lutcher High, Cypress Grove Elementary, Cypress Grove High and Paulina will attend Lutcher High School.

BOYS - Grades 6-12:

All boys, grades 6-12, from Colonial, Gramercy, Lutcher Elementary, Lutcher High, Cypress Grove Elementary, Cypress Grove High and Paulina will attend Cypress Grove Elementary and Cypress Grove High School.

Romeville Central Area

BOYS - Grades 1-12

All boys, grades 1-12, from Central and Romeville will attend Central School.

GIRLS - Grades 1-12

All girls, grades 1-12, from Central and Romeville will attend Romeville School.

WEST BANK OF MISSISSIPPI RIVER

DEVIL'S ISLAND AREA

Boys and Girls - Grades 1-4

All students, grades 5-, [illegible]

Magnolia Elementary, St. James High School and Consolidated Elementary will attend the Consolidated Elementary School.

GIRLS - Grades 5-12

All girls grades 5-12, formerly attending St. James High School, Magnolia High School, Magnolia Elementary, and Consolidated Elementary will attend the St. James High School.

BOYS - Grades 5-12

All boys, grades 5-12, formerly attending St. James High School, Magnolia Elementary, Consolidated Elementary will attend the Magnolia High School.

SOUTH VACHERIE AREA

All girls, grades 1-8, formerly attending Vacherie Elementary and Shell Mound Elementary, will attend Vacherie Elementary School.

All boys, grades 1-3, formerly attending Vacherie Elementary and Shell Mound Elementary, will attend Vacherie Elementary School.

All boys, grades 4-8, formerly attending Vacherie Elementary and Shell Mound Elementary, will attend Shell Mound Elementary School.

Order entered on May 7, 1969.

Order signed on May 7, 1969.

Judge, U.S. District Court