UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 22-30320

RONALD CHISOM; MARIE BOOKMAN, ALSO KNOWN AS GOVERNOR; URBAN LEAGUE OF LOUISIANA,

Plaintiffs-Appellees

UNITED STATES OF AMERICA; BERNETTE J. JOHNSON,

Intervenor Plaintiffs-Appellees

v.

STATE OF LOUISIANA, EX REL, JEFF LANDRY, ATTORNEY GENERAL,

Defendant-Appellant

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

BRIEF OF LOUISIANA SCHOOL BOARDS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL

COUNSEL FOR AMICUS

Jon K. Guice, jguice@hamsil.com, LA Bar Roll No. 20841
John Richard Blanchard, jblanchard@hamsil.com, LA Bar Roll No. 31703
Timothy Joseph Riveria, triveria@hamsil.com, LA Bar Roll No. 39585
John Scott Thomas, sthomas@hamsil.com, LA Bar Roll No. 22635

HAMMONDS, SILLS, ADKINS, GUICE, NOAH & PERKINS LLP
2431 S. Acadian Thruway, Ste. 600
Baton Rouge, Louisiana 70808
Telephone: 225/923-3462

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in this *amicus* brief. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Kasandria White, Board Member

Yolanda Laws, Board Member

Attorneys for Amicus

Jon K. Guice

John Richard Blanchard

Timothy Joseph Riveria

John Scott Thomas

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I. INTEREST OF *AMICUS CURIAE*

The Louisiana School Boards Association ("LSBA") is a non-profit entity created in 1947 with the purpose of providing leadership, service, and support for the sixty-nine (69) elected school boards across the state. As the organization supporting all elected public school boards in Louisiana, the LSBA has a keen interest in ensuring that parish and city school boards have clarity in understanding active institutional reform consent orders. Further, to the best of undersigned counsel's knowledge, at least twelve (12) Louisiana school boards are still involved in long-standing school desegregation cases.[1] The Fifth Circuit's affirmance of the District Court's ruling in this case has the possibility of directly impacting the ability of those systems to obtain judgments dismissing them from those cases, especially if terminating a consent decree must require a school board to prove future compliance with the law. Creating this new prong of *Dowell* moves the goal posts on how to end a desegregation case, and it is unclear how future compliance could ever be proven, especially given the post-unitary posture described below.

One of the LSBA's guiding principles is local autonomy. This is because elected school boards, as representatives of the community, need the freedom and capacity to

[1] Undersigned counsel notes that it is unclear exactly how many desegregation cases could be considered "open" in Louisiana, or even in this Circuit. This is because some desegregation cases have been dormant for decades with no party or the district court taking any action. *See Boudreaux v. St. Mary Parish School Board*, 6:65-cv-11351-RRS-CBW (W.D. La) (dormant between 1983 – 2012, then again from 2012-2018); *Thomas v. St. Martin Parish School Board*, 6:65-cv-11314-EEF (W.D. La) (dormant between 1975 – 2009). More still, the records for some cases likely exist only on paper dockets, not being converted to CM/ECF or even assigned to a new judge until somehow becoming active again.

make the educational policy decisions that best meet the needs of their local communities. Louisiana school boards are run by elected officials who have term limits under Louisiana law. It would be impossible for one group of elected school board members to prove that their successors[2] will not make bad decisions at some unknown time in the future. Thus, even if "prospective compliance" was a post-unitary legal possibility, proving such prospective compliance would be like divining the future – it is unknowable.

Further, as explained in this brief, the United States Supreme Court has stated that local control of education is a vital national tradition and should be returned to the locally-elected officials at the earliest practicable date.[3] To impose an additional requirement of proving future compliance with the law would be inconsistent with the goal of returning local autonomy to school districts currently under consent orders. For these reasons, the LSBA has an important perspective and interest in the outcome of this litigation and the Fifth Circuit's interpretation of the United States Supreme Court's desegregation standards.

Therefore, the LSBA believes that this *amicus* brief will help the Court make the critical decision to reverse the district court's ruling.

[2] As of 2014, school board members can serve no more than twelve (12) years on a local school board, in other words, three (3) four (4) year terms. *See* La. R.S. 17.60.4 (undersigned counsel notes that voters overwhelmingly approved ballot initiatives setting terms limits across the state).
[3] *Freeman v. Pitts*, 503 U.S. 467, 490 (1992).

II. ARGUMENT

a. LEGAL STANDARDS FOR ACHIEVING UNITARY STATUS

The current legal standards to end desegregation cases are important to demonstrate the significant impact that requiring future compliance with the law would have on such cases. The ultimate goal in every desegregation case is to eliminate from each area of school operations the vestiges of past *de jure* segregation to the extent practicable and, thus, achieve full unitary status.[4] Because federal court supervision of a local school system is intended to be a temporary measure only, it is a court's duty to return control of a school district to the local school board as soon as unitary status has been achieved.[5] The United States Supreme Court has long acknowledged that "local autonomy of school districts is a vital national tradition."[6] Restoring local control "at the earliest practicable date is essential to restore [the local school board's] true accountability in our governmental system."[7] Therefore, a federal court's supervisory authority must not extend beyond the time that unitary status has been achieved.[8] Thereafter, once declared unitary and the desegregation injunction is terminated, the

[4] *Freeman* 503 U.S. at 489.
[5] *Id.*; *Thomas v. School Board St. Martin Parish*, 756 F.3d 380, 387 (5th Cir. 2014) (citing *Board of Educ. v. Dowell*, 498 U.S. 237, 248, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991); *see also*, *Dowell*, 498 U.S. at 248 (school desegregation decrees "are not intended to operate in perpetuity").
[6] *Freeman*, 503 U.S. at 490 (quoting *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 410, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977)).
[7] *Freeman,* 503 U.S. at 490.
[8] *See, e.g.*, *Flax v. Potts*, 915 F.2d 155, 159 (5th Cir. 1990) ("To continue supervision once the wrong is righted ... 'effectively changes the constitutional measure of the wrong itself: it transposes the dictates of the remedy for the dictates of the constitution;'" citing *United States v. Overton*, 834 F.2d 1171, 1176 (5th Cir.1987)).

school board is free to govern its district absent the obligations previously imposed upon it but with the continuing obligation, of course, to comply with all the applicable state and federal laws.

The Supreme Court has described six areas of operation - known as the "*Green* factors" - that must be free from vestiges of the prior *de jure* segregation before full unitary status can be achieved in the respective area: (1) student assignment; (2) faculty assignment; (3) staff assignment; (4) extracurricular activities; (5) facilities; and (6) transportation.[9] In addition to those core areas of operation, some courts have considered ancillary factors such as discipline.[10] The school board has the burden of proving entitlement to a declaration of unitary status and dismissal as to each factor. Each of the *Green* factors and ancillary areas may be considered individually, and a school district may achieve partial unitary status as to these areas of operation one at a time such that federal judicial supervision is relinquished incrementally.[11]

To demonstrate that it has achieved unitary status in an individual *Green* area of operation, a school board's burden is to show that (a) it has fully and satisfactory complied with the relevant part of its desegregation obligations; (b) the Court's retention of judicial control is unnecessary or impracticable to achieve compliance in other areas of operation; and (c) it has demonstrated "its good-faith commitment to the

[9] *Green v. School Bd. of New Kent County*, 391 U.S. 430, 435, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).
[10] *Freeman*, 503 U.S. at 473; *Dowell,* 498 U.S. at 250; *see also, e.g., Tasby v. Estes*, 643 F.2d 1103, 1107 (5th Cir. 1981).
[11] *Freeman*, 503 U.S. at 489-91.

whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance."[12] In short, a school board must prove as to each specific factor that it has acted in good faith for a reasonable period of time and that the vestiges of past discrimination have been eliminated to the extent practicable.[13]

This Court has long held that a period of three (3) years without circumstances adverse to desegregation is adequate to demonstrate the establishment of unitary status.[14] "Once a school district has operated a fully desegregated, unitary school system for that reasonable period, the school desegregation case should be dismissed."[15]

When examining each *Green* factor, a court's concern is whether the local school board has remedied, to the extent practicable, the vestiges of the prior dual system.[16] Significantly, the Supreme Court has held that "[a]s the *de jure* violation becomes more remote in time and ... demographic changes intervene, it becomes less likely that a current racial imbalance in a school district is a vestige of the prior *de jure* system."[17] Furthermore, "[t]he causal link between current conditions and the prior violation is

[12] *Missouri v. Jenkins*, 515 U.S. 70, 87-89, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995) (quoting *Freeman*, 503 U.S. at 491-92, 498; *Dowell*, 498 U.S. at 248-50).
[13] *Id.* at 249-50. *See also, Anderson v. School Bd. of Madison Cty.*, 517 F.3d 292, 297 (5th Cir. 2008); *Flax*, 915 F.2d at 158; *Monteilth v. St. Landry Pub. Sch. Bd.*, 848 F.2d 625, 629 (5th Cir. 1988).
[14] *Dowell*, 498 U.S. at 248; *see also Flax*, 915 F.2d at 158; *Monteilth*, 848 F.2d at 629; *Singleton v. Jackson Mun. Sep. Sch. Dist.*, 541 F. Supp. 904, 906-07 (S.D. Miss. 1981).
[15] *Singleton*, 541 F. Supp. at 907.
[16] *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1,18 (1971); *Dowell*, 498 U.S. at 250; *see also, Andrews v. City of Monroe*, 2012 WL 2357310, *3 (W.D. La. June 20, 2012) (citing *Hull v. Quitman County Bd. of Educ.*, 1 F.3d 1450, 1458 (5th Cir. 1993)).
[17] *Freeman*, 503 U.S. at 496.

even more attenuated if the school district has demonstrated its good faith."[18] Notably, there is currently no requirement that a school board prove *future* compliance with the law before a desegregation case can be terminated.

If a school board is operating under a consent decree, the above legal standards still apply with respect to achieving unitary status, except that a school board would also be held to compliance with the terms of a decree it voluntarily entered into. Consent decrees entered in desegregation cases set forth the specific remedial obligations of the local school board relative to the *Green* or ancillary factors. The State has explained the voluntary nature of consent decrees and their interpretation in its *en banc* Supplemental Brief.[19] Rather than repeating the States' briefing, the LBSA would highlight the importance of how "[t]he 'voluntary nature of a consent decree is its most fundamental characteristic'; 'it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree.'"[20] Additionally, "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it."[21]

[18] *Id.*
[19] *See*, *e.g.,* The States' En Banc Supplemental Brief at 10-12.
[20] *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 334 (5th Cir. 2018) (citing *Cleveland*, 478 U.S. at 521-22); *see also Smith*, 906 F.3d at 335 ("[I]n addition to the law which forms the basis of the claim, the parties' consent animates the legal force of a consent decree," quoting *Cleveland*, 478 U.S. at 525).
[21] *United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971); *see also*, *Lelsz v. Kavanagh*, 824 F.2d 372, 373 (5th Cir. 1987).

In desegregation cases particularly, "[t]he scope of [a] consent decree, and the scope of th[e] case, is limited to eliminating the vestiges of *de jure* segregation in [the] [p]arish."[22] These general rules of consent order/decree interpretation are also in line with the Supreme Court and this Court's precedent that make clear that a school board is "is entitled to a rather precise statement of its obligations under a desegregation decree."[23] Thus, a consent decree sets out the precise remedial obligations voluntarily entered into that a school board must undertake in order to achieve unitary status. When unitary status is achieved, those remedial obligations are terminated. Perhaps most importantly, as this Court has held, "when a court finds that discrimination has been eliminated 'root and branch' from school operations, it must abdicate its supervisory role."[24]

b. A Future Compliance Requirement Would Dramatically Change Decades of Desegregation Law

The above legal standards related to unitary status and ending desegregation cases have been in place for decades without requiring a showing of future or prospective compliance with the law. Now, however, the District Court in this case and the Panel Majority have interpreted *Board of Education of Oklahoma City Public Schools,*

[22] *Smith*, 906 F.3d at 336 (citing *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574, 104 S.Ct. 2576, 81 L.Ed.2d 483 (1984) (quoting *Armour*, 402 U.S. at 682).
[23] *Thomas.*, 756 F.3d at 386 (citing *Dowell*, 498 U.S. at 246).
[24] *U.S. v. Overton*, 834 F.2d 1171, 1177 (5th Cir. 1987) (emphasis supplied) (quoting *Morgan v. Nucci*, 831 F.2d 313, 318 (1st Cir. 1987).

Independent School District No. 89 v. Dowell,[25] to require just that. Such a dramatic upheaval of settled law demands reversal by the *en banc* Court.

The LSBA is concerned about the District Court and the Panel Majority's interpretation of *Dowell* because it adds an additional requirement to the long-established *Dowell* test. As correctly stated in the Panel Majority decision, the two-pronged *Dowell* test is "whether the [State] had complied in good faith with the . . . decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable."[26] In its decision in this matter, however, the Panel Majority stated that *Dowell* examines "both past compliance and '*future* prospects.'"[27] It also held that the first prong of *Dowell* requires a showing of "'relatively little or no likelihood' of repeat violation once the Consent Order is terminated."[28] In the context of desegregation cases, or any other Fifth Circuit case, this Circuit has not interpreted *Dowell* in a similar manner.

To analyze the first prong of *Dowell*, during the appropriate time period determined by the District Court, a court must determine whether a school district complied with its orders in good faith.[29] This Court has interpreted *Dowell* as requiring a retrospective examination of institutional actions. In the seminal case of *Anderson v.*

[25] 498 U.S. 237, 250 (1991).
[26] *Chisom v. Louisiana ex rel. Landry*, No. 22-30320, at 25 (5th Cir. Oct. 25, 2023).
[27] *Id.* at p. 24 (emphasis supplied).
[28] *Id.* at p. 24.
[29] The second prong of *Dowell* is not discussed herein extensively, as it was not discussed in the Panel Majority's decision as requiring a demonstration of future compliance.

School Board of Madison County, this Court stated that, "[a] school district seeking the termination of federal court supervision must first show that it has 'consistently complied with a court decree in good faith.'"[30] "To meet this obligation, '[f]or at least three years, the school board must report to the district court.'"[31]

To examine the initial prong of *Dowell*, the *Anderson* opinion solely examines the district court's review of the school district's past compliance with its orders.[32] There was no discussion of an additional requirement regarding prospective constitutional compliance. In upholding the sufficiency of the lower court's review, this Court has found that past compliance with orders "constitute[d] compliance for a reasonable amount of time."[33] *Anderson* contains no examination of "future prospects."

Further, this Court has not otherwise interpreted *Dowell* or *Anderson* to require any additional prospective compliance element in the desegregation context. There was no mention of a future compliance element in the Fifth Circuit's recent decision in *Borel on behalf of AL v. School Board Saint Martin Parish*.[34] In that opinion, this Court approved the lower court's review of the district's past compliance with its consent orders along with the second prong of *Dowell*—which examines whether vestiges of the dual systems

[30] 517 F.3d 292, 297 (2008) (5th Cir. 2008) (citing *Hull v. Quitman Cnty. Bd. of Educ.*, 1 F.3d 1450, 1454 (5th Cir. 1993) and *Freeman v. Pitts*, 503 U.S. 467, 498 (1992)).
[31] *Id.* (citing *Monteilh v. St. Landry Parish Sch. Bd.*, 848 F.2d 625, 629 (5th Cir. 1988)).
[32] *Id.* at 297-298.
[33] *Id.* at 298 (citing *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400, 1401 (5th Cir.1971)).
[34] 44 F.4th 307, 314 (5th Cir. 2022) (citing *Anderson*, 517 F.3d at 297; *United States v. Fletcher ex rel. Fletcher*, 882 F.3d 151, 157–60 (5th Cir. 2018)).

were eliminated to the extent practicable.[35] Similarly, in *Fletcher ex rel. Fletcher*, this Court reviewed intervenors' appeal of the lower court's grant of unitary status to a school district.[36] In affirming the lower court, the panel reviewed the district's past compliance "in good faith with desegregation orders for a reasonable amount of time."[37] Likewise, there was no discussed requirement to show "that there is little or no likelihood the original violation will not be repeated when the Consent Judgment is lifted" or "future compliance." Until the Panel's ruling in this matter on October 25, 2023, no Fifth Circuit decision based on either *Anderson* or *Dowell* required any prospective showing of compliance to dissolve a consent decree.

The LSBA hereby states its position that its member parish school boards should not be required to prove prospective legal compliance in order to exit longstanding judicial oversight of desegregation cases. It is impossible to promise that for an indefinite period into the future a school board will never make a bad decision ever again. For example, how could a school board promise in a desegregation case that it will not make decisions based on race after the case ends, when post-unitary status case law already prohibits school boards from doing just that. In fact, this Circuit has applied strict scrutiny when districts were accused of continuing actions required by desegregation consent orders.

[35] *Id.*
[36] 882 F.3d at 156.
[37] *Id.* at 157-159.

In one such post-desegregation case, *Lewis v. Ascension Parish School Board*, a parent alleged that a school board attempted to maintain racial balancing of students that it had attained while it was under a desegregation order.[38] This Court applied strict scrutiny in that case and remanded the litigation to the lower court—stating "post-unitary 'racial balance' among the schools is at least in tension with the Supreme Court decision in *Parents Involved* . . . "[39] Similarly, in *Cavalier ex rel. Cavalier v. Caddo Parish School Board*, this Circuit determined that it was unconstitutional for a parish to continue to consider race in determining admissions to a magnet school after judicial supervision was withdrawn.[40] As these opinions demonstrate, a showing of future compliance, *i.e.* that a school district will forevermore be desegregated in line with the terms of a consent order, is prohibited by the constitution and may very well constitute an impossibility. At the least, this showing has never before been required in our Circuit.

Indeed, when a school district achieves full unitary status and a desegregation case is fully and finally dismissed, a school district is "released ... from federal judicial superintendence, leaving it on the same footing with other state actors."[41] Notably, if allegations about compliance with federal law arise after a desegregation case has closed, this Court has explained that:

> "... The [defendant School] Board, and the people ... who, in the end, govern their school system, must be aware that the door through which

[38] 662 F.3d 343, 349 (5th Cir. 2011).
[39] *Id.* (citing *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)).
[40] 403 F.3d 246 (5th Cir. 2005), *as amended on denial of reh'g and reh'g en banc* (Mar. 29, 2005).
[41] *United States v. Overton*, 834 F.2d 1171, 1177 (5th Cir. 1987).

> they leave the courthouse is not locked behind them. They will undoubtedly find that this is so if they fail to maintain the unitary system we conclude exists today."[42]

In other words, a desegregation case is not reopened based on broken promise that a future violation would never occur. Rather, after a school board achieves unitary status and a desegregation case is terminated in its entirety, a plaintiff would have to file a new lawsuit to prove a new violation of the law. In this case, the District Court and Panel Majority's decisions turn that principal on its head and leave open troubling questions. How long would a school board be held to a promise to forever comply with the law? How could breaking that promise be enforced? If desegregation case has ended and judicial supervision terminated, but a decade later an employee files a Title VII case alleging racial discrimination, can the plaintiffs in a desegregation case seek to reopen their case? These questions should not need to be answered for one simple reason, future compliance is not and should not be a requirement to end a desegregation case or any case with a consent decree.

c. ENDING A DESEGREGATION CASE ALREADY BURDENSOME ON SCHOOL BOARDS

As noted above, proving future compliance is impossible and would lead to complicated issues about whether a case is truly over when it is dismissed by a district court. It is unclear how a future compliance requirement, which does not exist under current legal standards, could ever be proven by a school board in a desegregation case.

[42] *Fletcher*, 882 F.3d at 160.

Bringing a desegregation case to conclusion is, at times, difficult enough without adding a new analysis on top of existing standards. There are many examples of efforts to get to unitary status; however, the Tangipahoa desegregation case, which this Court has considered several times and most recently in December 2023, demonstrates this issue.

In 2019, this Court observed that Tangipahoa Parish School Board has "made significant strides toward achieving a 'unitary school system' free of the vestiges of de jure segregation that prompted this desegregation case more than a half century ago."[43] Five years later, Tangipahoa remains under court supervision.[44] One of the issues this Court addressed in that appeal was whether that district court erred in denying unitary status in the area of facilities and instead granting a probationary period.

Though that school board "had gotten most of the way there" in showing good faith compliance "some doubt remained" because of comments that one school board member had made.[45] As that district court held, "Plaintiffs ha[d] shown instances where a Board member has evidenced bad faith intentions at compliance with lawful orders and rules."[46] In other words, no official action was taken by that school board, there was no finding of "bad faith", and there was not "a new and independent finding of discrimination after [that district court] conclud[ed] that the [Tangipahoa] Board had

[43] *Moore v. Tangipahoa Par. Sch. Bd.*, 921 F.3d 545, 546 (5th Cir. 2019).
[44] *See Moore v. Tangipahoa Par. Sch. Bd.*, 2:65-cv-15556-ILRL-JVM (E.D. La.)
[45] *Id.* at 549.
[46] *Moore v. Tangipahoa Par. Sch. Bd.*, No. CV 65-15556, 2017 WL 3116483, at *5 (E.D. La. July 21, 2017), *aff'd*, 921 F.3d 545 (5th Cir. 2019).

fully complied with the desegregation decrees."[47] Rather, a single board member's comments led to that school board being unable to be granted unitary status in the area of facilities because its "good faith compliance" was called into question.[48]

If a school board's good faith compliance can be called into question by a single board member's comments, this only begs the question, again, how could a school board ever prove future compliance with the law in a desegregation case? Rather than official actions of a school board, taken by majority vote of all members, every statement ever made by individual board members would be subject to scrutiny. If any one school board member said anything negative, it could lead to a denial of unitary status. It would be cancel culture on steroids. Being required to prove future compliance should be rejected by this Court.

Additional consideration should be given to the fact that, following Act 386 of 2012, and the subsequent election in all 69 public school districts in Louisiana, elected school board members are now subject to, effectively, a limit of serving three terms. The regularly scheduled elections for school boards[49] in 2026 will see the first election at which a significant number of school board members will be termed-out and ineligible for reelection. This process will repeat itself every 12 years. Imposing a future

[47] *Moore*, 921 F.3d at 549.
[48] That district court specifically held that "the good faith intentions and practices of the [Tangipahoa] Board have unfortunately been called into question by one [board member]'s inappropriate self-aggrandizing remarks." *Moore*, No. CV 65-15556, 2017 WL 3116483, at *6.
[49] School Boards in Plaquemines Parish, Orleans Parish and Lafayette Parish are on a different election cycle.

compliance component on school boards will effectively be mandating that one group of elected school board members prove that their successors in office will not make bad decisions, undoing the successful work that the prior elected body of a school board accomplished in meeting the *Green* factors, cleaning up the mistakes of their own processors in office.

d. THE LOUISIANA SCHOOL BOARDS ASSOCIATION SUPPORTS THE STATE

For the reasons and concerns explained above, the LSBA supports the State's request to reverse the district court. Additionally, the LSBA supports the notion that judicial oversight over public school boards should have a reasonable end and decrees in school desegregation cases "are not intended to operate in perpetuity[.]"[50] As explained in *Freeman v. Pitts*, "local autonomy of school districts is a vital national tradition," and Courts have a duty to return full control "at the earliest practicable date."[51]

The LSBA also recognizes the importance of ensuring that school districts in Louisiana comply with court orders that are designed to remedy the harms caused by the *de jure* racially segregated school systems of the past. It is with the importance of compliance with desegregation orders in mind that the LSBA submits the concerns explained in this brief. School districts must know that consent orders provide them

[50] *Thomas ex rel. D.M.T. v. Sch. Bd. St. Martin Par.*, 756 F.3d 380, 387 (5th Cir. 2014) (citing *Dowell*, 498 U.S. at 248)
[51] 503 U.S. 467, 490 (1992).

with the required "precise statement of its obligations under a desegregation decree."[52] If this Circuit allows courts to read unwritten and undefined future compliance requirements into the well-established test for unitary status, then desegregation orders will be far from precise roadmaps to unitary status. Rather, they will be uncertain guideposts that do not precisely define needed actions. This lack of clarity may never lead to unitary status and the goal of returning to the "vital national tradition" of local control of school districts.[53]

III. CONCLUSION

The new interpretation of *Dowell* by the District Court and Majority Panel would radically impact school boards in Louisiana, and potentially beyond. This interpretation would also radically change a long-established test for satisfying desegregation consent decrees and create major obstacles on the road to unitary status and full local control of education. Proving future compliance with the law for an indefinite period of time into the future is impossible, especially for school boards with members elected every four (4) years who are subject to a limit of serving three terms. For the forgoing reasons, *amicus* joins Appellants in urging the Court to reverse the District Court's ruling that created a new future compliance prong that has never been required by *Dowell* or this Circuit.

[52] *Thomas ex rel. D.M.T. v. Sch. Bd. St. Martin Par.*, 756 F.3d 380, 386 (5th Cir. 2014) (citing *Dowell*, 498 at 245 (internal citations omitted) and *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976)).
[53] *See Freeman*, 503 U.S. at 490.

RESPECTFULLY SUBMITTED, this the 6th day of March 2024.

LOUISIANA SCHOOL BOARDS ASSOCIATION

HAMMONDS, SILLS, ADKINS, GUICE, NOAH & PERKINS LLP
2431 S. Acadian Thruway, Suite
600 Baton Rouge, LA 70808
Telephone (225) 923-3462
Facsimile (225) 923-0315

/s/ John Richard Blanchard

JON K. GUICE
LA Bar Roll No. 20841
jguice@hamsil.com,
JOHN RICHARD BLANCHARD
LA Bar Roll No. 31703
jblanchard@hamsil.com
TIMOTHY JOSEPH RIVERIA
LA Bar Roll No. 39585
triveria@hamsil.com
JOHN SCOTT THOMAS
LA Bar Roll No. 22635
sthomas@hamsil.com

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ John Richard Blanchard

John Richard Blanchard
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,520 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond font size 14, except for footnotes, which appear in Garamond font size 12.

/s/ John Richard Blanchard

John Richard Blanchard
Counsel for Amicus Curiae

RULE 29 COMPLIANCE STATEMENT

Undersigned counsel hereby certifies that counsel for the Louisiana School Boards Association, and no other party, authored this brief in whole or in part. No money from any party or party's counsel, nor any other person, contributed any money intended to fund preparing or submitting this brief.

/s/ John Richard Blanchard

John Richard Blanchard
Counsel for Amicus Curiae