SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 592

COCHEYSE J. GRIFFIN, ETC., ET AL.,
PETITIONERS,

vs.

COUNTY SCHOOL BOARD OF PRINCE EDWARD
COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 24, 1964

IN THE

United States District Court

for the Eastern District of Virginia at Richmond

Civil No. 1333

—o—

EVA ALLEN, *et al.*,

Plaintiffs,

—v.—

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, *et al.*,

Defendants.

—o—

Docket Entries

Date 1960	Proceedings
Apr. 22	Order on Mandate (of May 5, 1959), ent'd & filed, retaining action on docket for further proceedings & etc. (Bryan, J.).
Apr. 27	Motion to withdraw appearance as counsel for County School Board of Prince Edward Co., filed by Hunton, Wms., Gay, Powell & Gibson, & Archibald G. Robertson, Jno W. Riely & T. Justin Moore, Jr. (members of the firm) and W. C. Fitzpatrick.
May 17	Order permitting Archibald G. Robertson, Jno W. Riely & T. Justin Moore, Jr. (members of the firm of Hunton, Wms., Gay, Powell & Gibson) & W. C. Fitzpatrick to withdraw as counsel for County School Board of Prince Edward Co., Va., ent. & filed May 17, 1960. Notice mailed counsel.

Docket Entries

Date 1960	Proceedings
June 13	Motion for leave to file supplemental complaint and to add additional defendants received & filed 6/10/60.
June 13	Supplemental Complaint received 6/10/60.
June 13	Motion to intervene received 6/10/60.
June 13	Complaint in intervention received, 6/10/60.
June 17	Notice of Motion & Motion to dismiss motion for leave to file . Supplemental Complaint filed.
June 21	Motion for continuance of Hearing on motion for Intervention & on motion to add additional Defts. & for leave to file supplemental complaint filed by deft. Geo. W. Palmer, member of School Bd. of Prince Edw. Co.
June 27	In chambers—before Orwin R. Lewis, Judge; appearance by counsel. Pending motions, after argument, continued to July 29, 1960 at 10 o'clock.
July 8	Motion of Harold P. White, Jr., etc., et al. to intervene and notice of motion, filed.
July 8	Notice of motion for hearing on motion to intervene and to file supplemental complaint, filed.
July 29	In Open Court—Lewis, J.: appearances by counsel. Plaintiffs moved to dismiss Geo. W. Palmer as party in so far as it dismisses Palmer as an individual only. Motion for leave to file supplemental complaint and add additional defendants argued by plaintiffs Collins Denny, Jr. moved for continuance. Motion denied. Argument concluded. Court takes time to consider.

Docket Entries

Date 1960	Proceedings
Sept. 16	Order entered 9-16-60, as follows: leave is granted to plaintiffs to file their supplemental complaint; making State Board of Education, Supt. of Public Instruction and Bd. of Supervisors of Prince Edward County, parties deft. to this suit, each of them to be served with copies of the original and supplemental complaints; granting defts. 20 days from 9-16-60 to file such answers and/or other pleadings to the supplemental complaint as they deem advised; reserving ruling on motion to dismiss supplemental complaint as to T. J. McIllwaine, without prejudice to his right to renew the motion at a later date; granting motion of George W. Palmer that he be dismissed as a party deft. in his individual capacity, but he shall remain a party deft. as a member of the School Board of Prince Edward County; granting motions of Harold P. White, Jr., and others, and Cocheyse J. Griffin, and others, that they be permitted to intervene as parties plaintiff and the persons named therein are herewith made parties plaintiff, and filed.
Sept. 16	Supplemental complaint filed.
Sept. 21	Summons issued to State Bd. of Education, Supt. of Public Instruction & Bd. of Supervisors of Prince Edward Co., returnable 10-6-60.
Oct. 5	Motion for leave to withdraw as counsel for deft., T. J. McIllwaine filed by Hunton, Wms., Gay, Powell & Gibson, Archibald G. Robertson, Jno W. Riely, Jr. & T. Justin Moore, Jr.
Oct. 5	Order permitting withdrawal of above counsel as counsel for deft. T. J. McIllwaine, ent. & filed. Notice mailed counsel.

Docket Entries

Date	Proceedings
1960	
Oct. 5	—Order extending time to 10-24-60 for deft. County School Bd. of Prince Edw. Co., Va., T. J. McIllwaine, Div. Supt. of Schools of Prince Edw. Co., Supt. of Public Instruction, State Board of Education & Bd. of Supervisors of Prince Edward Co., to file answers, ent. & filed. Notice mailed counsel.
Oct. 7	—Marshal's return on summons executed and filed as to all defendants.
Oct. 24	—Motion of Board of Supervisors of Pr. Edw. Co. to dismiss supplemental complaint as to said Board of Supervisors, filed.
Oct. 24	—Motion of Supt. of Public Instruction and State Board of Education to dismiss Supplemental Complaint, filed.
Oct. 24	—Motion of School Board of Prince Edward Co. to dismiss the supplemental complaint permitted to be filed by Order of Sept. 16, 1960, etc. filed.
Oct. 24	—Motion of T. J. McIllwaine to dismiss supplemental complaint permitted to be filed by order of Sept. 16, 1960 filed.
1961	
Jan. 13	—Motion of plf. for leave to file amended supplemental complaint and to substitute successor defts. & add party deft., filed.
Jan. 24	—Letter of Court to counsel fixing Feb. 15, 1961 at 2:00 p. m. to fix dates for hearing on motions, filed.

Docket Entries

Date 1961	Proceedings
Feb. 15—	In Open Court—Lewis, J.: appearances by counsel. April 11, 1961 at 2:00 p. m. set for argument on motion to file amended supplemental complaint. May 8, 1961 set for hearing on all other motions that are filed or may be filed and on any motions that may be filed if filing of amended supplemental complaint is allowed.
Apr. 11—	In Open Court—Lewis, J.: Motion to file amended supplemental complaint argued and granted.
Apr. 24—	Order substituting parties deft. & filing amended supplemental complaint, making J. W. Wilson, Jr., Treas. of Prince Edw. Co., Va. party deft. All defts. to file responsive pleadings on or before 5-1-61, ent. & filed. Copy of order & amended complaint del. to Marshal for service on J. W. Wilson, Jr. Notice 77d issued.
Apr. 24—	Amended supplemental complaint filed.
Apr. 26—	Motion to Intervene as a plf. and to add defendants Prince Edward School Foundation, Commonwealth of Va. & Sydney C. Day, Comptroller of Virginia, filed by United States.
Apr. 26—	Memorandum of Points & Authorities in support of motion of U. S. to intervene & to add parties deft. filed by U. S.
Apr. 27—	Notice of motion on 5-8-61 for U. S. to intervene as plf. etc., filed.
Apr. 28—	Marshal's return of service executed on order & supplemental complaint as to J. W. Wilson, Jr., filed.
May 1—	Motion to dismiss filed by State Board of Education.

Docket Entries

Date 1961	Proceedings
May 1	—Motion of T. J. McIlwaine to dismiss amended supplemental complaint permitted to be filed by order of 4-24-61, etc. filed.
May 1	—Motion of School Board of Prince Edward Co. to dismiss amended supplemental complaint permitted to be filed by order of 4-24-61, etc. filed.
May 1	—Motion of J. W. Wilson, Sr., Treas. of Prince Edward Co. to dismiss amended supplemental complaint filed.
May 1	—Motion of Board of Supervisors of Prince Edward Co. to dismiss amended supplemental complaint filed.
May 1	—Marshal's return on writ as to Atty. General executed & filed.
May 1	—Marshal's return on writ as to J. Barrye Wall, Jr. executed & filed.
May 1	—Marshal's return on writ as to Sidney C. Day, Jr. executed & filed.
May 3	—Motion to intervene as a deft. filed by John Bradley Minnick & to file answer to complaint of U. S. to intervene, filed.
May 3	—Memorandum of Points & Authorities in support of motion to intervene filed by John Bradley Minnick.
May 8	—In Open Court—Lewis, J.: Appearances by counsel. Motions to dismiss amended and supplemental complaint of plaintiffs argued. Attorney General of Virginia moved for continuance of Gov't. motion to intervene. Motions denied. Gov't. motion partly argued by Gov't. counsel.

Docket Entries

Date 1961	Proceedings
May 9	In Open Court—Lewis, J.: Appearances by counsel. Arguments concluded. Briefs to be filed.
May 24	Memorandum of Law filed by U. S.
May 24	Plaintiffs' Brief in opposition to motions to dismiss filed.
May 24	Memorandum in opposition to motion to intervene as a plf. and to add defts., filed by Atty. Gen.
May 24	Memorandum in support of motion to dismiss on behalf of the Supt. of Public Instruction and the State Bd. of Education, filed.
June 2	Memorandum as to Intervention of Right under Rule 24(a)(2) filed by Atty. Gen. of Va.
June 5	Letter of Court to counsel allowing Oliver W. Hill to withdraw as counsel, filed.
June 15	Memorandum opinion by the Court denying motion of United States to intervene as a party plaintiff and to add as parties defendant, Prince Edward School Foundation, Commonwealth of Virginia and Sydney C. Day, Jr., Comptroller of Virginia, entered June 14, 1961.
June 15	Opinion by the court denying without prejudice, motions to dismiss amended supplemental complaint, etc., granting defendants 20 days to answer or plead, fixing date for hearing on merits and fixing tentative date for formal pre-trial, etc., entered June 14, 1961.
June 15	Motion of County School Board of Prince Edward County to file report, with notice attached and report attached, filed June 15, 1961.
July 5	Answer of State Board of Education to amended supplemental complaint filed.

Docket Entries

Date 1961	Proceedings
July 5	—Answer of School Board of Prince Edward Co. to amended supplemental complaint filed.
July 5	—Answer of T. J. McIlwaine to amended supplemental complaint filed.
July 5	—Answer of J. W. Wilson, Jr., Treas. of Prince Edward Co., Va. to amended supplemental complant filed.
July 5	—Answer of the Board of Supervisors of Prince Edward Co. to amended supplemental complaint filed.
July 7	—Order denying motions to dismiss supplemental complaint, without prejudice to rights of defts. to renew their motions upon conclusion of hearing if they are then so advised; defts. to file answer or other pleadings to amended supplemental complaint within 20 days from 6-14-61; pre-trial proceedings as provided and scheduled in court's memorandum be observed; cause to be heard on merits 7-24-61; noting retirement from this cause as counsel for plfs.: Oliver W. Hill, Spottswood W. Robinson, III and Frank D. Reeves; ent. and filed.
July 7	—Order denying motion of U. S. to intervene as party plf. & to add as parties deft. Prince Edward School Foundation, Com. of Va. & Sidney C. Day, Jr., Comptroller of Va. ent. 7-5-61, filed.
July 24	—Trial Proceedings—Before Hon. Oren R. Lewis, Judge: Appearances by parties. Issues joined on all matters at issue. (Counsel appearing: S. W. Tucker & Robt. W. Carter, p.q.; J. Segar Gravatt, Frank N. Watkins, Frederick T. Gray, Attorney General of Virginia with R. D. McIlwaine, Collins Denny, Jr. with John F. Kay, Jr.; William C. King, p.d.).

Date 1961	Proceedings
	Mr. Denny moved for leave to file report. S. W. Tucker opposed motion. Motion granted and report ordered received and filed. Report of School Board of Prince Edward County, Virginia, filed. In re: Motion of J. B. Minnick of May 3, 1961 to intervene: Opinion from Bench that motion should be denied and motion denied. Plaintiffs adduced evidence. Adjournment.
July 25—	Trial Proceedings—resumed: Parties again appeared. Bill for certified copies amounting to $159.00 filed by defendant, School Board. Plaintiffs adduced further evidence and rested. Adjournment.
July 26—	Trial Proceedings—resumed: Parties again appeared. Defendants adduced evidence and rested. Evidence concluded. Mr. Collins Denny moved to dismiss Supplemental and Amended Complaint re: Prince Edward School Board and Division Superintendent of School Board. Motion argued and ruling deferred until all arguments are completed. Mr. Denny reiterated motions previously made. Rulings deferred. Mr. J. Segar Gravatt renewed previous motions on behalf of Board of Supervisors. Rulings deferred. Matter partly argued. Adjournment.
July 27—	Trial Proceedings — resumed and concluded: Parties again appeared. Argument concluded. Decision reserved. Adjournment.
Aug. 7—	Summary of principles relied upon by Board of Supervisors of Prince Edward Co. received.

Docket Entries

Date 1961	Proceedings
Aug. 25	Memorandum opinion by the Court entered Aug. 23, 1961 and filed August 25, 1961 at nine o'clock A. M.
Sept. 29	Statement of Court Reporter in sum of $338.00 to be taxed in costs, received.
Nov. 6	In Chambers—Lewis, J.: Settlement of order argued.
Nov. 13	Letter of J. Segar Gravatt showing payment to C. L. Craig, Reporter in sum of $338.00 received.
Nov. 15	Notice of Application for writ of mandamus, with copy of petition for writ of mandamus of Leslie Francis Griffin, Jr., and copy of answer to petition for writ of mandamus, filed Nov. 13, 1961.
Nov. 15	Order that report of County School Board of Prince Edward County and T. J. McIlwaine, Division Superintendent of Schools of said County, be received and filed as a part of the record, ent. and filed.
Nov. 15	Report of County School Board of Prince Edward County and T. J. McIlwaine, with Exhibits A, B, C and D attached, filed.
Nov. 17	Order on opinion of Aug. 23, 1961 restraining "grant in aid" payments by Board of Supervisors and Treasurer of Prince Edward County, et al.; restraining Division Superintendent of Schools of Prince Edward County, the Superintendent of Public Instruction, et al. from processing or approving any applications for State scholarship grants; ordering Prince Edward County School Board to forthwith comply with order of April 22, 1961; denying prayer for injunctive relief in re: transfer or lease of school property; reserving decision upon all other issues raised in the

Date	Proceedings
1961	
	amended supplemental complaint and motions and answers of various defendants not specifically ruled upon; continuing cause, and directing clerk to mail attested copies of this order to sundry persons, entered and filed November 16, 1961.
Nov. 17	—Return of Clerk on order of Nov. 16, 1961, filed.
Dec. 6	—Reporter's Transcript of Trial Proceedings of July 24-27, 1961 (Vol. I), filed.
Dec. 6	—Reporter's Transcript of Trial Proceedings of July 24-27, 1961 (Vol. II), filed.
Dec. 15	—Notice of appeal from order entered Nov. 16, 1961 filed by Cocheyse J. Griffin, et al.
1962	
Jan. 19	—Motion for extension of time to docket appeal record, filed 1-18-62.
Jan. 19	—Order extending time to Mch. 16, 1962 for docketing appeal, entered 1-18-62.
Jan. 19	—Appeal Bond of $250.00 filed by plfs.
Feb. 28	—Order of U. S. Court of Appeals ent'd. Feb. 26, 1962 postponing issues raised by the appeal noted Dec. 15, 1961 until final adjudication of the entire case by the district court and until appeal is noted and perfected from the district court's final adjudication, received and filed Feb. 28, 1962. (Clerk, USCA mailed copies of order to counsel.)
Mar. 20	—Notice of application for extension of injunction filed by plaintiffs in open Court in Alexandria.

Date 1962	Proceedings
Mar. 22	Proceedings in open court in Alexandria (Lewis, J.). Motion came on this morning for application of extension of the injunction heretofore entered. Motion continued until such time as the Court has been advised that a final order has been entered by the Supreme Court of Appeals of Virginia. The extension of injunction shall continue until such time as this order is handed down. When order is handed down this court will hear the motion as soon thereafter as possible.
Mar. 26	Motion to substitute Annie Dobie Peebles & C. Stuart Wheatley, Jr. parties deft. in substitution for Gladys V. V. Morton & Wm. J. Story, Jr., filed by plfs.
Mar. 26	Notice of motion for further relief filed by plfs.
Mar. 26	Motion for further relief & final disposition of this case, filed by plfs.
Apr. 2	In Open Court—Lewis, J.: Appearances by counsel. Plaintiffs, by counsel, moved court to enter order extending injunction and moved to have date for hearing on application for further relief. Court declined to rule at this time. Matter continued. Clerk to notify all counsel of record that counsel or someone from their offices shall appear on April 4th at 10:00 a.m. for purpose of setting date.
Apr. 4	In Open Court—Lewis, J.: Appearances by counsel. Copy of decision of Supreme Court of Appeals of Virginia, filed. Plaintiffs, by counsel, moved to extend injunction. Opposed by defendants. Defendants allowed until May 1, 1962 to file their motions. Leave granted to file motion

Date 1962	Proceedings
	to dissolve existing injunction. Plaintiffs to file any motions by April 16, 1962. Court to enter order effective today enlarging present injunction to remain in full force and effect until further order of this court. All motions now filed or that may be filed set for hearing on May 18, 1962.
May 1	—Motion of defendants to dismiss or in the alternative to abstain from determining the issues presented in the amended supplemental complaint and to dismiss plaintiffs' motion for further relief, with exhibits "A", "B", "C", "D", & "E", filed.
May 1	—Motion of defendants Board of Supervisors of Prince Edward County, Virginia, and J. W. Wilson, Jr., Treasurer of Prince Edward County, Virginia, to dismiss the injunction entered herein on November 16, 1961, and further extended by order of , 1962, filed.
May 1	—Motion to dismiss motion for further relief; Motion to stay until questions of State Constitutional and Statutory construction raised therein are submitted to the supreme court of appeals of Virginia for construction; and Answer of the Board of Supervisors of Prince Edward County, Virginia, and J. W. Wilson, Jr., Treasurer thereto, filed.
May 1	—Motion of defendants County School Board of Prince Edward County, Virginia, and T. J. McIllwaine, Division Superintendent of Schools to dismiss the amended supplemental complaint for failure of proof, filed.

Docket Entries

Date 1962	Proceedings
May 1	—Motion of defendants, County School Board of Prince Edward County, Virginia and T. J. McIllwaine, Division Superintendent of Public Schools, to Dismiss plaintiffs' motion for further relief, filed.
May 1	—Answer of County School Board of Prince Edward County, Virginia, and T. J. McIllwaine, Division Superintendent of Schools, to a motion for further relief filed herein by the plaintiffs, filed.
May 1	—Motion to dismiss filed by Woodrow W. Wilkerson, Colgate W. Darden, Lewis F. Powell, Jr., Ann Dobie Peebles, C. Stuart Wheatley, Jr., Leonard G. Muse, Louise F. Galleher and Mosby Garland Perrow, Jr., ind. and constituting the State Board of Education.
May 1	—Answer of Woodrow W. Wilkerson, Supt. of Public Instruction, and Colgate W. Darden, Lewis F. Powell, Jr., Anne Dobie Peebles, C. Stuart Wheatley, Jr., Leonard G. Muse, Louise F. Galleher and Mosby Garland Perrow, Jr., ind. and constituting the State Board of Education, filed.
May 18	—In Open Court—Lewis, J.: Appearances by counsel. Matter of filing action in Supreme Court of Appeals of Virginia for a determination under Sec. 129 of the Constitution of Virginia and motion to dismiss amended supplemental complaint argued by counsel.
May 23	—Plaintiffs' Exceptions to entry of summary judgment, filed.

Docket Entries

Date 1962	Proceedings
May 25	Order granting motion for summary judgment as to cause of action alleged in Sec. V of the Amended Supplemental Complaint and dismissing sec. V; directing clerk to enter final judgment, ent. & filed May 24, 1962.
May 25	Final judgment in favor of School Board on the cause of action alleged in Sec. V of the Amended Supplemental Complaint, entered by Clerk May 25, 1962. Notice 77 D mailed counsel 6-8-62.
June 11	Notice of appeal from final judgment in favor of School Board on the cause of action alleged in Sec. V of the Amended Supplemental Complaint, filed by Cocheyse J. Griffin, et al., plaintiffs, filed.
June 26	Conference with counsel in chambers (Lewis, J.).
July 26	Memorandum opinion and Order of the Court directing School Board of Prince Edward County complete plans for admission of pupils in the elementary and high schools of the county without regard to race or color and to receive and consider applications to this end at the earliest practical date; proposed plans should be submitted to all counsel of record not later than 9-1-62 and to this Court on 9-7-62; granting motion to substitute successor defendants; granting motion to dismiss motion for further relief; denying motior to dismiss injunction entered on 11-16-61, and fur ther extended 3-26-62; said injunction is effective only so long as the public schools of Prince Ed ward County remain closed; ent. July 25, 1962 and filed.

Date 1962	Proceedings
Sept. 7	In Open Court—Lewis, J.: Messrs. S. W. & Otto Tucker, Robt. Carter, Henry Marsh, for plaintiffs; Messrs. Button, McIlwaine, Gray, Denny, Kay, Hicks, Rogers, Watkins and Gravatt for defendants. Order filing report of School Board entered. Report of School Board filed. Exception to Report of School Board filed by plaintiffs. Exceptions argued. Other matters argued. Notice of School Board for entry of order with proposed order attached, filed.
Sept. 28	Reporter's Transcript of Proceedings in Open Court on Sept. 7, 1962 filed.
Oct. 11	Motion of defendants to amend the findings contained in the memorandum opinion of July 25, 1962, to rehear and reconsider in part that opinion, and to abstain, filed in Chambers at Alexandria October 3, 1962. Suggestion Re Court's Order, filed in Chambers at Alexandria October 3, 1962. Memorandum opinion and order denying in its entirety defendants' motion in Chambers that the Court amend its findings as set forth in its Memorandum Opinion of July 25, 1962 and to rehear and consider in part that opinion, and to abstain upon the grounds set forth in the motion; amending par. 2 of page 3, line 7 and and par. 2 of page 11, line 9 on oral motion of defendants and denying other requested amendments, entered and filed Oct. 10, 1962. Order denying defendants' motion for stay; ordering School of Prince Edward County to submit the Pupil Placement Board assignment plan to the court forthwith for review and approval, if

Date 1962	Proceedings
	the School Board relies upon the validity of the Plan; incorporating Court's Memorandum Opinion of July 25, 1962 as a part of this order by reference; setting forth previous findings by the court; adjudging that the public schools of Prince Edward County may not be closed to avoid the effect of the law as interpreted by the Supreme Court while the Commonwealth of Virginia permits other public schools to remain open; denying defendants' motion to dismiss, or in the alternative to abstain from determining the issues presented in the amended supplemental complaint; granting defendants' motion to dismiss the plaintiffs' motion for further relief; granting plaintiffs' motion to substitute successor defendants and substituting Anne Dobie Peebles and C. Stuart Wheatley, Jr., individually and as members of the State Board of Education for Gladys V. V. Morton and William J. Story as parties defendant; denying defendants' motion to dissolve the injunction of Nov. 16, 1961 which was further extended on March 26, 1962; extending injunction of Nov. 16, 1961 so long as the public schools of Prince Edward County remain closed; deferring entry of further orders as may be necessary and proper to require full compliance with this decree pending review by the United States Court of Appeals for the Fourth Circuit and the Supreme Court of the United States, providing such appeal is noted and perfected within the time provided by law, entered and filed October 10, 1962 (copies of this order and copy of opinion mailed counsel Oct. 11, 1962).
Oct. 17	—Notice of appeal filed by plfs. from order of 10-10-62.

Order On Mandate

As directed by the United States Court of Appeals for the Fourth Circuit, and upon motion of the plaintiffs, the defendants having advised the Court that they did not desire to be heard thereon, the Court does hereby ADJUDGE, ORDER and DECREE:

1. That the judgment entered by this Court on the 26th day of November, 1958, be, and it hereby is, vacated to the extent that it relieves defendants of the necessity of complying with the terms of the injunction heretofore entered in this case until the beginning of the school year 1965 and to the extent that it limits the recovery by the plaintiffs from the defendants to an amount chargeable for one copy of the transcript of the proceedings.

2. That the defendants, the County School Board of Prince Edward County, T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, their agents and employees and successors in office, and all persons acting in concert with them, be, and they hereby are, restrained and enjoined from any action that regulates or affects on the basis of race or color the admission, enrollment or education of the infant plaintiffs, or any other Negro children similarly situated, to the high schools operated by the defendants in the County and that the defendants receive and consider the applications of such persons for admission to such high schools without regard to race or color.

3. That the defendants make plans for the admission of pupils in the elementary schools of the County without regard to race or color and to receive and consider applications to this end at the earliest practical day.

4. This decree does not relieve the plaintiffs, and other persons similarly situated, of the necessity of observing state laws as to the assignment of pupils to classes in the

public schools of the County so long as such laws do not cause or allow discrimination based on race or color, and the administrative remedies provided in such laws must be exhausted before application is made to this Court for relief on the ground that this injunction is being violated.

5. That in addition to the costs heretofore allowed the plaintiffs they are hereby allowed the sum of $770.25 as additional costs for transcripts of the proceedings in this action.

6. That until the further order of this Court this action shall be retained on the docket of this Court for such further proceedings as may be necessary, and the Court reserves the power to enlarge, reduce or otherwise modify the provisions of this decree.

To which action of the Court, the defendants, by counsel, objected and excepted.

Dated: April 22, 1960

s/ ALBERT V. BRYAN
United States District Judge

Amended Supplemental Complaint

Plaintiffs present this, their supplemental complaint, leave having been granted by this Court to do so, against the County School Board of Prince Edward County, Virginia, T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, The Board of Supervisors of Prince Edward County, Virginia, J. W. Wilson, Jr., Treasurer of Prince Edward County, Virginia, Garland Gray, Lewis F. Powell, Jr., Gladys V. V. Morton, William J. Story, Jr., Leonard G. Muse, Louise F. Galleher, and Mosby Garland Perrow, Jr., individually and as constituting the State Board of Education, and Woodrow W. Wilkerson, Superintendent of Public Instruction, and aver as follows:

I

1. On May 5, 1959, the United States Court of Appeals for the Fourth Circuit reversed and remanded the judgment theretofore entered in this case and directed this Court to enter an order requiring defendant School Board and Division Superintendent of Schools to commence the desegregation of the public schools of Prince Edward County in September 1959. As required by said mandate this Court, by order entered the 22nd day of April, 1960, restrained and enjoined the defendants The County School Board of Prince Edward County and T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, and all persons acting in concert with them, from any action that regulates or affects on the basis of race or color the admission, enrollment or education of the infant plaintiffs, or any other Negro children similarly situated, to the high schools operated by said defendants in the county and required that said defendants receive and consider the applications of such persons for admission to such high schools without regard to race or color and make plans for the admission of pupils in the elementary schools of the

county without regard to race or color and to receive and consider applications to such end at the earliest practical day.

2. All public schools in Prince Edward County have been and have remained closed since the end of the 1958-59 school term. An efficient system of public free schools is established and maintained in every county and corporation in this Commonwealth, as required by § § 129, 130, 132 and 136 of the Constitution of Virginia, other than in the County of Prince Edward. Consequently, the plaintiffs, and all members of the class which they represent, as well as all other children of public school age residing in Prince Edward County, have been and are being denied public free education contrary to and in violation of § 129 of the Constitution of Virginia and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

II

3. Section 136 of the Constitution of Virginia and §22-116 of the Code of Virginia, 1950, as amended, make it the duty of the Board of Supervisors of Prince Edward County to provide for the levy and collection of local school taxes and the appropriation of funds thus acquired to be apportioned and expended by the defendant School Board in establishing and maintaining public schools in said county.

4. Soon after the abovementioned remand of this case and in anticipation of the order of this Court which was thereafter entered, the defendant Board of Supervisors of Prince Edward County acting under purported discretionary power granted by legislation enacted at the Special Session of the General Assembly, 1959, to-wit, §22-127 of

the Code of Virginia of 1950, as amended, and notwithstanding the budgetary recommendation of the defendant School Board, failed and refused to make any levy or appropriation for public school purposes for the school year 1959-60. Moreover, the defendant Board of Supervisors has not made and does not intend to make any levy or appropriation for maintenance and operation of public free schools in the County of Prince Edward for the school year 1960-61, or any school year in the foreseeable future.

5. At its June 1959 meeting, said Board of Supervisors fixed the levies for the year 1959 at $1.60 per one hundred dollars of assessed valuation on all taxable real estate and tangible personal property located in the county elsewhere than in the Town of Farmville, where the levy on such property was fixed at $1.50 per one hundred dollars of assessed valuation, and at $0.30 per one hundred dollars of assessed valuation on all personal property classified as merchants' capital invested in businesses located in said county. The corresponding levies for the years 1957 and 1958 were and had been $3.40, $3.30 and $0.80, respectively.

6. Sometime after the decision of the Supreme Court in this case, there was created in said county an organization known as Prince Edward School Foundation, the purpose of which is to operate elementary and secondary schools in said county in partial substitution for public schools, thus to provide education for white children residing in said county. Since the beginning of the school term 1959-60, said foundation has operated such a school or such schools in said county for white children, representing such school or schools as being private, non-profit and non-sectarian. No other person, firm, association or corporation is known or believed to have operated a private, non-profit, non-sectarian school of elementary or secondary level in said county at any time since the beginning of the school

year 1959-60 or at any prior time which would be material here.

7. At its June 1960 meeting said Board of Supervisors fixed the levies for the year 1960 at $4.00 per one hundred dollars of assessed valuation on all taxable real estate and tangible personal property located in said county elsewhere than in the Town of Farmville, where the levy on such property was fixed at $3.90 per one hundred dollars of assessed valuation, and at $0.80 per one hundred dollars of assessed valuation on all personal property classified as merchants' capital invested in businesses located in said county.

8. At its said June 1960 meeting, said Board of Supervisors proposed and at its meeting held July 18, 1960 it enacted an ordinance (adopted under Chapter 191, Acts of the General Assembly of 1960, being §58-19.1 of the Code of Virginia) to provide that contributions made by persons to certain non-profit, non-sectarian private schools shall constitute a credit against the liability of any such person for certain taxes otherwise payable to Prince Edward County, etc. Among other things said ordinance provides that upon receipt of the taxpayer's affidavit of the fact of such contribution and related matters and supporting evidence of payment, the Treasurer of the County of Prince Edward "shall deduct from the amount of taxes due the County of Prince Edward by such person, firm, association, corporation or other taxpayer on account of real estate taxes or personal property taxes the amount of such contribution, in no event to exceed 25 per centum of the total taxes due the County of Prince Edward on real estate and personal property by such taxpayer." A copy of said ordinance as, prior to its enactment, it was published in the Farmville Herald, a newspaper published in said county, is herewith filed, marked "Exhibit 'Supp. A' ".

9. At its said June 1960 meeting said Board of Supervisors proposed, and at its meeting held July 18, 1960, it enacted an ordinance (adopted under Chapter 461, Acts of the General Assembly of 1960, being §22-115.37 of the Code of Virginia) "to encourage the education of certain children in Prince Edward County by appropriating funds for educational purposes in furthering the elementary and secondary education of such children", etc. A copy of said ordinance as, prior to its enactment, it was published in said Farmville Herald, is herewith filed, marked "Exhibit 'Supp. B.'" Pursuant to this ordinance said Board of Supervisors by resolution passed at subsequent meetings has appropriated and caused to be paid from the general tax fund sums of money, averaging $50.00 for each child, aggregating more than $65,000.00, all or most of which was paid to or in reimbursement for sums paid to said Prince Edward School Foundation for education of white children residing in said county.

10. At and prior to the time of the proposal of the above-mentioned ordinances and at all times thereafter, said Board of Supervisors and each member thereof knew that the only person, firm, association or corporation which operated or claimed to operate a private, non-profit, nonsectarian school of elementary or secondry level located within said county was the said Prince Edward School Foundation, that said Foundation was organized to provide educational opportunities for white children only, and that said Foundation had been organized for the purpose of avoiding the attendance of white children and colored children at the same public schools. The enactment and execution of said ordinances serve merely to provide, within said county and at public expense, elementary and secondary education for white children residing in said county while such education for Negro children similarly situated is totally denied.

11. The foregoing actions of the defendant Board of Supervisors result from and reflect a deliberate, intentional and calculated purpose to circumvent and frustrate the order of this Court as anticipated at the time the Board first failed and refused to appropriate money for public schools for the 1959-60 session and as thereafter entered. The aforesaid action by the defendant Board of Supervisors has rendered and will render said order unenforceable and ineffective unless the relief prayed herein is granted.

III

12. J. W. Wilson, Jr., is the Treasurer of the County of Prince Edward. On information and belief, plaintiffs allege that, under purported authority of the ordinance mentioned and referred to in paragraph numbered 9, he has given tax credits for contributions made to said Prince Edward School Foundation and, unless restrained, will continue to do so.

IV

13. The Constitution of Virginia (Sections 130 through 135) creates the State Board of Education and the office of Superintendent of Public Instruction, vests the general supervision of the state-wide system of public free schools in said State Board, generally defines the powers and duties of said Board, provides for a permanent and perpetual literary fund (all or part of which the General Assembly may set aside for public school purposes), and gives to the State Board the management and investment of the school fund under regulations prescribed by law. With respect to the administration of the public free school system, further duties of the State Board of Education and of the Superintendent of Public Instruction are set forth in Title 22 [Education] of the Code of Virginia, as amended, e.g., §§ 22-1, 22-2, 22-6, 22-9.1, 22-9.2, 22-11 through 22-40, 22-72, 22-101 through 22-146.11, 22-159.

14. Neither the defendant State Board of Education, the defendant Superintendent of Public Instruction, nor any other State official acted to discharge the State's constitutional obligation to provide and maintain an efficient system of public free schools in Prince Edward County as required by §§ 129 to 136, inclusive, of the Constitution of Virginia and §§ 22-11 to 22-29, inclusive, of the Code of Virginia of 1950, as amended.

15. Plaintiffs, on information and belief, allege that, from funds which would have been available for public schools in Prince Edward County if public schools there were not closed, the State Board of Education has approved grants for the school year 1960-61 to more than one thousand white children in Prince Edward County in sums aggregating more than one hundred thousand dollars, in aid of the attendance of said children at the school or schools operated by said Prince Edward School Foundation.

V

16. Plaintiffs are informed, and on information and belief allege, that defendant County School Board is considering and contemplating the conveyance, lease or transfer of the public schools and public school property of Prince Edward County to some private corporation, partnership, association or individual pursuant to §§ 22-161, 22-164.1 and 22-164.2 of the Code of Virginia, as amended, and that the defendants by causing and permitting the public school facilities in said county to fall into disuse, and by other means as well, are making possible and encouraging the sale and conveyance of the public schools and public school property of said county pursuant to §§ 22-161.1 through 22-161.5 of the Code of Virginia of 1950, as amended.

VI

17. The hereinabove related action, inaction, and contemplated action of each and all of the defendants was, has been, and will be taken for the sole purpose of circumventing and frustrating the enforcement of the order of this Court requiring the racial desegregation of the public schools of Prince Edward County, in violation of the rights of these plaintiffs and the class they represent as guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States as established in this case.

18. Plaintiffs and those similarly situated and affected, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the hereinabove related action, inaction and contemplated action of each and all of the defendants. Plaintiffs have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than as herein prayed.

WHEREFORE, plaintiffs pray that the Court enter an order enjoining and restraining the defendants, their officers, agents, servants, employees, attorneys, successors or assigns, or persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise:

(a) From refusing to maintain and operate an efficient system of public free schools in Prince Edward County, Virginia;

(b) From expending public funds for the direct or indirect support of any private school which, for reason of race, excludes the infant plaintiffs and others similarly situated;

(c) From expending public funds in aid of, or in reimbursement of money paid for, the attendance of any

child at any private school which, for reason of race, excludes the infant plaintiffs and others similarly situated;

(d) From crediting any taxpayer with any amount paid or contributed to any private school which, for reason of race, excludes the infant plaintiffs and others similarly situated; and

(e) From conveying, leasing, or otherwise transferring title, possession or operation of the public schools and facilities incidental to the operation thereof in Prince Edward County, Virginia, to any private corporation, association, partnership or indivdual.

And plaintiffs further pray that they be allowed their costs and such other, further and general relief as the Court may deem justiciable.

S. W. TUCKER,
Of Counsel for Plaintiffs.

Oliver W. Hill
214 East Clay Street
Richmond 19, Virginia

Spottswood W. Robinson, III
214 East Clay Street
Richmond 19, Virginia

Robert L. Carter
20 West 40th Street
New York 18, New York

S. W. Tucker
111 East Atlantic Street
Emporia, Virginia

Frank D. Reeves
473 Florida Avenue, N. W.
Washington 1, D. C.
Counsel for Plaintiffs.

Answer of School Board of Prince Edward County to Amended Supplemental Complaint

School Board of Prince Edward County, Virginia, answering the Amended Supplement Complaint permitted to be filed herein, avers:

I

1. It admits that the United States Court of Appeals for the Fourth Circuit on May 5, 1959, reversed and remanded the judgment theretofore entered by this Court in this case and directed that this Court enter a certain order; the summation of that order found in paragraph No. 1 of the Amended Supplemental Complaint is not accurate; the nature and extent of the order directed to be entered is found in the opinion of said Court of Appeals.

2. It admits that on April 22, 1960, this Court entered an order as directed by the Court of Appeals, the pertinent provisions of which are set forth in the second sentence of paragraph No. 1 of the Amended Supplemental Complaint.

3. The original Complaint in this case was based upon the proposition that segregation of the races in the schools operated by this defendant violates the Federal Constitution and upon the further ground that if segregation accompanied by equality of treatment is valid, the facilities afforded colored pupils in the high schools operated by this defendant were grossly inferior to those furnished white pupils.

4. The latter ground was eliminated by the decision of the Supreme Court of the United States handed down May 17, 1954, wherein it was held that to such extent as the State may undertake to provide education, it must make the same available to all on equal terms without racial distinction.

5. Neither said Supreme Court nor said Court of Appeals nor this Court has decided that this defendant must operate schools in Prince Edward County, Virginia, or that any "public" schools (public in the sense that they are owned and controlled by the Commonwealth of Virginia or any legal subdivision thereof) must be operated in Prince Edward County, Virginia.

6. The Amended Supplemental Complaint is based upon the fallacious assumption that the order of April 22, 1960, requires that this defendant operate schools in the County. At the time said order was entered, this defendant had not operated any schools since June of 1959; that was a fact of wide public knowledge; and it was known to the plaintiffs and their attorneys and it was known to this Court.

7. It admits the allegation of the first sentence of paragraph No. 2 of the Amended Supplemental Complaint.

8. It admits that in every other county, city, and town constituting a separate school district public schools are operated by the local school boards. The schools in the several districts are not uniform. Those operated by some local school boards are much more extensive and complete than those operated by other local school boards.

9. It is denied that §§129, 130, 132, and 136 of the Constitution of Virginia, or any other provisions of that Constitution, require the operation of public free schools in every location of the Commonwealth. Said Constitution does not require that public free schools be operated in every locality. It leaves to the locality whether any money will be raised by local taxes for the support of public schools, and the extent, if any, of the educational opportunities which will be furnished by a system of public free

schools, subject only to the qualification found in §136 of the Constitution that such primary schools as may be established in any school year shall be maintained at least four months of that school year before any part of such local monies is devoted to the establishment of schools of the higher grades.

10. It is denied that the plaintiffs or any other children of public school age residing in Prince Edward County are being denied any rights in violation of §129 of the Constitution of Virginia or of the Due Process or of the Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

II

11. With the exception of one clause in paragraph No. 4 of the Amended Supplemental Complaint, the allegations of Sections II, III, and IV of said Amended Supplemental Complaint relate to no action of this defendant, County School Board, and charge nothing against it. However, the Court having overruled the motion of this defendant to dismiss as to its said sections, this defendant believes it is incumbent upon it to answer those allegations.

III

12. It is denied that §136 of the Constitution of Virginia or that §22-116 of the Code of Virginia (Acts, 1928, page 1200) make it the duty of the Board of Supervisors of Prince Edward County to provide for the levy and collection of local school taxes and the appropriation of funds thus acquired to be apportioned and expended by this defendant in establishing and maintaining public schools in the County. Said sections, when properly construed, make

it discretionary with said Board of Supervisors whether it will levy and collect any such taxes.

13. Not only do the constitutional and statutory provisions now in effect in Virginia make it discretionary with the Board of Supervisors of Prince Edward County whether or not it will provide for the levy and collection of local school taxes, et cetera, but this defendant further avers that throughout the whole history of public schools in the Commonwealth of Virginia, from the very first act entitled "An Act to Establish Public Schools", adopted December 22, 1796 (see page 354 of "A Collection of All Such Acts of the General Assembly of Virginia of a Public and Permanent Nature as Are Now in Force" published pursuant to an Act of the General Assembly passed on the 26th day of January, 1802, generally referred to as the "Code of 1802"), it has been left to the discretion of county authorities whether any local taxes should be levied and collected for the support of public schools within the county.

14. As alleged in the first sentence paragraph No. 4 of said Amended Supplemental Complaint, it is admitted that this defendant made to the Board of Supervisors of the County budgetary recommendations of the estimate deemed to be needed for the support of public schools during the school year 1959-60 and in the alternative the amount of money deemed to be needed for educational purposes of the County pursuant to Acts of Assembly, Extra Session 1959, Chapter 79, Section 1, codified as §§22-120.3 and 22-120.4 of the Code of Virginia.

15. It is denied as alleged in said paragraph No. 4 of the Amended Supplemental Complaint that shortly after May 5, 1959, the Board of Supervisors of said County took any action under §22-127 of the Code of Virginia as amend-

ed (Acts, Extra Session 1959, Chapter 79, Section 1), or relied upon said section in failing or refusing to take any action. It is admitted that said Board of Supervisors made no levy or appropriation for public school purposes for the school year 1959-60.

16. With reference to the last sentence of paragraph No. 4 of the Amended Supplemental Complaint, this defendant admits that no levy or appropriation for maintenance and operation of public free schools in said County was made by said Board of Supervisors for the school year 1960-61 and that none has been made for the school year 1961-62.

17. This defendant admits the allegations of paragraph No. 5 of the Amended Supplemental Complaint.

18. This defendant admits that a number of citizens of the County organized a non-profit, non-stock corporation under the laws of the Commonwealth of Virginia known as Prince Edward School Foundation, and it says that said corporation was organized in May of 1959. This defendant avers that neither the Board of Supervisors of the County nor this defendant nor any official of said County participated in the organization of said Prince Edward School Foundation, controls or influences its actions, and neither this defendant nor said Board of Supervisors nor any official of said County is in any respect responsible for the activities and policies of said Foundation.

19. This defendant is not aware that the purpose of said Foundation is as alleged in the first sentence of paragraph No. 6 of the Amended Supplemental Complaint, and it, therefore, denies the allegations thereof.

20. This defendant admits that with the beginning of the school year 1959-60 said Foundation has operated pri-

vate, non-profit and non-sectarian schools in said County. In other respects it is not informed whether the allegations of the second sentence of paragraph No. 6 are true or false, and it, therefore, denies the same.

21. The allegations of the third sentence of paragraph No. 6 of the Amended Supplemental Complaint are denied.

22. This defendant admits the allegations of paragraph No. 7 of the Amended Supplemental Complaint.

23. This defendant neither admits nor denies the allegations of paragraph No. 8 of said Amended Supplemental Complaint and calls for strict proof of same.

24. This defendant neither admits nor denies the allegations of the first sentence of paragraph No. 9 of said Amended Supplemental Complaint and calls for strict proof of same.

25. This defendant is not informed of the accuracy of the allegations of the last sentence of paragraph 9 of the Amended Supplemental Complaint and, therefore, denies the same.

26. This defendant is not informed of the truth or falsity of the allegations of the first sentence of paragraph 10 of the Amended Supplemental Complaint and it, therefore, denies the same.

27. This defendant denies the allegations of the second sentence of paragraph No. 10 of said Amended Supplemental Complaint and says that those allegations are simply a figment of the imagination of counsel since said ordinances make no provision for white children as such and make no provision for colored children as such, but make provision for children residing in the County of any race

and color whatsoever. This defendant is advised that said ordinances are administered without reference to race, and equally for all children.

28. This defendant is not informed of the truth or falsity of the allegations of the first sentence of paragraph No. 11 of the Amended Supplemental Complaint and, therefore, denies the same. It further avers that the purpose of said Board of Supervisors is without legal consequence because the Board of Supervisors having been empowered by valid law to take the actions alleged, and the wisdom or lack of wisdom thereof being a political and not a judicial question, the purpose or the motive of the Board of Supervisors and of the individual members thereof is not a matter for judicial inquiry.

This defendant avers that said order has not been rendered unenforceable or ineffective by any action of the Board of Supervisors or any failure of said Board to act, but that said order is today in full force and effect in said County and is being obeyed by this defendant, and so far as this defendant is aware by every person and agency, public and private in the County, as well as in the Commonwealth.

IV

29. This defendant admits that J. W. Wilson, Jr., is Treasurer of the County of Prince Edward.

30. This defendant is not informed of the truth or falsity of the other allegations of paragraph No. 12 of the Amended Supplemental Complaint and, therefore, denies the same.

V.

31. This defendant avers that the content and scope of §§ 130 through 135 of the Constitution of Virginia are

not set forth with accuracy or with reasonable completeness in paragraph No. 13 of the Amended Supplemental Complaint. It says that the content and scope of said sections, as well as the provisions of the Virginia Code listed in said paragraph, are to be obtained from a perusal thereof.

32. The State Board of Education and the Superintendent of Public Instruction have no powers or duties save as the same are conferred by the Constitution or laws of Virginia. No provision of the Constitution of Virginia or of the law of Virginia lays on the Commonwealth of Virginia the obligation to provide and maintain public free schools in Prince Edward County. No provision of the Constitution of Virginia or the laws of Virginia lays upon the State Board of Education, the Superintendent of Public Instruction or any other official of the Commonwealth of Virginia the obligation to provide and maintain any public schools in the County of Prince Edward. The allegations of paragraph No. 14 of the Amended Supplemental Complaint are accordingly denied.

33. The defendant denies the allegations of paragraph No. 15 of the Amended Supplemental Complaint.

VI

34. This defendant denies the allegations of paragraphs Nos. 16, 17 and 18 of the Amended Supplemental Complaint.

VII

35. This defendant avers that it has not refused to maintain and operate public free schools in Prince Edward County, Virginia. It avers that there has been by this

defendant, and so far as it knows by others, no circumvention or frustration of the order of this Court entered on April 22, 1960, or attempt to circumvent or to frustrate it.

COLLINS DENNY, JR.
Of Counsel for Defendant, County School Board of Prince Edward County, Virginia

Denny, Valentine & Davenport
Collins Denny, Jr.
John F. Kay, Jr.
1300 Travelers Building
Richmond 19, Virginia

C. F. Hicks
DeHardit, Martin & Hicks
Gloucester, Virginia

Counsel for County School Board of Prince Edward County, Virginia

Answer of T. J. McIlwaine to Amended Supplemental Complaint

Your defendant, T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, Virginia, in answer to the Amended Supplemental Complaint avers:

1. Said Amended Supplemental Complaint makes no allegation concerning this defendant; it charges him with no action; it charges him with no dereliction; and it asks for no relief against him.

2. To such extent, if any, as the allegations of said Amended Supplemental Complaint have any reference to him or involve him, he adopts the answer filed by the County School Board of Prince Edward County, Virginia, to said Amended Supplemental Complaint.

T. J. McIlwaine,
By Collins Denny, Jr.,
Of Counsel.

Denny, Valentine & Davenport
Collins Denny, Jr.

John F. Kay, Jr.
1300 Travelers Building
Richmond 19, Virginia

C. F. Hicks
DeHardit, Martin & Hicks
Gloucester, Virginia
Counsel for T. J. McIlwaine.

Answer of the Board of Supervisors of Prince Edward County to Amended Supplemental Complaint

The defendant, the Board of Supervisors of Prince Edward County, Virginia, for answer to the Amended Supplemental Complaint says:

1. That all matters alleged in Paragraph 1 are of record in this action and the defendant relies upon said record.

It admits that insofar as it is informed public schools have not been operated in the County of Prince Edward since the conclusion of the school term 1958.

2. It denies that Sections 129, 130, 132 and 136 of the Constitution of Virginia requires the operation of schools in any county or corporation in the Commonwealth of Virginia.

It is not advised as to what schools are operated in other counties or corporations in the Commonwealth of Virginia, but denies that such schools as are operated in such other counties or corporations are operated in pursuance or by reason of the requirement of Sections 129, 130, 132 and 136 of the Constitution of Virginia.

It denies that Sections 129, 130, 132 and 136 of the Constitution of Virginia, or any other provision thereof, have been violated by action of this defendant. It denies that the complainants or any class of children or any child residing in Prince Edward County have or has been denied education in violation of the Constitution of Virginia or in violation of the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

On the contrary, it alleges that its action with respect to public education and the offering of free education in the County of Prince Edward are in accord with lawful powers vested in it under the Constitution and Laws of the Com-

monwealth of Virginia and that in the exercise of these powers no rights of the complainants or any class of children or any child residing in Prince Edward County have been violated or denied.

3. It denies that Section 136 of the Constitution of Virginia and Section 22-116 of the Code of Virginia impose a mandatory or other duty upon the Board of Supervisors of Prince Edward County to levy, collect or appropriate taxes to be expended by the School Board of Prince Edward County in establishing and maintaining public schools in the said County.

On the contrary, it alleges that said sections along with other provisions of the Constitution of Virginia and of the Code of Virginia repose discretion with the Board of Supervisors with respect to the levy and collection of taxes and with respect to the appropriation of funds, the same having been collected.

It further alleges that the discretion reposed in the Board of Supervisors with respect to the levy and collection of taxes for public schools is not dependent upon any legislation enacted by the General Assembly of Virginia in recent years, but has been a discretionary power vested in the said Board of Supervisors of the counties and Councils of the cities and towns constituting school districts within the Commonwealth of Virginia since the inception of public support of education in the Commonwealth.

4. It admits that it has made no levy and has appropriated no funds derived from local revenue to the School Board of Prince Edward County for the operation of public schools.

It denies that it acted in pursuance of purported discretionary power granted it by legislation enacted at the

Special Session of the General Assembly 1959, to-wit, Section 22-127 of the Code of Virginia 1950, as amended, but avers that its action is in pursuance of discretionary powers vested in it under provisions of the Constitution of Virginia and under and by virtue of enactments of the General Assembly in force long prior to the issuance of original process in this action.

It further admits that it did not make a levy or appropriate funds to the School Board for the operation of public schools in 1960-61 and has not made such levy or appropriation for the year 1961-62, which action on its part it alleges is lawful in all respects.

5. It admits the allegations contained in Paragraph 5 and alleges that the said action is lawful in all respects.

6. It admits that the Prince Edward School Foundation operates private, non-profit, non-sectarian schools within the County of Prince Edward. It is not informed of the policies of the said Prince Edward School Foundation and, therefore, denies the allegation with respect thereto contained in the first sentence of Paragraph 6.

It denies that no other person, firm, association or corporation has operated private, non-profit, non-sectarian schools of elementary or secondary level within said County.

This defendant further avers that neither the Board of Supervisors of the County of Prince Edward nor any member thereof, nor any official of the said County participated in the organization of said Prince Edward School Foundation, nor does the said Board, any of its members, or any official of the County control or influence the action or policy of the said Foundation.

Answer of the Board of Supervisors of Prince Edward County to Amended Supplemental Complaint

7. Defendant admits the allegations contained in Paragraph 7.

8. It admits the adoption of the Ordinance mentioned in Paragraph 8 and files a certified copy herewith marked "Exhibit 'Ordinance 1' ".

9. The defendant admits the adoption of the Ordinance referred to in Paragraph 9 and files a certified copy herewith marked "Exhibit 'Ordinance 2' ".

It further admits that appropriations were made without regard to race, which, when taken with similar appropriations under State law, were adequate for the educational needs of all children of the said County without regard to race, that all such funds were paid to the parents or guardian of children entitled thereto without regard to the race of said child and without regard to the school wherein the child received educational training otherwise than as specified in said ordinance.

This defendant not being advised of the amount of money expended by parents and guardians of children residing within the County, nor of the amount received by such parents or guardians of children within said County from the State of Virginia or from any other source in furtherance of the educational needs of such children, and not being advised of the person, firm or corporation to whom such parents or guardians may have paid funds for the education of children residing within the said County, the allegation contained in the last sentence of Paragraph 9 is denied.

10. This defendant denies the allegations contained in Paragraph 10.

The defendant further alleges that the ordinances referred to in the said paragraph were enacted in furtherance

of education of children residing within the County of Prince Edward under powers vested in it under the Constitution of Virginia and Acts of the General Assembly of Virginia and for the equal benefit of all children of the said County without regard to race.

It denies that the effect of the said ordinance is to deny education to Negro children while providing the same for white children. On the contrary, it avers that the legal effect of the ordinances is to further educational opportunity of all children resident of the County without regard to race and to further the freedom of parents guaranteed under the First and Fifth Amendments of the Constitution of the United States to choose the school or schools in which their children should receive mental training; that the enactment of these ordinances in no way denied Negro children similarly situated any educational right, opportunity or privilege which was afforded to white children, and that any failure of Negro parents to take advantage of educational opportunities thus afforded is in no wise attributable to the enactment of said ordinances, but resulted solely from the free choice of the parents of said children.

11. This defendant denies the allegations contained in Paragraph 11.

It alleges further that its actions as alleged in the first ten paragraphs of the Amended Supplemental Complaint (1) were not intended and do not as a matter of law violate the order of this Court entered on April 22, 1960; (2) that all such actions were taken in pursuance of lawful discretionary power and authority vested in it under the Constitution of Virginia and Statutes enacted in pursuance thereof; (3) that such discretionary legislative power has been exercised in conformity with the Fourteenth Amend-

ment of the Constitution of the United States; (4) that such actions have been taken in furtherance of freedom of parents guaranteed by the First and Fifth Amendments of the Constitution of the United States with respect to the education and training of their children.

It further alleges that the order of this Court is in full force and effect within the County of Prince Edward and that the same has not been circumvented or frustrated, and that the actions of the Board of Supervisors do not constitute nor reflect a deliberate, intentional and calculated purpose to circumvent or frustrate said order.

12. This defendant admits that J. W. Wilson, Jr. is Treasurer of Prince Edward County, that his duties under and by virtue of the ordinances referred to in the Amended Supplemental Complaint are ministerial duties under the ordinances referred to.

13, 14 & 15. This defendant not being sufficiently advised as to the factual allegations contained in Paragraphs 13, 14 & 15 to form any belief with respect thereto deny all such factual allegations.

As to all allegations contained therein charging a constitutional obligation upon the State Board of Education or the Superintendent of Public Instruction to operate public free schools within the County of Prince Edward, the same are denied.

16. This defendant has no legal responsibility whatsoever with respect to the matters alleged in Paragraph 16 and is not sufficiently informed with respect to the factual allegations contained therein to form a belief with respect thereto and, therefore, denies the factual allegations therein contained.

Answer of the Board of Supervisors of Prince Edward County to Amended Supplemental Complaint

17. This defendant denies the allegations contained in Paragraph 17.

It further alleges that the order of this Court entered on April 22, 1960 has not been circumvented or frustrated, or that any rights of the plaintiff or the class they represent under the Due Process or Equal Protection Clause of the Fourteenth Amendment of the Constitution as established by the said order of April 22, 1960 have been violated or denied, and denies that it has acted independently or in concert with any other agency, person, firm or corporation for the purpose of circumventing or frustrating the enforcement of the order of April 22, 1960 and alleges that the actions charged against it in the Amended Supplemental Complaint are lawful actions under the laws and Constitution of Virginia and in furtherance of the individual freedom of parents with respect to the education of children guaranteed by the First and Fifth Amendments of the Constitution of the United States and that none of said actions violate any right of the plaintiffs or of any class of children within the County of Prince Edward under the Due Process or Equal Protection Clause of the Constitution of the United States.

18. It denies that the plaintiffs are suffering irreparable injury, or threatened with irreparable injury by reason of any action, inaction or contemplated action of this defendant, or of all of the co-defendants, in manner and form as alleged in the Amended Supplemental Complaint, but, on the contrary, it alleges that any alleged injury suffered has been the direct, voluntary and sole result of the choice and decision of the plaintiffs, and those similarly situated, or their parents, or of others in position to influence them, and is in no wise legally attributable to

this defendant, nor to all of the defendants, as alleged in the Amended Supplemental Complaint.

This defendant further alleges that the plaintiff has a plain, adequate and complete remedy for a redress of the alleged wrongs and illegal acts complained of in the Amended Supplemental Complaint by an action in the appropriate court or courts of the State of Virginia to enforce the alleged mandatory constitutional obligation alleged to rest upon this defendant and all other co-defendants under said Constitution and laws of the State of Virginia to operate free public schools within the County of Prince Edward, as set forth in the said Amended Supplemental Complaint.

THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY

By: FRANK NAT WATKINS
Commonwealth's Attorney of Prince Edward County

J. SEGAR GRAVATT
Special Counsel

Answer of J. W. Wilson, Jr., Treasurer of Prince Edward County, Virginia

The defendant, J. W. Wilson, Jr., Treasurer of Prince Edward County, Virginia, for answer to the Amended Supplemental Complaint says:

1. That he is the Treasurer of the County of Prince Edward.

2. That he knows nothing with respect to the allegations contained in the Amended Supplemental Complaint except as to the allegations contained in Paragraph 12 and Paragraph 17 of the said Amended Supplemental Complaint.

As to Paragraph 12, the said J. W. Wilson, Jr. admits that he has given tax credit for contributions made as provided by the ordinance mentioned in Paragraph 12 of the Amended Supplemental Complaint and that some of the tax credits have been for contributions made to the Prince Edward School Foundation; that his duties under the said ordinance are ministerial duties; that he stands ready to supply such information from the records of his office as the court may direct or as may be requested.

With respect to the allegation contained in Paragraph 17, he denies that he has acted with any purpose of circumventing or frustrating the enforcement of the order of this Court referred to in said paragraph in violation of the rights of the plaintiff, or of any other person, and denies that any action which he has taken, or any failure to act, or any contemplated action on his part has or will be taken for the purpose of circumventing and frustrating the order of this Court or in violation of the rights of any person.

J. W. Wilson, Jr.
By: J. Segar Gravatt,
His Attorney.

Answer of Woodrow W. Wilkerson, Superintendent of Public Instruction, *et al.*

Now come Woodrow W. Wilkerson, Superintendent of Public Instruction, and Colgate W. Darden, Lewis F. Powell, Jr., Gladys V. V. Morton, William J. Story, Jr., Leonard G. Muse, Louise F. Galleher and Mosby Garland Perrow, Jr., individually and constituting the State Board of Education, and answer the amended supplemental complaint herein and say:

1. For answer to Paragraph 1 of the amended supplemental complaint, these defendants say that the decision of the United States Court of Appeals for the Fourth Circuit in this case, dated May 5, 1959, and the order of this Court entered April 22, 1960, speak for themselves and no answer to said paragraph is required of these defendants.

2. The allegation of the first sentence of Paragraph 2 of the amended supplemental complaint is admitted; the remaining allegations of said Paragraph 2 are denied.

3. The allegations of Paragraph 3 of the amended supplemental complaint are denied.

4. These defendants neither admit nor deny the allegations of Paragraphs 4, 5, 6, 7, 8, 9 and 10 of the amended supplemental complaint.

5. The allegations of Paragraph 11 of the amended supplemental complaint are denied.

6. These defendants admit the allegation of the first sentence of Paragraph 12 of the amended supplemental complaint; the remaining allegations of said Paragraph 12 are neither admitted nor denied.

7. For answer to Paragraph 13 of the amended supplemental complaint, these defendants say that the various provisions of the Constitution of Virginia and Code of Virginia specified in said Paragraph 13 speak for themselves,

and no answer to the allegations of said Paragraph 13 is required of these defendants.

8. For answer to Paragraph 14 of the amended supplemental complaint, these defendants deny that they have failed to discharge any duty imposed upon them by any law of the Commonwealth of Virginia.

9. The allegations of Paragraph 15 of the amended supplemental complaint are denied.

10. These defendants neither admit nor deny the allegations of Paragraph 16 of the amended supplemental complaint.

11. The allegations of Paragraphs 17 and 18 of the amended supplemental complaint are denied.

Now, having fully answered, these defendants pray to be hence dismissed with their costs in this behalf expended.

WOODROW W. WILKERSON,
Superintendent of Public Instruction

COLGATE W. DARDEN
LEWIS F. POWELL, JR.
GLADYS V. V. MORTON
WILLIAM J. STORY, JR.
LEONARD G. MUSE
LOUISE F. GALLEHER
MOSBY GARLAND PERROW, JR.

Individually and Constituting
the State Board of Education

By: FREDERICK T. GRAY
Of Counsel

Frederick T. Gray
Attorney General of Virginia

R. D. McIlwaine, III
Assistant Attorney General

Supreme Court-State Library Building
Richmond 19, Virginia

Plaintiffs' Exhibit 24

(Resolution of the Board of Supervisors of Prince Edward County Dated 3 May 1956)

At a regular meeting of the Board of Supervisors of Prince Edward County held at the courthouse thereof on the 3rd day of May 1956, at which meeting all members of the board were present, the following resolutions were adopted unanimously:

I

BE IT RESOLVED BY THE BOARD OF SUPERVISORS, That we do hereby express to the people of Prince Edward County our gratitude that they have made known to this board so clearly their views upon the grave problems with which we are confronted with respect to our schools. The support of our people makes the burden of our responsibilities lighter and the course of our future action clearer. We trust the people of the county will continue to make known to us their views as we go forward to meet our problems together.

II

BE IT RESOLVED, That the Board of Supervisors of Prince Edward County as the elected representatives of the people of Prince Edward County, do hereby declare it to be the policy and intention of said board in accordance with the will of the people of said county that no tax levy shall be made upon the said people nor public revenue derived from local taxes shall be appropriated for the operation and maintenance of public schools in said county wherein white and colored children are taught together under any plan or arrangement whatsoever.

Plaintiffs' Exhibit 24

III

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY, That the Governor of Virginia, the superintendent of public instruction, and the State Board of Education are hereby requested to pay any State revenue to the School Board of Prince Edward County in support of public schools in accordance with the policy adopted by the board of supervisors of said county for the payment of local revenues to said school board.

IV

BE IT FURTHER RESOLVED BY THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY, That the "Affirmation" signed by citizens and school patrons of the county is hereby received and directed to be filed with records of the board and it is further resolved that the "Statement of Convictions and Purposes" adopted by the citizens of this county present at this meeting (being approximately 250 in number) be received by the board and it is directed that the same be filed with the records of the board.

And the clerk of this board is directed to prepare copies of the affirmation with a statement attached thereto showing the number of the citizens whose names are signed thereto together with copies of the "Statement of Convictions and Purposes" and that one copy of each be transmitted to the School Board of Prince Edward County, the Governor of Virginia, the superintendent of public instruction, the attorney general of Virginia, the State Board of Education, Representative J. H. Daniel and Senator J. D. Hagood, together with a copy of this resolution, and of the resolution this day adopted stating the policy and intention of this board with respect to the levy of taxes and appropriation of local revenue for school purposes.

V

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY, That the Governor be and he is hereby respectfully requested not to call a special session of the Legislature of Virginia for the purpose of presenting any legislative plan which would require, permit, or authorize under the laws of Virginia the teaching of white and Negro children together in the public schools of Prince Edward County.

HORACE ADAMS,
Clerk of the Board

Memorandum Opinion, Dated August 23, 1961

The issues raised, in this phase of the Prince Edward County school case, are:

Whether or not Prince Edward County can close and refuse to maintain its heretofore existing free public school system in order to avoid the racial discrimination prohibited by the Supreme Court of the United States, in Brown v. Board of Education, 347 U. S. 483; 349 U. S. 294; and

Whether or not the defendants, individually or in concert, have deliberately circumvented or attempted to circumvent or frustrate the order of this Court entered herein on the 22nd day of April, 1960.

In order to properly answer these questions it is necessary and appropriate to briefly review the history of this litigation.

This suit was originally instituted in 1951, and sought to enjoin the enforcement of the provisions of the Virginia Constitution and Code,[1] which required the segregation of

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[1] Virginia Constitution, Section 140, Code 22-221, 1950.

Negroes and whites in public schools. After years of litigation, the basic question raised therein was presented to the Supreme Court of the United States and was decided in a consolidated hearing, styled Brown v. Board of Education, 347 U. S. 483. The holding in that case was:

> "The Fourteenth Amendment forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property." Cooper v. Aaron, 358 U. S. 1.

Thus the provisions of the Virginia Constitution and Code referred to were declared unconstitutional and void.

That this decision was unpopular in most of the South, is understating the fact. Most of the southern states, including Virginia, adopted new laws in order to meet the situation thus created. Many of these new laws were declared unconstitutional, both by the federal and state courts.[1]

In compliance with the Brown decision, supra, this Court entered an order enjoining the defendants from discriminating against the plaintiffs in admission to the public schools of Prince Edward County solely on account of race, and further directed the defendants to proceed promptly with the formulation of a plan to comply therewith, commencing with the opening of the school year 1965.

The Court of Appeals for the Fourth Circuit, under date of May 5, 1959, reversed this Court and remanded the case with directions to issue an order in accordance with that opinion, which provided, among other things, that the defendants be enjoined from any action that regulates or

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[1] Harrison v. Day, 106 S. E. 2d 636; James v. Almond, 170 Fed. Supp. 331; Cooper v. Aaron, 358 U. S. 1; Beck v. Orleans Parish School Board, 191 Fed. Supp. 875.

affects on the basis of race or color the admission, enrollment or education of the infant plaintiffs, or any other Negro children similarly situated, to the high schools operated by the defendants in the County and to take immediate steps in this regard to the end that the applications be considered so as to permit the entrance of qualified persons into the white schools in the school term beginning September 1959. No decree was entered pursuant to the mandate of the Court of Appeals until the petitioners presented an appropriate order for entry therein on April 22, 1960, pertinent portions of said order being:

> "The defendants are restrained and enjoined from any action that regulates or affects on the basis of race or color the admission, enrollment or education of the infant plaintiffs, or any other Negro children similarly situated, to the high schools operated by the defendants in the County and that the defendants receive and consider the applications of such persons for admission to such high schools without regard to race or color.
>
> "That the defendants make plans for the admission of pupils in the elementary schools of the County without regard to race or color and to receive and consider applications to this and at the earliest practical day."

This Court and all counsel of record had knowledge of the fact that the public schools of Prince Edward County were closed prior to the entry of the said order.

The Board of Supervisors of Prince Edward County, anticipating the aforesaid decision of the Court of Appeals for the Fourth Circuit, refused to levy any taxes or appropriate any money for the maintenance of the public schools during the school year 1959-60, resulting in the closing thereof.

This action was in accord with the expressed policy of the Board of Supervisors (adopted in May 1956) to abandon public schools and educate the children in some other way if that be necessary to preserve separation of the races in the schools of Prince Edward County.[1]

All public schools in Prince Edward County have remained closed from that date to the present time and apparently will so remain until this or some state court directs that they be opened and maintained. Unfortunately, as a result thereof, all of the children of Prince Edward County, both white and colored, have been deprived of a public education since June 1959. In fact, none of the approximately 1800 colored children have received any formal education since that date. Nearly all of the 1500 white children have been attending private schools, operated by the Prince Edward School Foundation.

Under these circumstances should this Court enter an order directing the appropriate officials of Prince Edward County to reopen and maintain its public schools?

Section 129 of the Constitution of Virginia provides:

> "Free schools to be maintained.—The General Assembly shall establish and maintain an efficient system of public free schools throughout the State."

The Supreme Court of Appeals of Virginia, in Harrison v. Day, 106 S. E. 2d 636, held that Section 129 of the Virginia Constitution is still in the organic law (of Virginia) and must be complied with. The Court further stated in its opinion:

> "that Section 129 requires the state to maintain an efficient system of public free schools throughout the State. That means that the State must support such public free schools in the State as are necessary

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[1] See plaintiffs' Exhibit #2.

> to an efficient system, including those in which the pupils of both races are compelled to be enrolled and taught together, however unfortunate that situation may be."

Therefore it would appear from this decision that the Supreme Court of Appeals of Virginia has determined that public schools must be maintained in Prince Edward County, Virginia.

However, the defendants earnestly contend that the public schools in Virginia are not now and never have been operated by the state or by any state agency; that they are now and always have been owned, operated, managed and controlled by local (that is, county or city) school boards. The defendants further contend that other sections of the Virginia Constitution and certain statutes made pursuant thereto must be considered and construed in order to determine this question.

Counsel for the plaintiffs contend it is not necessary for this Court or the Supreme Court of Appeals of Virginia to further construe and/or pass upon the validity of any actions of the Virginia Constitution or statutes made pursuant thereto in order to properly decide this issue. They contend the closing of the public schools in Prince Edward County, while maintaining public schools in every other city and county in the state, violates the Fourteenth Amendment to the Federal Constitution, and cite James v. Almond, 170 Fed. Supp. 331, in support thereof:

> "While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise, in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court,

> while the state permits other public schools or grades to remain open at the expense of the taxpayers. In so holding we have considered only the Constitution of the United States as it is unnecessary, in our opinion, to pass upon the specific provisions of the Constitution of Virginia which deals directly with the free public school system of the state. We do not suggest that, aside from the Constitution of Virginia, the state must maintain a public school system. That is a matter for state determination. We merely point out that the closing of a public school, or grade therein, for the reasons heretofore assigned violates the right of a citizen to equal protection of the laws and, as to any child willing to attend a school with a member or members of the opposite race, such a school-closing is a deprivation of due process of law."

Whether the State of Virginia or the County of Prince Edward, technically speaking, owns and operates the public schools is of no concern of the children who are being deprived of free public education. The question that must and should be judicially determined is: Can the public schools, heretofore maintained in Prince Edward County, be closed in order to avoid the racial discrimination prohibited by the Fourteenth Amendment?

Since the final answer to that question requires the interpretation of perhaps several sections of the Virginia Constitution and statutes adopted pursuant thereto, federal abstinence is the proper procedure.

> "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced

> working of our federal system. To minimize the possibility of such interference a scrupulous regard for the rightful independence of state governments should at all times actuate the federal courts, Matthews v. Rodgers, 284 U. S. 521, 525, as their contribution in furthering the harmonious relation between state and federal authority. Railroad Comm'r. v. Pullman Co., 312 U. S. 496.'' Harrison v. NAACP, 360 U. S. 167.

Counsel for all parties having indicated that an appropriate suit would be forthwith instituted in the Virginia state courts, this Court will defer its ruling on this question until the Supreme Court of Appeals of Virginia has rendered its decision, provided the said suit is filed within sixty days from this date.

Having thus disposed of the first question before the Court, and now turning to the second question, it is likewise necessary and proper to briefly review what has transpired in Prince Edward County subsequent to January 1, 1959. The record thus made is as follows:

The County Board of Supervisors of Prince Edward County, anticipating the May 5, 1959, decision of the Court of Appeals for the Fourth Circuit, failed or refused to make any funds available to the Prince Edward School Board for the fiscal and school years 1959-60, 1960-61 and 1961-62.

No public schools have been operated in the County since June 1959.

On May 16, 1959, certain private citizens obtained a charter for the Prince Edward School Foundation in order that private schools would be available for white children.

Such private schools were conducted during the school year 1959-60 for white children only; no tuition was charged; these schools were supported by private contributions.

For the school year 1960-61, the Prince Edward School Foundation charged a tuition of $240.00 for its elementary students and $265.00 for its high school students.

On July 18, 1960, the Board of Supervisors of Prince Edward County adopted an ordinance providing for $100.00 grants in aid of the education of any Prince Edward County child whose parent or guardian applied therefor, who attended or proposed to attend a school that met the requirements of the ordinance.[1]

The Board of Supervisors adopted, on the same date, an ordinance providing for a tax credit, not to exceed 25% of the total county real and personal property taxes for contributions made to private non-profit nonsectarian schools located within Prince Edward County.[2]

During the school year 1960-61, thirteen hundred twenty-seven white students enrolled in the schools being operated by the Prince Edward School Foundation, obtained state and county tuition grants, totaling $225.00 for each elementary student and $250.00 for each high school student.

During the school year 1960-61, the Prince Edward School Foundation received private contributions in the amount of $200,000.00 which were credited to its building fund, its library fund and its operating fund.

The Treasurer of Prince Edward County credited as payments on account of county tax bills the sum of approximately $56,000.00, all of which was contributed to the Prince Edward School Foundation.

During both the 1959-60 and 1960-61 school years practically all of the white school teachers who formerly taught in the public school system in Prince Edward County were employed as teachers by the Prince Edward School Foundation.

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[1] See plaintiffs' Exhibit #15.

[2] See plaintiffs' Exhibit #16.

During the 1960-61 school year the Prince Edward School Foundation schools were accredited by the State Board of Education.

In 1960-61, the sum of $39,360.00 was received by Prince Edward County, from the State of Virginia as its share of the State Constitutional School Fund. These so-called constitutional funds were neither requested nor received by Prince Edward County during the school year 1959-60. This money was used by the School Board for the payment of debt service charges, repairs and upkeep of school buildings and grounds, fire insurance and other fixed charges and administration costs.

Five Negro children residing in Prince Edward County applied for and received state and county tuition grants for attending public schools elsewhere in Virginia.

The Prince Edward County Christian Association, a Negro association, conducted training centers for Negro children beginning in the late fall of 1959. These centers do not meet the requirements for either state or county tuition grants.

Approximately one-third of the Negro school children of Prince Edward County attended these training centers. The other Negro school children of Prince Edward County have not received any schooling or training of any kind since the closing of the public schools.

By the adoption of these County ordinances, and the payment of the state tuition grants during the time the schools of Prince Edward County were closed, have any of the defendants circumvented or attempted to circumvent or frustrate the anticipated order of this Court, entered pursuant to the mandate of the Court of Appeals?

We think they have.

> "The basic decision in Brown v. Board of Education was unanimously reached by the Supreme Court of the United States. Since the first Brown

> opinion three new Justices have come to the court. They are at one with the Justices still on the court, who participated in that basic decision, as to its correctness and that decision is now unanimously reaffirmed." * * *
>
> "The principles announced in that decision and the obedience of the state to them, according to the command of the Constitution are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us." Cooper v. Aaron, 358 U. S. 1.
>
> "In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.' (Smith v. Texas, 311 U. S. 128, 132.)" Cooper v. Aaron, 358 U. S. 1.

Without questioning the purpose or motives of the members of the Board of Supervisors of Prince Edward County, the end result of every action taken by that body was designed to preserve separation of the races in the schools of Prince Edward County.

> "When a State[1] exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. This principle has had many applications. It has long been recognized in cases which have prohibited

[1] Prince Edward County is likewise limited by this rule of law.

> a State from exploiting a power acknowledged to be absolute in an insulated context to justify the imposition of an 'unconstitutional condition.' What the Court has said in those cases is equally applicable here, viz., that 'Acts generally lawful may become unlawful when done to accomplish an unlawful end, (United States v. Reading Co., 226 U. S. 324, 357.)'' Gomillion v. Lightfoot, 364 U. S. 339.

Approximately $132,000.00 from general tax funds were paid to those residents of Prince Edward County who sent their children to schools maintained by the Prince Edward School Foundation, (a segregated white school). An additional $56,000.00 of tax revenue, in the form of tax credits, was used for this purpose. Like aid was not available to the colored residents of Prince Edward County, for the obvious reason there was no private colored school in existence. By closing the public schools, the Board of Supervisors have effectively deprived the citizens of Prince Edward County with a freedom of choice between public and private education. County tax funds have been appropriated (in the guise of tuition grants and tax credits) to aid segregated schooling in Prince Edward County.

That, to say the least, is circumventing a constitutionally protected right.

We do not hold these County ordinances[1] are facially unlawful. We only hold they become unlawful when used to accomplish an unlawful end, (the perpetuation of segregated schooling in Prince Edward County).

Therefore an order will be entered herein restraining and enjoining the members of the Board of Supervisors of Prince Edward County, the County Treasurer and their respective agents and employees from approving and paying out any county funds purportedly authorized by the

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[1] Educational grant in aid ordinance adopted July 18, 1960; Tax credit ordinance adopted July 18, 1960.

so-called "grant in aid" ordinance, adopted July 18, 1960, and from allowing any tax credits purportedly authorized by the so-called "tax credit" ordinance, adopted July 18, 1960, during such time the public schools of Prince Edward County remain closed.

We are next confronted with the question of the lawfulness of the payment of state tuition grants to residents of Prince Edward County during the time public schools are closed.

The policy of the Commonwealth of Virginia as enunciated in Section 22-115.29 of the Code of Virginia, is as follows:

> "The General Assembly, mindful of the need for a literate and informed citizenry, and being desirous of advancing the cause of education generally, hereby declares that it is the policy of this Commonwealth to encourage the education of all of the children of Virginia. In furtherance of this objective, and to afford each individual freedom in choosing public or private schooling, the General Assembly finds that it is desirable and in the public interest that scholarships should be provided from the public funds of the State for the education of the children in nonsectarian private schools in or outside, and in public schools located outside, the locality where the children reside; and that counties, cities and towns, if the town be a separate school district approved for operation, should be authorized to levy taxes and appropriate public funds to provide for such scholarships. (1960, c. 448.)"

Thus a "freedom of choice" between public and private schooling is clearly contemplated.

That the state did not intend its "scholarships" would be available in communities without public schools is best

evidenced by reference to the regulation of the State Board of Education governing public scholarships.[1] This rule reads as follows:

> "Scholarships will be available for pupils of legal school age who are eligible to attend the public schools in the county, city or town in which the parent, guardian or such other person standing in loco parentes is a bona fide resident."

This rule is plain and unequivocal. State scholarships are not available to persons residing in counties that have abandoned public schools.

An order will therefore be entered restraining and enjoining the County Superintendent of Prince Edward County, the Superintendent of Public Instruction, their agents and employees, and all persons working in concert with them, from receiving, processing or approving any applications for state scholarship grants from persons residing in Prince Edward County so long as the public schools of Prince Edward County remain closed.

The order of April 20, 1960, provides, among other things:

> "That the defendants (County Superintendent and School Board) make plans for the admission of pupils in the elementary schools of the County without regard to race or color and to receive and consider applications to this and at the earliest practical day."

That no such plans have been made is admitted. The defendants justify their failure to comply with the plain language of this order by stating they acted on advice of counsel and that it appeared useless to make such plans so long as the public schools of the County were closed.

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[1] See plaintiffs' Exhibit #20.

This Court cannot accept these reasons as justification for failing to comply with this portion of the order. Therefore the defendants are herewith directed to forthwith proceed with the preparation of such plans, so that they may be readily available when and if the public schools of Prince Edward County are reopened. The defendants should advise the Court in writing of the progress made on or before November 15, 1961.

There is no evidence the School Board of Prince Edward County has leased or transferred or intends to lease or transfer any school property. The prayer for injunctive relief is therefore denied.

Counsel for the plaintiffs should prepare an appropriate order in accordance with this opinion, and submit the same to counsel for defendants for approval, and it will be entered accordingly, effective this date. Costs will be assessed against the defendants.

/s/ OREN R. LEWIS,
United States District Judge.

Alexandria, Virginia
August 23, 1961

Order, Filed November 16, 1961

This cause came on again to be heard upon the amended supplemental complaint, the motions to dismiss and answers of the defendants, upon the evidence and exhibits heard ore tenus by the Court, upon written briefs and argument of counsel, upon a consideration of all of which the Court rendered its memorandum opinion dated August 23, 1961, the original of which has heretofore been filed as a part of the record in this case; and

It appearing from statement of counsel and the copy of the suit papers that an appropriate suit has been timely instituted in the Supreme Court of Appeals of Virginia, seeking a determination of the legal question posed in this Court's opinion of August 23, 1961, namely: "Can the public schools, heretofore maintained in Prince Edward County, be closed in order to avoid the racial discrimination prohibited by the 14th Amendment?"

The Court reserves further consideration of this question until there has been a final determination by the Supreme Court of Appeals of Virginia of the pertinent provisions of the United States Constitution, the Virginia Constitution and statutes adopted pursuant thereto; and

The Court being of the opinion that action taken pursuant to certain ordinances of Prince Edward County would be a circumvention or attempted circumvention of the order of this Court entered April 22, 1960; it is

ORDERED that the Board of Supervisors of Prince Edward County, the County Treasurer of Prince Edward County and their respective agents and employees are hereby restrained and enjoined from approving and paying out any county funds purportedly authorized by the so-called "grant in aid" ordinance adopted July 18, 1960, and from allowing any tax credits purportedly authorized by the so-called "tax credit" ordinance adopted July 18, 1960, during such time as the public schools of Prince Edward County remain closed; said restraining order to remain in ef-

fect from August 23, 1961, until twenty days after the date of the final decision of the Supreme Court of Appeals of Virginia in the above mentioned suit, upon which date it shall stand dissolved except upon further order of this Court; and

The Court having found that scholarships awarded pursuant to Section 22-115.29 et seq. of the Code of Virginia (1950), as amended, are not available to persons residing in counties that have abandoned public schools; it is

ORDERED that the Division Superintendent of Schools of Prince Edward County, the Superintendent of Public Instruction, their agents, employees and all persons working in concert with them, are hereby restrained and enjoined from processing or approving any applications for State scholarship grants from persons residing in Prince Edward County so long as the public schools of Prince Edward County remain closed; said restraining order to remain in effect from August 23, 1961, until twenty days after the date of the final decision of the Supreme Court of Appeals of Virginia in the above mentioned suit, upon which date it shall stand dissolved except upon further order of this Court;

It is further ORDERED that the School Board of Prince Edward County forthwith comply with that portion of the order of this Court entered April 22, 1960, that provides, among other things, for making plans for the admission of pupils in the elementary schools of Prince Edward County without regard to race or color, and make written report to this Court on or before November 16, 1961, of the progress being made in the preparation of such plans; and

There being no evidence that the School Board of Prince Edward County has leased or transferred or intends to lease or transfer any school property, the plaintiff's prayer for injunctive relief is denied.

Order, Filed November 16, 1961

The Court herewith reserves decision upon all other issues raised in the amended supplemental complaint and the motions and answers of the various defendants not specifically herein ruled upon until twenty days after the date of the final decision of the Supreme Court of Appeals of Virginia in the above mentioned suit; and

This cause is continued.

The Clerk shall forthwith serve an attested copy of this order, by certified or registered mail, upon the individual members of the School Board of Prince Edward County, the Division Superintendent of Schools of Prince Edward County, the Superintendent of Public Instruction, the individual members of the Board of Supervisors of Prince Edward County, the Treasurer of Prince Edward County, and all counsel of record in this suit.

s/ OREN R. LEWIS
United States District Judge

Richmond, Virginia
November 16, 1961

Order, Entered May 24, 1962

Defendant, School Board of Prince Edward County, Virginia, having moved in open court for an order pursuant to Rule 56 granting summary judgment in its favor upon Section V (paragraph 16) of the Amended Supplemental Complaint and dismissal of said section; and the Court in its memorandum opinion of August 23, 1961, and in its order of November 16, 1961, having found that there is no evidence that the School Board of Prince Edward County has leased or transferred or intends to lease or transfer any school property and in said last mentioned order having denied the plaintiffs' prayer for injunctive relief in connection therewith; and the Court being of opinion that there is no just reason for delay in finally disposing of the claim raised by Section V of the Amended Supplemental Complaint and that pursuant to Rule 54(b) it should now expressly direct entry of judgment in favor of this defendant, School Board of Prince Edward County, upon said claim;

It Is Ordered

That defendant's motion for a summary judgment as to the cause of action alleged in Section V of the Amended Supplemental Complaint is hereby granted and said Section V is hereby dismissed and the Clerk of this Court is directed to enter a final judgment in favor of said School Board on the cause of action alleged in said Section V of the Amended Supplemental Complaint, and the undersigned District Judge expressly determines that there is no just reason for delay in the entry of final judgment on this order.

s/ Oren R. Lewis
United States District Judge

May 24, 1962

Memorandum Opinion, Dated July 25, 1962

The infant plaintiffs in the Prince Edward school case are again before this Court seeking admission to the public schools of Prince Edward County, Virginia, on a non-discriminatory basis—all in accord with the *Brown*[1] decisions.

Rather than comply with those decisions and the order of this Court, the defendant Board of Supervisors caused the closing of all public schools in the county.

Thereafter the petitioners filed an amended supplemental complaint raising the following issues:

(1) Whether the public schools heretofore maintained in Prince Edward County can be closed in order to avoid the racial discrimination prohibited by the Fourteenth Amendment of the United States Constitution.

(2) Whether the defendants, individually or in concert, have deliberately circumvented, or attempted to circumvent or frustrate, the order of this Court entered herein on the 22nd day of April, 1960.

Issue numbered (2) was partially determined August 23, 1961, and it is not necessary to repeat those rulings in this opinion (see memorandum opinion dated August 23, 1961, and order dated November 1, 1961).

This Court has repeatedly stated that the Prince Edward school case would not be terminated until this or some other court determined issue numbered (1), above recited.

Upon the assurance of counsel for petitioners that such a suit would be filed in the state courts, and upon the further assurance of counsel for the Board of Supervisors

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[1] *Brown* v. *Board of Education,* 347 U. S. 483 (1954); 349 U. S. 294 (1955).

of Prince Edward County that he would file such a suit[2] if the petitioners failed to so do, this Court abstained from determining the issue, pending a final ruling by the Supreme Court of Appeals of Virginia.

But such was not to be—true the petitioners filed a petition for writ of mandamus in the Supreme Court of Appeals[3] to compel the Board of Supervisors of Prince Edward to appropriate money for the maintenance and operation of free public schools in the county. However, they expressly informed that court in their printed brief that "There are no Federal questions (involved) in this proceeding," and Chief Justice Eggleston, speaking for the Supreme Court of Appeals, said " * * * and we perceive none."

The defendants now move this Court to dismiss or, in the alternative, to abstain from determining the issues presented in the amended supplemental bill of complaint upon the ground the petitioners deliberately failed and refused to comply with the order[4] of this Court by deleting all federal questions from the suit filed in the Supreme Court of Appeals.

This motion would be meritorious had the defendants filed an appropriate answer and/or countersuit to the plaintiffs' petition for writ of mandamus so that the citizens of Virginia would have learned from their highest state court whether the public schools of Prince Edward County could be legally closed in accordance with the State and Federal Constitutions, under the circumstances and conditions there existing.

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[2] This assurance was made after conferring with the Attorney General of Virginia and counsel for the School Board of Prince Edward County.

[3] *Leslie Francis Griffin, Jr.* v. *Board of Supervisors of Prince Edward County,* 203 Va. 321, 124 S. E. 2d 227 (1962).

[4] Order of November 1, 1961.

This "issue" must be determined—and dismissal of the pending suit will not accomplish that end. Therefore, the motion of the defendants to dismiss the amended supplemental complaint will be denied.

The doctrine of abstention is well embedded in the federal procedure, and rightfully so. It is aimed at the avoidance of unnecessary interference by the federal courts with properly administered state concern. See *Harrison* v. *N.A.A.C.P.*, 360 U. S. 167 (1959). However, the District Court cannot avoid its duty to adjudicate a controversy properly before it by postponing the exercise of its jurisdiction by invoking the doctrine of abstention. See *County of Allegheny* v. *Frank Mashuda Company*, 360 U. S. 185 (1959). And especially so when it is advised by counsel for all parties that none of them intends to file another suit in the state courts.[5]

The Prince Edward County public schools have been closed for three years and will remain closed unless they be legally required to reopen. During the interim practically all of the negro children in the county have been denied a formal education. The white children are being educated in the (private) Prince Edward Foundation schools, or away from home, at the expense of their parents and friends. All other children in the State of Virginia, both negro and white, are given the privilege of being educated in public schools at public expense.

This is a suit in equity instituted by the infant plaintiffs requesting this Court to declare and insure them, and all others similarly situated, their constitutional rights.

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[5] Counsel for petitioners contend state constitutional questions are not involved—they seek only federal relief. The Attorney General and counsel for the Board of Supervisors and the School Board of Prince Edward admit both State and Federal constitutional questions are involved but contend they have neither the authority not the duty to file an appropriate suit in the state courts.

To further abstain is to further delay—and further delay in the formal education of 1,700 children would create an irreparable loss. These children are entitled to know whether any of their federally protected rights are being abridged. The motion to further abstain will be denied.

That the Board of Supervisors of Prince Edward caused the closing of the public schools in the county in order to avoid the racial discrimination prohibited by the Supreme Court of the United States[6] cannot be seriously questioned. This action was in accord with the Board's expressed policy (adopted in May, 1956) to abandon public schools and educate the children some other way if that be necessary to preserve segregation of the races in the schools of Prince Edward County.[7]

The defendants attempt to justify their action and/or inaction upon the theory that public schools of Prince Edward County are owned, operated, managed, and controlled by the local school board—that they are not now and never have been operated by the state or any state agency—that the Fourteenth Amendment is addressed solely to the state—that the Board of Supervisors cannot be compelled to levy taxes or appropriate money for the maintenance of free public schools—and that the reason or motive back of such action or inaction is beyond judicial review.

In determining whether these contentions are well-founded, it is necessary and proper to review and re-examine the Federal and State Constitutions, the implementing statutes, and the recent court decisions pertaining to public education. In so doing, we find the Supreme Court of Appeals of Virginia in the *Griffin* suit, *supra,* held that Section 136 of the Constitution of Virginia and Code Sections 22-126 and 22-127, as amended, which implement the con-

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[6] *Brown* v. *Board of Education, supra.*

[7] See Petitioners' Exhibit No. 2.

stitutional provision, vest in the Board of Supervisors of Prince Edward County the discretionary power and authority to determine what additional sums, if any, should be raised by local taxation to supplement the funds provided by the state for the support of the schools in the county. That holding was in accord with previous decisions of that court. See *School Board of Carroll County* v. *Shockley,* 160 Va. 405, 168 S. E. 419 (1933). See also *Almond* v. *Gilmer,* 188 Va. 1, 49 S. E. 2d 431 (1948); *Scott County School Board* v. *Board of Supervisors,* 169 Va. 213, 193 S. E. 52 (1937); *Board of Supervisors of Chesterfield County* v. *County School Board,* 182 Va. 266, 28 S. E. 2d 698 (1944).

There is not anything in the *Griffin* decision indicating that the Board of Supervisors has a duty to maintain or operate public schools. To the contrary, Chief Justice Eggleston, speaking for the court, said:

> "Whatever may be the duty imposed under Section 129 of the Constitution, that section is plainly directed to the General Assembly and not to the local governing bodies. It says, 'The General Assembly shall establish and maintain an efficient system of public free schools throughout the State' * * * "

In *Harrison* v. *Day,* 200 Va. 439, 106 S. E. 2d 636 (1959), the Supreme Court of Appeals held that Section 129 of the Virginia Constitution is still in the organic law (of Virginia) and must be complied with. The court further stated in its opinion that Section 129

> "* * * requires the State to '*maintain* an efficient system of public free schools *throughout the State*.' (Emphasis included.) That means that the State must support such public free schools in the State as are necessary to an efficient system, including those in which the pupils of both races are compelled to

be enrolled and taught together, however unfortunate that situation may be."

The court further stated that the provisions of certain appropriation acts (then under consideration by that court) violated Section 129 of the Constitution in that they removed from the public school system any schools in which pupils of the two races are mixed and made no provision for the support and maintenance of said schools as a part of the system.

From this decision is would appear that the Constitution of Virginia imposes a mandatory duty to establish and maintain an efficient system of public schools throughout the state, and that the state may not remove from the system schools in which the races are mixed.

Article IX of the Constitution of Virginia, embracing the subjects of Education and Public Instruction, contemplates that moneys for the establishment and maintenance of public free schools will be appropriated partly by the General Assembly and partly by the local governing units. (See *Griffin* v. *Board of Supervisors of Prince Edward County, supra.*) Other sections of that article provide for the appointment and duties of the Superintendent of Public Instruction, the powers and duties of the State Board of Education, and the creation of school districts and school trustees. Title 22 (Education) of the Code of Virginia, implements these constitutional provisions.

From a careful reading of the foregoing Virginia authorities, it would appear the local school boards have been given the responsibility by law of establishing, maintaining, and operating the school system along with the State Board of Education, Superintendent of Public Instruction and Division Superintendent of Schools. The Supreme Court of Appeals has so held.[8]

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[8] See *Board of Supervisors of Chesterfield County, et al.* v. *County School Board of Chesterfield County, supra.*

Thus it is clear the public schools of Prince Edward County are not under the sole control of the county.

This Court finds, and so holds, that the public schools of Virginia were established, and are being maintained, supported and administered in accordance with state law. These public schools are primarily administered on a statewide basis. A large percentage of the school operating funds is received from the state. The curriculums, school text books, minimum teachers' salaries, and many other school procedures are governed by state law.

Nevertheless the public schools of Prince Edward County have been closed for the past three years. This was accomplished by the refusal of the Board of Supervisors to levy taxes or appropriate money for the maintenance of public schools, all of which was in accord with the expressed policy of the Board of Supervisors in their attempt to avoid the requirements of the *Brown* decision. This action was taken with full knowledge and acquiescence of the State Board of Education, the Superintendent of Public Instruction, the School Board of Prince Edward County, and the Division Superintendent.

In these circumstances true focus is not on the Board of Supervisors but on the above-named school officials, all of whom directly or indirectly are state officials. They cannot abdicate their responsibilities either by ignoring them or by merely failing to discharge them, whatever the motive may be. See *Burton* v. *Wilmington Pkg. Authority,* 365 U. S. 715 (1961).

As the court said in *Bush* v. *Orleans Parish School Board,* 190 F. Supp. 861 (1960),

> "* * * equality of opportunity to education through access to non-segregated public schools is a right secured by the Constitution of the United States to all citizens regardless of race or color

against State interference. *Brown* v. *Board of Education,* 347 U. S. 483. * * * accordingly, every citizen of the United States, by virtue of his citizenship, is bound to respect this constitutional right, and * * * all officers of the state, more especially those who have taken an oath to uphold the Constitution of the United States, including the governor, the members of the state legislature, judges of the state courts, and members of the local school boards, are under constitutional mandate to take affirmative action to accord the benefit of this right to all those within their jurisdiction. U. S. Const. art. VI, cls. 2, 3; *Cooper* v. *Aaron,* 358 U. S. 1.''

And as the court said in *Cooper* v. *Aaron* 358 U. S. 1 (1958),

'' 'Whoever, by virtue of public position under a State government, * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.' *Ex parte Virginia,* 100 U. S. 339, 347. Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see *Virginia* v. *Rives,* 100 U. S. 313; *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia,* 353 U. S. 230; *Shelley* v. *Kraemer,* 334 U. S. 1; or whatever the guise in which it is taken, see *Derrington* v. *Plummer,* 240 F. 2d 922; *Department of Conservation and Development* v. *Tate,* 231 F. 2d 615.''

Note also the following apt statement from *Cooper* v. *Aaron:*

> "It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law." See also *James* v. *Almond, supra.*

Counsel for the Board of Supervisors has seriously contended, however, that what the Board of Supervisors does, or does not do, is not state action; that the Board of Supervisors cannot be compelled to levy taxes or appropriate money for school purposes. The Supreme Court of Appeals in the recent *Griffin* case so held in re levying taxes and appropriating money for school purposes. That court did not, however, pass upon or consider any federal questions.

Counsel for the Prince Edward School Board and the Division Superintendent wholeheartedly supported the contention of the Board of Supervisors. No argument was tendered justifying the failure of those school officials in fulfilling or attempting to fulfill the responsibility imposed by law of establishing, maintaining, and operating a free

public school system, except to state that the County School Board will establish and maintain public schools in Prince Edward County if funds are made available to it, all in strict accordance with the April 22, 1960 order of this Court.

The Attorney General of Virginia, counsel for the State Board of Education and Superintendent of Public Instruction, likewise, in the main, supported the position of the Board of Supervisors. No argument was presented justifying the failure of those state officials from attempting to fulfill the responsibilities reposed in them by the Constitution of Virginia of establishing a system of free public schools throughout the state, and as set forth in *Board of Supervisors of Chesterfield County* v. *County School Board of Chesterfield County, supra.*

The contention that the action and inaction of the foregoing state and county officials resulting in the closing of the Prince Edward County schools was a local action, beyond the purview of the Fourteenth Amendment, is not well taken. County has been defined[9] "as a body politic, or political subdivision of the State, created by the legislature for administrative and other public purposes." It is generally regarded as merely an agency or arm of the state government.

The United States Constitution recognizes no governing units except the federal government and the states. A contrary position would allow a state to evade its constitutional responsibilities by carve-outs of small units. At least in the area of constitutional rights, specifically with respect to education, a state can no more delegate to its subdivisions the power to discriminate than it can itself directly establish inequalities. "When a parish wants to lock its school doors, the state must turn the key. If the

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[9] Corpus Juris Secundum, V. 20, p. 1300.

rule were otherwise, the great guarantee of the equal protection clause would be meaningless."[10]

James v. *Almond,* 170 F. Supp. 331 (1959), in discussing the validity of the closing of some of the City of Norfolk schools, also announces this same view. It said:

> "While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to remain open at the expense of the taxpayers."

The Court further said:

> "We do not suggest that, aside from the Constitution of Virginia, the state must maintain a public school system. That is a matter for state determination."

This Court holds that the public schools of the Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers.

In the event the public schools of Prince Edward County are reopened and maintained in accordance with the order of this Court entered herein on the 22nd day of April, 1960, it will not be necessary to enter a more formal order. If, however, the said schools are not reopened prior to Sep-

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[10] *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649 (1961).

tember 7, 1962, this Court will on that day consider any and all proposed orders tendered by counsel of record.

> " * * * When, notwithstanding their oath so to do, the officers of the state fail to obey the Constitution's command, it is the duty of the courts of the United States to secure the enjoyment of this right to all who are deprived of it by action of the state. *Brown* v. *Board of Education,* 349 U. S. 294." *Bush* v. *Orleans Parish School Board, supra.*

The School Board of Prince Edward County is herewith directed to complete plans for the admission of pupils in the elementary and high schools of the county without regard to race or color and to receive and consider applications to this end at the earliest practical date. The proposed plans should be submitted to all counsel of record not later than September 1, 1962, if possible, and to this Court on September 7, 1962.

The motion to substitute successor defendants is herewith granted.

The motion to dismiss the motion for further relief is herewith granted.

The motion to dismiss the injunction entered herein on November 16, 1961, and further extended March 26, 1962, is denied. The said injunction is effective only so long as the public schools of Prince Edward County remain closed.

Let copies of this memorandum be mailed forthwith to all counsel of record.

/s/ OREN R. LEWIS,
United States District Judge.

Alexandria, Virginia
July 25, 1962

Memorandum Opinion, Filed October 10, 1962

Counsel for the defendants having expressed their desire to be heard prior to the entry of the Court's suggested order (mailed to all counsel of record September 20), the Court again heard the matter informally in Chambers on the 3rd day of October, 1962, at which time counsel for the defendants moved the Court to amend its finding as set forth in its Memorandum Opinion of July 25, 1962, and to rehear and reconsider in part that opinion, and to abstain upon the grounds set forth in said motion.

Upon consideration of which, together with the argument of counsel, the Court is of the opinion that said motion ought to be DENIED in its entirety, and it is so ORDERED.

Whereupon counsel for the defendants then orally moved the Court to amend some of the findings set forth in the Memorandum Opinion of July 25, 1962, upon consideration of which the Court herewith amends paragraph 2, page 3, of said Memorandum Opinion by inserting the word "reply" after the word "printed" (line 7), and amends paragraph 2, page 11, by deleting "and acquiescence" (line 9) therefrom. All other requested amendments or deletions are herewith DENIED.

Whereupon counsel for the defendants then made certain suggestions in re the proposed order as prepared by the Court to be entered herein, some of which were adopted and some of which were refused, and the proposed order, as prepared by the Court in accord with its Memorandum Opinion of July 25, was this day entered herein.

s/ OREN R. LEWIS
United States District Judge

Alexandria, Virginia
October 10, 1962

Order, Filed October 10, 1962

Upon consideration of the evidence, exhibits and authorities cited in support of the contentions of the respective parties, and argument in re all motions pending in the above-styled matter, the Court rendered its Memorandum Opinion dated July 25, 1962, wherein, it was provided among other things:

> "In the event the public schools of Prince Edward County are reopened and maintained in accordance with the order of this Court entered herein on the 22nd day of April, 1960, it will not be necessary to enter a more formal order. If, however, the said schools are not reopened prior to September 7, 1962, this Court will on that day consider any and all proposed orders tendered by counsel of record."

Upon which date, counsel for the defendants moved the Court to stay further proceedings herein until 20 days after date of final disposition in the Supreme Court of Appeals of Virginia of the suit which was instituted in the Circuit Court of the City of Richmond on August 31, 1962, by the School Board of Prince Edward County, et al v. Leslie Francis Griffin Sr., et al, to determine among other things whether the public schools heretofore maintained in Prince Edward County can be closed in order to avoid the racial discrimination prohibited by the Fourteenth Amendment;

To which motion counsel for the plaintiffs objected; and

It appearing to the Court that further abstention would create an irreparable loss in the formal education of the children of Prince Edward County,

The motion of the defendants to stay further proceedings in this suit is DENIED.

Pursuant to the order of July 25, 1962, and previous orders of this Court that the School Board of Prince Ed-

ward County complete plans for the admission of pupils in the elementary and high schools of the county without regard to race or color and to receive and consider applications to this end at the earliest practical date, the said School Board filed a report stating that it no longer is possessed of the power to enroll or place pupils or to determine the school to which any children shall be admitted; that such power is vested in the Pupil Placement Board; and accordingly, the plan proposed for the admission of pupils (to Prince Edward County public schools) is that set forth in the Pupil Placement Law and the rules and regulations of the Board.

The report thus received does not comply with the orders of this Court.

The authority having the immediate supervision of the schools, that is, the agency actually receiving or rejecting the pupils, is the County School Board. The Placement Act, however, is still alive as between the School Board and the Placement Board. It divests the former of and invests the latter with all assignment powers; hence, the School Board must submit these applications to the Placement Board and in the first instance bow to the latter's assignment prerogative, but in any order of revision on a review will bear directly upon the School Board as the body ultimately responsible and immediately answerable to the Court for the physical enrollment and admissions of all pupils.

Accordingly, if the School Board of Prince Edward County intends to rely upon the validity of the Pupil Placement Board assignment plan, such plan, set forth in reasonable detail, should be forthwith submitted to this Court for review and approval, and it is so Ordered.

It appearing to the Court that the public schools of Prince Edward County were not reopened prior to September 7, 1962, in accordance with the Court's Memorandum Opinion of July 25, 1962, and that counsel of record could

not agree on the wording of an appropriate order to be entered in accordance therewith;

The Court's Memorandum Opinion of July 25, 1962, is incorporated herein and made a part of this order by reference; and

The Court having found:

that the Board of Supervisors of Prince Edward County caused the closing of the public schools in the county in order to avoid the racial discrimination prohibited by the Supreme Court of the United States; and

that said schools have been closed for three years and will remain closed unless they be legally required to reopen; and

that during the interim practically all of the negro children have been denied a formal education; and that the white children have been educated in private schools or away from home at the expense of their parents and friends; and

that all other children in the State of Virginia, both negro and white, are granted the privilege of being educated in public schools at public expense; and

that Section 129 of the Constitution of Virginia, as construed by the Supreme Court of Appeals of Virginia, requires the State to maintain an efficient system of public free schools throughout the State; and

that Article 9 of the Constitution of Virginia contemplates that money for the establishment and maintenance of public free schools will be appropriated partly by the General Assembly and partly by the local governing units; and

that the State Board of Education, Superintendent of Public Instruction and Division Superintendent of Schools, and the local school boards, have been given the responsibility by law of establishing, maintaining and operating the school system; and

that the public schools of Virginia were established and are being maintained, supported and administered in accordance with State law—primarily on a state-wide basis; and

that a large percentage of the school operating funds is received from the State; and

that textbooks, curriculums, minimum teachers' salaries and many other school procedures are governed by State law; and

that the aforementioned school officials, all of whom are directly or indirectly State officials, cannot abdicate their responsibilities merely by ignoring them or by failing to discharge them, whatever the motive may be;

And the Court having concluded that the closing of the public schools in Prince Edward County, under the circumstances and conditions there existing, is prohibited by the Fourteenth Amendment of the Constitution of the United States; it is

ADJUDGED, ORDERED AND DECREED that the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers; and it is further

Order, Filed October 10, 1962

ORDERED AND DECREED as follows:

(1) That the defendants' motion to dismiss, or in the alternative to abstain from determining the issues presented in the amended supplemental complaint, is Denied.

(2) That the defendants' motion to dismiss the plaintiffs' motion for further relief is Granted.

(3) That the plaintiffs' motion to substitute successor defendants is Granted, and Anne Dobie Peebles and C. Stuart Wheatley, Jr., individually and as members of the State Board of Education, are substituted for Gladys V. V. Morton and William J. Story as parties defendant herein.

(4) That the defendants' motion to dissolve the injunction entered herein on November 16, 1961 and further extended on March 26, 1962, is Denied. Said injunction is herewith extended so long as the public schools of Prince Edward County remain closed.

This Court will defer the entry of such further orders as may be necessary and proper to require full compliance with this decree pending review by the United States Court of Appeals for the Fourth Circuit and the Supreme Court of the United States, providing such appeal is noted and perfected within the time provided by law.

s/ OREN R. LEWIS,
United States District Judge.

Alexandria, Virginia
October 10, 1962

Notice of Appeal

Notice is hereby given that Cocheyse J. Griffin, Mignon D. Griffin, Naja D. Griffin and L. Francis Griffin, Jr., infants, by and through L. Francis Griffin, Sr., their father and next friend, Osa Sue Allen and Ada D. Allen, infants, by and through Hal Edward Allen, their father and next friend, Toby Hicks, Carl Hicks, Gregory Hicks, Boyce U. Z. Hicks and John Hicks, infants, by and through C. W. Hicks, their father and next friend, Betty Jean Carter, an infant, by and through James L. Carter, her father and next friend, Dorothy Mae Wood, an infant, by and through Spencer Wood, Jr., her father and next friend, Jacquelyn Reid, an infant, by and through Warren A. Reid, her father and next friend, and L. Francis Griffin, Sr., Hal Edward Allen, C. W. Hicks, James L. Carter, Spencer Wood, Jr., and Warren A. Reid

Hereby appeal to the United States Court of Appeals for the Fourth Circuit from so much of the order of this Court entered in the above captioned cause on October 10, 1962, as defers, pending review, the entry of an order directing compliance with the Court's holding that the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers; the effect of such deferment being a refusal of the prayer of the amended supplemental complaint that the defendants be enjoined and restrained from refusing to maintain and operate an efficient system of public free schools in Prince Edward County, Virginia, and a refusal of the prayer for general relief.

The said appellants have heretofore given notice, and they hereby again give notice, of their appeal to the United States Court of Appeals for the Fourth Circuit from the

order of this Court entered in the above captioned action on November 16, 1961, and from so much of said order as limits the effective period of its restraining or injunctive provisions to so long as the public schools of Prince Edward County remain closed, the effect of said order and of its said limitation being a refusal of the prayers of the plaintiffs' amended supplemental complaint that the defendants be enjoined and restrained:

(b) From expending public funds for the direct or indirect support of any private school which, for reason of race, excludes the infant plaintiffs and others similarly situated.

(c) From expending public funds in aid of, or in reimbursement of money paid for, the attendance of any child at any private school which, for reason of race, excludes the infant plaintiffs and others similarly situated, and

(d) From crediting any taxpayer with any amount paid or contributed to any private school, which for reason of race, excludes the infant plaintiffs and others similarly situated.

The said appellants have heretofore given notice, and they hereby again give notice, of their appeal to the United States Court of Appeals for the Fourth Circuit from the order of this Court entered in the above captioned action May 24, 1962, by which the motion of the defendant County School Board of Prince Edward County, Virginia, for a summary judgment as to the cause of action alleged in Section V of the Amended Supplemental Complaint was granted and said Section V was dismissed and the Clerk

was directed to enter a final judgment in favor of said defendant school board.

S. W. TUCKER,
Of Counsel for Appellants.

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Counsel for Appellants.

[fol. 91]

APPENDIX

To Reply Brief of the Board of Supervisors of Prince Edward County, Appellees, and Brief of the Board of Supervisors of Prince Edward County, Cross Appellants.

[fol. 93]

MOTION OF THE BOARD OF SUPERVISORS OF PRINCE EDWARD COUNTY TO DISMISS AMENDED SUPPLEMENTAL COMPLAINT

The Board of Supervisors of Prince Edward County, Virginia, having been made a party defendant to this action by amended supplemental complaint, by order entered on the 24th day of April, 1961, moves the court as follows:

I.

To dismiss the amended supplemental complaint upon the ground that it states a new cause of action in that the original cause of action alleged racial discrimination in the admission, enrollment and education of Negro children in the public schools of the County and sought an injunction against such alleged discriminatory practices, whereas the amended supplemental complaint sets forth an alleged duty under the Constitution and laws of the State of Virginia, requiring the Board of Supervisors of Prince Edward County to levy taxes and to appropriate money for the operation of public schools and seeks affirmatively to compel said Board of Supervisors to levy taxes and appropriate money for such purposes, the prayer of the said amended supplemental complaint and this defendant being entirely foreign to the purposes and prayers of the original complaint and to the order of April 22, 1960, entered thereon.

[fol. 94]

II.

To dismiss the amended supplemental complaint upon the ground that it appears upon the face of the amended supplemental complaint when read with the original complaint and the order of April 22, 1960, entered thereon that

neither the original complaint nor the order of April 22, 1960, has any reference whatever to any alleged legal obligation requiring the operation of public schools in Prince Edward County, nor to any alleged legal obligation resting upon the Board of Supervisors of Prince Edward County to operate public schools within the said County or to the levy of taxes of appropriation of money by the said Board of Supervisors for said purpose. Consequently, the alleged actions of the Board of Supervisors of said County, as a matter of law, do not violate the terms of the said order nor do they violate any purported rights of the plaintiffs under or by virtue of said order.

III.

To dismiss the allegations contained in Paragraph 16 of the amended supplemental complaint as to this defendant upon the ground that the Board of Supervisors of Prince Edward County has no power, control or responsibility with respect to the conveyance, lease or transfer of public schools or public school property in Prince Edward County.

IV.

To dismiss the amended supplemental complaint as to it for lack of jurisdiction upon the ground that it appears the power upon the face of the amended supplemental complaint [fol. 95] that the Board of Supervisors of Prince Edward County acted in the exercise of valid and constitutional powers reposed in it under the Constitution and laws of the State of Virginia in its refusal to levy taxes and appropriate money for the operation of public schools within the County, and that the order sought against the said Board of Supervisors of Prince Edward County constitutes this a suit against the Commonwealth of Virginia of which this court does not have jurisdiction by virtue of the prohibition of the Eleventh Amendment of the Constitution of the United States.

V.

To dismiss the amended supplemental complaint as to it for lack of jurisdiction upon the ground that the power

of taxation and the appropriation of public funds is a legislative power which cannot be exercised other than under legislative authority and in strict compliance with the legislative requirements for its exercise, and the prayer of the amended supplemental complaint, in effect, asks a federal court to exercise an exclusively legislative power by compelling a local legislative body to levy taxes and to appropriate money, which is beyond the limits of the judicial power conferred upon this court under the Constitution of the United States, and which raises a political question with which federal courts have consistently refused to interfere.

VI.

To dismiss the amended supplemental complaint upon the ground that it raises questions which require a construction of provisions of the Constitution of Virginia [fol. 96] and statutes enacted by the legislature of the Commonwealth of Virginia in pursuance thereof relating to matters of the most delicate nature involving federal-state relations; that a final authoritative determination of these issues cannot be accomplished in this court but must be accomplished in the Supreme Court of Appeals of Virginia, which has the final authority for construction of the provisions of the Constitution of Virginia and the statute here involved; that the doctrine of equitable abstention should be followed in this case and that the amended supplemental complaint should be dismissed and the complainants permitted to seek a construction of the said constitutional provisions and statutes in the State courts as they may be advised, there being available speedy and adequate procedures, and by following such course any possible federal questions which may be considered to have been raised by the amended supplemental complaint may never be raised.

VII.

The Board of Supervisors of Prince Edward County moves the court to dismiss the amended supplemental complaint because it fails to state a case upon which relief may

be granted; because it fails to state or allege facts giving rise to a federal question; because it seeks to convert the Fourteenth Amendment and the order of April 22, 1960, into an affirmative mandate extending not only to the original defendant, the School Board of Prince Edward County, but affirmatively extending to this defendant and the other new defendants added thereby; because it seeks to extend the federal judicial power into the area of state legislative discretion by prayer for a mandamus in the form of a negative injunctive decree and thereby seeks to restrict individual freedom guaranteed by the Constitu- [fol. 97] tion of the United States; because it seeks to extend federal judicial power to unconstitutional control of state administration of education and seeks to extend the said federal judicial power into the impractical supervision of the details of school administration.

All of which appears upon the face of the amended supplemental complaint as follows:

(1) The levy of taxes by the Board of Supervisors of Prince Edward County is clearly within the discretion vested in said Board by Section 136 of the Constitution of Virginia and by Section 22-127 of the Code of Virginia and the amended supplemental complaint does not allege that any provision of the Constitution of Virginia or of the state law vesting said power in the Board of Supervisors of Prince Edward County is repugnant to the Constitution of the United States or that the same has been exercised by the said Board of Supervisors in a manner repugnant to the Constitution of the United States.

Prayer (a) of the amended supplemental complaint is in effect a prayer for a mandamus by the federal judiciary to a state legislative body to compel the levy of taxes and the appropriation of money for public schools, which, as a matter of law, is not a matter within the jurisdiction of a federal court and as a matter of law does not violate the Fourteenth Amendment or the order of April 22, 1960, entered in this cause.

(2) Prayer (b) of the amended supplemental complaint does not ask the court to declare any law of the Com-

monwealth of Virginia or any ordinance of the Board of Supervisors repugnant to the Constitution of the United States, but on the contrary is a prayer that the federal [fol. 98] judiciary, by use of its injunctive power, exercise an affirmative, purely legislative function and, in effect, is a prayer for the judiciary to amend all ordinances of the County and laws of the Commonwealth of Virginia by which any money may be paid directly or indirectly to any private school so as to provide that by the payment or acceptance of such money a private school receiving the same forfeits its freedom to accept or reject students as it may choose.

The judicial action prayed for would (1) constitute a violation of the negative nature and terms of the Fourteenth Amendment, (2) would constitute an unconstitutional invasion by the federal judicial branch of legislative discretion vested in the legislative branch of state government in violation of the most fundamental principle of the United States Constitution and of a Republican form of government, (3) would constitute an extension of the prohibitions of the Fourteenth Amendment into the area of individual and private action and choice in violation of the express limitations of the Fourteenth Amendment and in violation of freedoms guaranteed by other provisions of the United States Constitution to private individuals.

(3) Prayer (c) of the amended supplemental complaint does not ask the court to declare any law of the Commonwealth of Virginia or any ordinance of the Board of Supervisors repugnant to the Constitution of the United States, but is a prayer that the judiciary, by the use of its injunctive power, exercise an affirmative legislative function and, in effect, amend all ordinances and all laws of the Commonwealth of Virginia by which money may be paid to parents or individuals in aid of the education [fol. 99] of children or individuals so as to restrict the freedom of such parent or individual to seek education in such environment and association as such parent or individual may select.

The judicial action prayed for is (1) in violation of the negative terms and nature of the Fourteenth Amend-

ment, (2) an unconstitutional invasion by the federal judiciary of the area of legislative discretion, and is, in short, a mandamus to the legislative branch, (3) is an extension of the prohibitions of the Fourteenth Amendment into the area of private, parental and individual action in violation of the express limitations of the Fourteenth Amendment to state action, and (4) is a violation of freedoms secured to such parents and persons under other provisions of the United States Constitution.

(4) Prayer, (d) of the amended supplemental complaint does not ask the court to declare the ordinance under which the tax credit referred to is granted or the state statute upon which the same is based to be repugnant to the Constitution of the United States, but is a prayer that the federal judiciary, by the exercise of its injunctive power, exercise an affirmative and purely legislative function and, in effect, is a prayer that the court amend the County ordinance and the state law upon which it is based so as to provide that the tax credits authorized therein be given only for contributions made to such private schools as do not exclude applicants upon the basis of race.

The judicial action prayed for is (1) in violation of the negative nature and terms of the Fourteenth Amendment, (2) is an unconstitutional invasion by the judicial branch of legislative discretion reposed in a legislative branch [fol. 100] of the state government, and is in short a prayer for a mandamus to such legislative branch, (3) is an extension of the Fourteenth Amendment into the area of private individual action in violation of the express limitations of the Fourteenth Amendment to state action, and (4) is an unconstitutional restriction of and violation of freedoms secured to individual tax payers by other provisions of the United States Constitution.

(5) Prayer (e) of the amended supplemental complaint is not based upon any allegation that such leasing, conveyance or transfer of school property constitutes a violation of any provision of the United States Constitution or of the order of April 22, 1960, or of any other provision of federal law.