UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

CLAUDE BOUDREAUX, *et al.*, Plaintiffs, v. SCHOOL BOARD OF ST. MARY PARISH, *et al.*, Defendants.	Civil Action No. 6:65-cv-11351 JUDGE ROBERT R. SUMMERHAYS MAGISTRATE JUDGE CAROL B. WHITEHURST

THE STATE'S *AMICUS* BRIEF IN SUPPORT OF THE BOARD"S MOTION TO DISMISS THE COMPLAINT AND VACATE THE INJUNCTIONS

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION AND INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

I. INSTITUTIONAL-REFORM INJUNCTIONS THREATEN OUR FEDERALISM AND STATE SOVEREIGNTY. 5

II. TO PROTECT OUR FEDERALISM, INSTITUTIONAL-REFORM INJUNCTIONS MUST BE HARD TO GRANT AND EASY TO VACATE UNDER RULE 60(B) (5). 11

III. THE FIFTH CIRCUIT ROUTINELY SCALES BACK INSTITUTIONAL REFORM INJUNCTIONS. 16

IV. THE COURT SHOULD GRANT THE BOARD'S MOTION. 23

A. The State Has Eradicated the Effects of State-Sponsored School Segregation 23

B. The Board Has Eradicated the Effects of Board-Sponsored Segregation. 29

CONCLUSION 34

TABLE OF AUTHORITIES

Cases

Anderson v. Sch. Bd. of Madison Cnty.,
517 F.3d 292 (5th Cir. 2008) 17, 29, 33

Bd. of Educ. of Okla. City Pub. Sch. v. Dowell,
498 U.S. 237 (1991) ..... passim

Bell v. Wolfish,
441 U.S. 520 (1979) 10

Block v. Rutherford,
468 U.S. 576 (1984) 10

Brown v. Board of Education,
347 U.S. 483 (1954) 15

Brown v. Board of Education,
349 U.S. 294 (1955) 9

Charles v. LeBlanc,
No. 24-30484, 2024 WL 3842581 (5th Cir. Aug. 16, 2024)..... 21

Chisom v. Edwards,
No. 2:86-cv-04075 (E.D. La. Dec. 2, 2021) 19, 20

Chisom v. Louisiana ex rel. Landry,
___F.4th ___, No. 22-30320, 2024 WL 3982181 (5th Cir. Aug. 29, 2024)..... 13, 16

Chisom v. Louisiana ex rel. Landry,
85 F.4th 288 (5th Cir. 2023)..... 19

Chisom v. Louisiana ex rel. Landry,
No. 22-30320 (5th Cir.)..... passim

Fackelman v. Bell,
564 F.2d 734 (5th Cir. 1977) 13

Flax v. Potts,
915 F.2d 155 (5th Cir. 1990) 17

Freeman v. Pitts,
503 U.S. 467 (1992) ..... passim

Frew v. Janek,
820 F.3d 715 (5th Cir. 2016) 16

Frew v. Young,
No. 21-40028, 2022 WL 135126 (5th Cir. Jan. 13, 2022) ..... passim

Garcetti v. Ceballos,
547 U.S. 410 (2006) 11

Goldstein v. MCI WorldCom,
340 F.3d 238 (5th Cir. 2003) 14

Gonzalez v. Crosby,
545 U.S. 524 (2005) 13

Goodman v. Bowdoin Coll.,
380 F.3d 33 (1st Cir. 2004) 14

Groome Res., Ltd. v. Par. of Jefferson,
234 F.3d 192 (5th Cir. 2000) 17

Hall v. St. Helena Par. Sch. Bd.,
417 F.2d 801 (5th Cir. 1969) 30

Hazel–Atlas Glass Co. v. Hartford–Empire Co.,
322 U.S. 238 (1944) 8

Heath v. De Courcy,
888 F.2d 1105 (6th Cir. 1989) 15

Horne v. Flores,
557 U.S. 433 (2009) ..... passim

In re Gee,
941 F.3d 153 (5th Cir. 2019) ..... passim

Jackson v. Los Lunas Cmty. Program,
880 F.3d 1176 (10th Cir. 2018) 14

Johnson v. Arden,
614 F.3d 785 (8th Cir. 2010) 14

LAJIM, LLC v. Gen. Elec. Co.,
917 F.3d 933 (7th Cir. 2019) 14

Liljeberg v. Health Servs. Acquisition Corp.,
486 U.S. 847 (1988) 14

M. D. by next friend Stukenberg v. Abbott,
No. 24-40248, 2024 WL 2309123, (5th Cir. May 20, 2024) 18

M. D. by Stukenberg v. Abbott,
No. 24-40248, 2024 WL 1651273, (5th Cir. Apr. 17, 2024) 17

M.D. ex rel Stukenberg v. Abbott,
907 F.3d 237 (5th Cir. 2018) 9, 11, 17

M.D. ex rel. Stukenberg v. Abbott,
No. 24-40248 (5th Cir. Oct. 11, 2024) 17, 18

M.D. ex rel. Stukenberg v. Abbott,
929 F.3d 272 (5th Cir. 2019) 17

M.D. ex rel. Stukenberg v. Abbott,
977 F.3d 479 (5th Cir. 2020) 17

Mei Xing Yu v. Hasaki Rest., Inc.,
944 F.3d 395 (2d Cir. 2019) 14

Milliken v. Bradley,
418 U.S. 717 (1974) 9

Milliken v. Bradley,
433 U.S. 267 (1977) 10

Missouri v. Jenkins,
515 U.S. 70 (1995) ..... passim

Parker v. Hooper,
No. 23-30825 (5th Cir. Jan. 11, 2024) 20

Parker v. Hooper,
No. 23-30825 (5th Cir. Mar. 4, 2024) 20, 21

Parker v. Hooper,
No. 23-30825 (5th Cir. Mar. 6, 2024) 20

Plaut v. Spendthrift Farm, Inc.,
514 U.S. 211 (1995) 8

Regents of Univ. of Cal. v. Bakke,
438 U.S. 265 (1978) 22

Reno v. Bossier Par. Sch. Bd.,
520 U.S. 471 (1997) 34

Rhodes v. Chapman,
452 U.S. 337 (1981) 10

Rizzo v. Goode,
423 U.S. 362 (1976) 2

Ross v. Houston Indep. Sch. Dist.,
699 F.2d 218 (5th Cir. 1983) 29

Rufo v. Inmates of Suffolk Cnty. Jail,
502 U.S. 367 (1992) 13, 14, 15, 22

S. Pac. R. Co. v. United States,
168 U.S. 1 (1897) 14

Shelby Cnty. v. Holder,
570 U.S. 529 (2013) 12

Singleton v. Jackson Mun. Sch. Dist.,
419 F.2d 1211 (5th Cir. 1970) 31

Smith v. Sch. Bd. of Concordia Parish,
906 F.3d 327 (5th Cir. 2018) 7

Spangler v. Pasadena City Bd. of Educ.,
611 F.2d 1239 (9th Cir. 1979) 33

Swann v. Charlotte-Mecklenburg Bd. of Educ.,
402 U.S. 1 (1971) 23

Tellis v. LeBlanc,
No. 18-cv-00541 (W.D. La. Aug. 14, 2024) 21

United States v. Catahoula Par. Sch. Bd.,
No. CV 69-14430, 2020 WL 5261198 (W.D. La. Sept. 3, 2020) 27

United States v. Hinds Cnty. Bd. of Sup'rs,
No. 22-60203 (5th Cir. Dec. 28, 2022) 22

United States v. Hinds Cnty. Bd. of Sup'rs,
No. 22-60203 (5th Cir. Dec. 8, 2023) 22

United States v. Lincoln Par. Sch. Bd.,
No. 66-cv-12071 (W.D. La. Mar. 21, 2022) 27

United States v. Lincoln Par. Sch. Bd.,
No. 66-cv-12071 (W.D. La. Oct. 15, 2021) 27

United States v. Mississippi,
82 F.4th 387 (5th Cir. 2023) 18

United States v. Richland Par. Sch. Bd.,
No. 66-cv-12169 (W.D. La. Feb. 12, 2018) 28

United States v. Richland Par. Sch. Bd.,
No. 66-cv-12169 (W.D. La. Feb. 9, 2018) 28

United States v. Richland Par. Sch. Bd.,
No. 66-cv-12169 (W.D. La. Oct. 16, 2017) 28

Wisconsin v. Yoder,
406 U.S. 205 (1972) 2

Younger v. Harris,
401 U.S. 37 (1971) 9

Statutes

18 U.S.C. § 3626(a)(1)(A) 12

18 U.S.C. § 3626(b)(3) 23

La. Rev. Stat. § 17.105.1 24

La. Rev. Stat. § 17:111(A)(1) 24

La. Rev. Stat. § 17:52(A) 3

La. Rev. Stat. § 17:81(A)(1) 3

La. Rev. Stat. § 4:461 24

La. Rev. Stat. § 46:1104 24

Other Authorities

Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 Vand. L. Rev. 167, 176, 182 (2017) 7

Paul M. Smith, Dun & Bradstreet v. Greenmoss Builders *As an Example of Justice Powell's Approach to Constitutional Jurisprudence*, 88 Wash. L. Rev. 143, 144 (2013) 22

Rules

Federal Rule of Civil Procedure 60(b) ..... passim

Constitutional Provisions

La. Const. art. VIII § 9(A) 3

La. Const, art VIII, § 13(D)(1) 24

La. Const. art. I, § 3 23

Preamble, La. Const. art. VIII 24

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

The School Board of St. Mary Parish is fighting to bring to pass the Supreme Court's promise that it will not be forever under federal supervision. *See* ECF Nos. 226 (Motion); 227 (Memo). Desegregation decrees are not to "operate in perpetuity. *Bd. of Educ. of Okla. City Pub. Sch. v. Dowell*, 498 U.S. 237, 248 (1991). District courts "must strive to restore state and local authorities to the control of [their school system[s]." *Missouri v. Jenkins*, 515 U.S. 70, 99 (1995). And they must do so "promptly." *Horne v. Flores*, 557 U.S. 433, 450 (2009) (quoting *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004)). In desegregation cases, that means at "the earliest practicable date." *Freeman v. Pitts*, 503 U.S. 467, 490 (1992).

Ending federal supervision of the Board involves dismissing the Complaint and dissolving the injunctions, which the Board has moved to do. *See* ECF Nos. 226–27. The State wholeheartedly supports all of the Board's arguments in favor of dismissing the Complaint and dissolving the injunction and agrees with the Board that the earliest practicable date for dismissing the Complaint and dissolving the injunctions has long since come and gone. *See id.*

Indeed, the State itself previously made some of these same arguments in this very case. *See, e.g.*, ECF Nos. 119, 119-1, 151. If ten years of active litigation that

[1] In July 2023 the Court "grant[ed] the State of Louisiana leave to file *amicus* briefs in response to pending motions." ECF No. 143 at 8. That Memorandum Ruling, however, did not set a page limit for the State's amicus briefs. The Federal Rules of Civil Procedure do not provide a default rule for amicus briefs filed in district court. Given the 60-year lifespan of this case, the Court's allowance of 180 pages for the parties' briefs (*see* ECF No. 225 at 1), and the School Board's more-than-100-page motion, the State believes that its 34-page brief supporting the Board's motion is an appropriate length.

resulted in a remedy to the Boudreaux' and Bourgeois' satisfaction—so much so that they were willing to stay the case[2] and not need additional court intervention for some fifty years—does not meet the "earliest practicable date" standard, then when? Sixty years of federal supervision surely is enough to ensure the Board is complying with the law. If not, it's hard imagine any set of facts that could satisfy *Dowell*, *Jenkins*, *Horne*, *Frew*, and *Freeman*.

The State's interest here, however, goes way beyond merely supporting the Board. The State has its own interest in ending federal supervision of the St. Mary Parish School Board. Federalism "play[s] an important part in governing the relationship between federal courts and state governments." *Rizzo v. Goode*, 423 U.S. 362, 380 (1976). And federalism "likewise" applies to cases like this one "where injunctive relief is sought" against a "local government[]" agency like the St. Mary Parish School Board. *Id.*

And for the last sixty years, this case has turned over the Board's policymaking power to a federal judge, which in turn "eviscerates" the State's system for setting educational policy in its public schools. *In re Gee*, 941 F.3d 153, 167 (5th Cir. 2019) (quoting *Jenkins*, 515 U.S. at 131 (Thomas, J., concurring)).

Providing public education is one of the State's "core" or "apex" sovereign responsibilities. *See Horne*, 557 U.S. at 448 (recognizing "public education" as an "area[] of core state responsibility"); *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) ("Providing public schools ranks at the very apex of the function of a State."). The

[2] *See* ECF No. 227 n.11 (collecting cases holding that putting a case on the inactive docket is the same as staying or administratively closing the case).

State's system for providing education vests parish school boards with principle responsibility for educating the State's children.

The *State* created both St. Mary Parish and the St. Mary Parish School Board. *See, e.g.*, La. Const. art. VIII § 9(A) ("The legislature shall create parish school boards and provide for the election of their members."); *id.* § 44 (defining "political subdivision" as "including a school board"). The *State* gave the St. Mary Parish School Board "policymaking" authority to set policies that are "in the best interests of all students enrolled in" the St. Mary Parish public schools. La. Rev. Stat. § 17:81(A)(1) ("Each local public school board shall serve in a policymaking capacity that is in the best interests of all students enrolled in schools under the board's jurisdiction."). And the *State* made the St. Mary Parish School Board accountable to voters for its policymaking decisions. *See* La. Rev. Stat. § 17:52(A) ("Members of parish school boards shall be elected at the congressional elections.").

This case eviscerated all that—and for a long time. For sixty years and counting, the School Board has not been able to exercise its state-given policymaking power without permission from this Court. By having to seek federal preclearance of its policies, the Board is no longer accountable to the State or voters. The democratic power to change board policies through the ballot box that the State guaranteed to voters has not existed in St. Mary Parish for sixty years.

To be clear, the State has zero tolerance for racial discrimination of any kind in its schools or elsewhere. The intentional separation of the races in public education should have never happened. And the State celebrates the Boudreaux and Bourgeois

for their courageous efforts to put an end to that practice in St. Mary Parish. If there is a new problem, the School Board should put an end to it immediately (with full backing from the State).

The purposeful separation of races into White schools and Black schools, dating from the 1960s, however, is no longer sufficient legal justification for keeping educational policymaking decisions out of the State's and School Board's hands. "Federalism is a 'clear restraint[] on the use of equity power.'" *In re Gee*, 941 F.3d at 167 (quoting *Jenkins*, 515 U.S. at 131 (Thomas, J., concurring)). And the "date" has come to restore the State's system for making educational policy decisions in the State's public schools in St. Mary Parish. *Freeman*, 503 U.S. at 490.

SUMMARY OF THE ARGUMENT

Institutional-reform cases (like this one) are becoming an increasing problem in the Fifth Circuit. The State has endured—and continues to battle—a range of injunctions administered by federal courts that refuse to relinquish their power over sovereign State functions. This phenomenon is an affront to our federalism and the States themselves. *See, e.g.*, *Horne*, 557 U.S. at 448 (explaining institutional-reform cases like this "raise sensitive federalism concerns" because they "involve[] areas of core state responsibility"). For that reason, the State submits this brief to express their views on institutional-reform litigation.

In particular, the State (I) explains that, unlike ordinary injunctions, institutional-reform injunctions uniquely threaten federalism and State sovereignty by installing federal judges as school superintendents (like here), prison wardens, and chiefs of police. The State then (II) emphasizes that, under Supreme Court and

Fifth Circuit precedents, such injunctions must be hard to grant and easy to vacate under Rule 60(b)(5). The State (III) notes that the Fifth Circuit takes a hard look at appeals in institutional reform cases to protect basic federalism and State sovereignty principles from prolonged judicial supervision of state and local governments. Finally, the State (IV) highlights the diversity that exists in Louisiana's schools today.

ARGUMENT

I. INSTITUTIONAL-REFORM INJUNCTIONS THREATEN OUR FEDERALISM AND STATE SOVEREIGNTY.

Not all injunctions are created equal. There are injunctions and then there are institutional-reform injunctions. The former are relatively commonplace and straightforward—for example, "Don't enforce X policy." Easy enough. But the latter are far more pernicious because they hand over the sovereign keys of State institutions to the federal judiciary, which may then dictate day-to-day operations on pain of contempt costs (and sometimes monitor fees). And once a court has exercised that power, it is often loath to give it up. Just look at the nigh immortal agreement in *Chisom v. Louisiana ex rel. Landry*, No. 22-30320 (5th Cir.). Because of that danger, it is thus important to begin any institutional-reform analysis with a clear understanding of what sets such institutional reform injunctions apart from others.

A. Start with ordinary injunctions. In the average case, injunctive relief against a defendant generally unfolds in three steps: The district court (a) finds that the defendant is doing something unlawful, (b) commands the defendant to stop doing the unlawful thing, and then (c) dismisses the case. This is true even in cases against state and local agencies. The injunction ordinarily is a one-and-done endeavor: The

district court permanently forbids the agency from enforcing a state or local law or regulation, and then dismisses the case. The whole purpose of the case is to grant a permanent injunction that is, well, permanent, meaning that the injunction forever stays on the books even after the case is dismissed.

But note what does not happen. The court does not keep the case open to monitor the agency's compliance with the injunction. The court also does not condition dismissal of the litigation on the agency's ability to demonstrate a record of compliance with the injunction. Instead, the dismissal order comes and goes, the case is over, and the injunction stays.

Now, to be sure, some defendants are intransigent and may backslide by reviving enforcement of a forbidden law or policy. In that scenario, the plaintiffs can return to the district court to enforce their injunction through contempt proceedings. But the key point for present purposes is that the defendant state or local agency, for its part, hardly ever requires relief from the injunction under Federal Rule of Civil Procedure 60(b). That is because ordinary injunctions generally do not require defendant agencies to take affirmative action into the indefinite future.

B. Institutional-reform injunctions, by contrast, are entirely different animals. *See Horne*, 557 U.S. at 448 ("[T]he dynamics of institutional reform litigation differ from those of other cases."). These injunctions arise in the context of so-called "structural reform" or "public interest" cases—and these cases differ dramatically from traditional litigation. In particular, rather than seek an injunction that compels a defendant to take or stop a certain action, they seek "court-ordered injunctions

aimed at reforming the day-to-day operation of government institutions that are accused of committing systemic violations of law." Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 Vand. L. Rev. 167, 176, 182 (2017) (describing "institutional reform litigation [as] a radical departure from the traditional model of litigation" (collecting early scholarly criticism)).

The upshot is judicial management of state and local institutions. A district court's Article III commission suddenly empowers the court to become the superintendent of a State school district (like here), the warden of a State prison, the chief of police, or even the secretary of a State child-welfare agency. There is no detail too minute for such judicial oversight. Nor is there any timeline that is too long. *See, e.g.*, *Smith v. Sch. Bd. of Concordia Parish*, 906 F.3d 327, 331 (5th Cir. 2018) ("Since 1970, Concordia Parish has operated under a desegregation order entered by the Western District of Louisiana."). At least as the district courts in these cases often see the world.

In practice, moreover, a release from such institutional-reform injunctions is virtually impossible. The path to freedom is, in theory, an established and lengthy record of near-perfect (if not perfect) compliance. That is what the School Board has tried here—decades of operating under the *Jefferson* Decree and its modifications without a single complaint from the Boudreaux or Bourgeois, any of the students or parents they purported to represent, or even the U.S. Department of Justice as *amicus*. And it is what the State and its political subdivisions have tried in similar cases. *See infra* Section III. But in the State's experience, district courts have

stonewalled those efforts by refusing to restore sovereign prerogatives to the States, thus consigning the States to perpetual judicial oversight absent the Fifth Circuit's or the Supreme Court's intervention.

C. In this way, institutional-reform injunctions strike at the very heart of our federalism. As the Fifth Circuit has emphasized, "structural injunction[s] and continuing federal supervision of [States]" is an "expansive use of equitable remedies [that] has long been recognized as a threat to federalism." *In re Gee*, 941 F.3d at 167. From the beginning, "[t]he Founders worried 'that the equity power would' so empower federal courts that it 'would result . . . in the entire subversion of the legislative, executive and judicial powers of the individual states.'" *Id.* (omission in original) (quoting *Jenkins*, 515 U.S. at 128–29 (Thomas, J., concurring)).

In response to this concern, "'Hamilton sought to narrow the expansive Anti-Federalist reading of inherent judicial equity power' and 'described Article III "equity" as a jurisdiction over certain types of cases rather than as a broad remedial power.'" *Id.* (quoting *Jenkins*, 515 U.S. at 130 (Thomas, J., concurring)). Indeed, courts' "inherent and discretionary power . . . to set aside a judgment whose enforcement would work inequity . . . [was] 'firmly established in English practice long before the foundation of our Republic.'" *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 233–34 (1995) (quoting *Hazel–Atlas Glass Co. v. Hartford–Empire Co.*, 322 U.S. 238, 244 (1944)).

But the Founders' worry that equity would swallow federalism regrettably has legs today. No doubt, federal courts have the "responsibility[,] . . . when appropriate,

[to] issu[e] permanent injunctions mandating institutional reform." *M.D. ex rel Stukenberg v. Abbott* (*Stukenberg I*), 907 F.3d 237, 271 (5th Cir. 2018). But the Supreme Court and the Fifth Circuit have long instructed courts to be wary of equity's potential for sliding the balance of State and federal power—"Our Federalism," *Younger v. Harris*, 401 U.S. 37, 44 (1971)—too far to the federal side by handing over core areas of state sovereignty to a federal judge.

Many have traced the exacerbation of this danger to the virtually limitless authority espoused in *Brown v. Board of Education* (*Brown II*), 349 U.S. 294, 757 (1955) (authorizing "District Courts to take such proceedings and enter such orders and decrees . . . as are necessary and proper" and to "retain jurisdiction of these cases"). And since then, the Supreme Court repeatedly has attempted to rein in that authority to keep equity and federalism in balance.

As to the scope of institutional-reform injunctions, the Supreme Court has reminded courts not to confuse best practices with constitutional minima:

- In 1974, the Court reminded lower courts that the scope of institutional-reform injunctions extends only to conditions that are caused by the violation. *See Milliken v. Bradley* (*Milliken I*), 418 U.S. 717, 745 (1974) (discussing the permissible scope of institutional reform injunctions).
- In 1977, the Court explained that courts "must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution." *Milliken v. Bradley* (*Milliken II*), 433 U.S. 267, 280–81 (1977).

- In 1979, the Court expressed concern that federal courts were "becom[ing] increasingly enmeshed in the minutiae of prison operations." *Bell v. Wolfish*, 441 U.S. 520, 562 (1979).
- In 1981, the Court urged lower courts to limit their injunctions to constitutional requirements "rather than a court's idea of how best to operate a detention facility." *Rhodes v. Chapman*, 452 U.S. 337, 351 (1981) (quoting *Bell*, 441 U.S. at 539)).
- In 1984, the Court emphasized "the very limited role that courts should play in the administration of detention facilities." *Block v. Rutherford*, 468 U.S. 576, 584 (1984).

Adding to these scope limitations, the Supreme Court also has tried to rein in the duration of institutional-reform injunctions:

- In 1992, concern for "the allocation of powers within our federal system" led the Court to decree that institutional reform injunctions "are not intended to operate in perpetuity." *Dowell*, 498 U.S. at 248.
- In 2004, recognizing that institutional-reform injunctions "improperly deprive future officials of their designated legislative and executive powers," the Court required that, "when the objects of the decree have been attained, responsibility for discharging the State's obligations [must be] returned promptly to the State and its officials." *Frew*, 540 U.S. at 441–42.

- In 2006, the Court "shaped substantive federal law around the assumption that it must avoid 'permanent judicial intervention in the conduct of governmental operations to a degree inconsistent with sound principles of federalism and the separation of powers.'" *In re Gee*, 941 F.3d at 167–68 (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 423 (2006)).

Together, these cases reflect a consistent effort to place federalism-protecting limits on the scope and duration of institutional-reform injunctions. Properly respected, these limits offer courts sufficient room to remedy systemic violations of federal law, while ensuring that State sovereignty is not unduly abridged.

II. TO PROTECT OUR FEDERALISM, INSTITUTIONAL-REFORM INJUNCTIONS MUST BE HARD TO GRANT AND EASY TO VACATE UNDER RULE 60(B) (5).

A. Because of the sovereignty-destroying danger presented by institutional-reform injunctions, the Fifth Circuit rightly has established a presumption against granting them in the first place. As the Fifth Circuit has put it, "institutional reform injunctions are disfavored, as they 'often raise sensitive federalism concerns' and they 'commonly involve[] areas of core state responsibility.'" *Stukenberg I*, 907 F.3d at 271 (quoting *Horne*, 557 U.S. at 448); *accord In re Gee*, 941 F.3d at 167 ("Courts are properly reluctant to grant such relief because of the federalism burdens it imposes."). After all, institutional-reform injunctions in many instances allow the federal government to do what it otherwise could not: "review and veto state [and local] enactments before they go into effect." *In re Gee*, 941 F.3d at 168 (quoting *Shelby Cnty. v. Holder*, 570 U.S. 529, 542 (2013)).

Congress, too, shares this concern. In the Prison Litigation Reform Act (PLRA), enacted in 1996, Congress placed firm limits on courts' abilities to grant institutional reform-injunctions as well as on the scope of these injunctions. For example, the PLRA prohibits a court from granting prospective relief "unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). But even then, any prospective relief "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." *Id.* And "[t]he court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.*

In other words, the Supreme Court, the Fifth Circuit and Congress are acutely aware of the dangers presented by institutional-reform cases—and the law rightly tilts against the issuance (or at least toward the cabining) of institutional-reform injunctions in the first place.

B. As decades-old desegregation cases (like this one) illustrate, however, many such injunctions are already in place and have been in place for quite some time. Even then, state and local governments are not—or at least should not be—helpless. That is because, in *Horne*, the Supreme Court established a presumption in favor of vacating institutional-reform injunctions under Rule 60(b)(5).

Rule 60(b) provides that, "[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding," Fed. R. Civ. P. 60(b), and

"reopen[]" the case, "under a limited set of circumstances," *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Rule 60(b) has six subsections, each recognizing a different reason or reasons a court may relieve a party from a final judgment, order, or proceeding.

The key subsection here is the School Board's subsection of choice—Rule 60(b)(5). It permits a party to obtain relief from a "judgment or order" if, among other things, a party has "satisfied its obligations under [the judgment or order]," *Chisom v. Louisiana ex rel. Landry*, ___F.4th ___, No. 22-30320, 2024 WL 3982181, at *1 (5th Cir. Aug. 29, 2024), or if "'applying [the judgment or order] prospectively is no longer equitable,'" *Horne*, 557 U.S. at 447 (quoting Fed. R. Civ. P. 60(b)(5)). The purpose of Rule 60(b)(5) is not "to challenge the legal conclusions on which a prior judgment or order rests," but instead to "ask a court to *modify or vacate* a judgment or order" due to subsequent changes. *Id.* (emphasis added) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)).

As with Rule 60(b)'s other subsections, the purpose of this subsection "is to make an exception to finality." *Gonzalez*, 545 U.S. at 529. Thus, in the ordinary case, "the desirability of finality in judgments" weighs "*against* the grant of a 60(b) motion." *Fackelman v. Bell*, 564 F.2d 734, 736 (5th Cir. 1977) (emphasis added). Put otherwise, the ordinary case enjoys a presumption *in favor of* "the finality of judgments" and *against* granting Rule 60(b) relief. *Gonzalez*, 545 U.S. at 535 (quoting *Liljeberg v.*

Health Servs. Acquisition Corp., 486 U.S. 847, 873 (1988) (Rehnquist, C.J., dissenting)).[3]

But remember that institutional-reform injunctions are different. In this context, "finality in judgment" is an illusion because an institutional-reform injunction is decidedly *non*-final—it requires the defendant state or local government to take ongoing action—to the detriment of federalism. As a result, a presumption that an injunction should stay on the books forever—which Rule 60(b)(5) traditionally requires—is entirely misplaced for institutional-reform injunctions. In fact, not just misplaced, but flipped on its head: The Supreme Court has emphasized that, "in recognition of the features of institutional reform decrees, . . . courts must take a 'flexible approach' to Rule 60(b)(5) motions addressing such decrees." *Horne*, 557 U.S. at 450 (quoting *Rufo*, 502 U.S. at 381). And that means "ensur[ing] that 'responsibility for discharging the State's obligations is returned *promptly* to [state and local] officials when the circumstances warrant." *Id.* (quoting *Frew*, 540 U.S. at 442 (emphasis added)). In other words, unlike in the ordinary case, there is a presumption in favor of *granting* Rule 60(b)(5) relief in institutional reform cases.

This unique presumption under Rule 60(b)(5) began in *Rufo*. There, the Supreme Court instructed district courts to take a "flexible approach" to motions to

[3] This presumption "reflects the foundational idea that if 'conclusiveness did not attend the judgments of [judicial] tribunals,' parties would not 'invoke[]' the 'aid of [such] tribunals' for 'the vindication of rights of person and property.'" *Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 426 (2d Cir. 2019) (Calabresi, J., dissenting) (alternations in original) (quoting *S. Pac. R. Co. v. United States*, 168 U.S. 1, 49 (1897)). It is unsurprising, then, that this Court and others have held that relief under any subsection of Rule 60(b) is an "extraordinary remedy." *See, e.g.*, *Goldstein v. MCI WorldCom*, 340 F.3d 238, 258 (5th Cir. 2003); *LAJIM, LLC v. Gen. Elec. Co.*, 917 F.3d 933, 949 (7th Cir. 2019); *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1191 (10th Cir. 2018); *Johnson v. Arden*, 614 F.3d 785, 799 (8th Cir. 2010); *Goodman v. Bowdoin Coll.*, 380 F.3d 33, 48 (1st Cir. 2004).

modify institutional reform injunctions under Rule 60(b)(5). *Rufo*, 502 U.S. at 381. *Rufo* explained that "[t]he upsurge in institutional reform litigation since *Brown v. Board of Education* [(*Brown I*)], 347 U.S. 483 (1954), ha[d] made the ability of a district court to modify a decree in response to changed circumstances all the more important." *Id.* at 380 (internal citation omitted). "Because such decrees often remain in place for extended periods of time, the likelihood of significant changes occurring during the life of the decree is increased." *Id.*

These factors, the Court said, "demonstrated that a flexible approach is often essential to achieving the goals of reform litigation." *Id.* at 381. Importantly, the Court found that "the public interest" weighed in favor of federalism: "[T]he public interest is a particularly significant reason for applying a flexible modification standard in institutional reform litigation because such decrees 'reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions.'" *Id.* (quoting *Heath v. De Courcy*, 888 F.2d 1105, 1109 (6th Cir. 1989)).

Horne placed a bow on *Rufo*. There, the Supreme Court reiterated that "Rule 60(b)(5) serves a particularly important function in . . . 'institutional reform litigation.'" *Horne*, 557 U.S. at 447 (quoting *Rufo*, 502 U.S. at 380). *Horne* then extended *Rufo*'s "'flexible approach' to [all types of] Rule 60(b)(5) motions addressing such decrees," both motions to *modify* (like in *Rufo*) and motions to *vacate* (like in *Horne*) institutional-reform injunctions. *Id.* at 450 (quoting *Rufo*, 502 U.S., at 381). That flexibility, *Horne* said, was necessary to preserve our federalist system: "A

flexible approach . . . ensure[s] that 'responsibility for discharging the State's obligations is returned promptly to the State and its officials.'" *Id.* (quoting *Frew*, 540 U.S. at 442).

To that end, *Horne* gave three reasons for favoring vacatur of institutional-reform injunctions under Rule 60(b)(5): (1) the likelihood that "changed circumstances" will warrant reexamining injunctions that last for many years, (2) federalism concerns caused by federal court interference with "areas of core state responsibility" overseen by State and local institutions, and (3) the unique "dynamics" of institutional-reform litigation. *Id.* at 448–50. Thus, although the Supreme Court did not put an end to institutional-reform litigation altogether, *Horne* makes clear that courts must favor vacating institutional-reform injunctions under Rule 60(b)(5).

III. THE FIFTH CIRCUIT ROUTINELY SCALES BACK INSTITUTIONAL REFORM INJUNCTIONS.

These teachings are clear. And yet, the Fifth Circuit has had to install itself "as a check on district courts to ensure that the above principles are followed." *Chisom v. Louisiana ex rel. Landry*, No. 22-30320, 2024 WL 3982181, at *4 (5th Cir. Aug. 29, 2024). According to the Fifth Circuit, the "Supreme Court precedent instructs not only that heightened deference to the district court is unwarranted in cases like this but, if anything, that deference should be lessened relative to an ordinary case." *Id.* "[The Fifth Circuit] must take heed of the Supreme Court's admonition that the continued enforcement of the consent decree poses legitimate federalism concerns." *Frew v. Janek*, 820 F.3d 715, 721 (5th Cir. 2016). To that end, "the Supreme Court requires that [courts] refrain from applying 'a Rule 60(b)(5)

standard that [is] too strict.'" *Chisom*, 2024 WL 3982181, at *4 (quoting *Horne*, 557 U.S. at 452).

Per the en banc Fifth Circuit in *Chisom*, gone are the days of "great deference" to district courts in desegregation cases, "particularly" when they have "supervised the case for many years." *Anderson v. Sch. Bd. of Madison Cnty.*, 517 F.3d 292, 296 (5th Cir. 2008) (first quoting *Flax v. Potts*, 915 F.2d 155, 158 (5th Cir. 1990), then quoting *Groome Res., Ltd. v. Par. of Jefferson*, 234 F.3d 192, 198–99 (5th Cir. 2000)).

Take, for example, the long-running institutional reform case involving Texas' foster care system. The case started in 2011, and for the past six years, the Fifth Circuit has scaled back the district court's injunctions again and again (and again). *See Stukenberg I*, 907 F.3d 237; *M.D. ex rel. Stukenberg v. Abbott* (*Stukenberg II*), 929 F.3d 272 (5th Cir. 2019); *M.D. ex rel. Stukenberg v. Abbott* (*Stukenberg III*), 977 F.3d 479 (5th Cir. 2020).

On remand, Texas filed a Rule 60(b)(5) motion arguing substantial compliance with certain remedial orders. *See* Published Opinion 33, *M.D. ex rel. Stukenberg v. Abbott* (*Stukenberg IV*), No. 24-40248 (5th Cir. Oct. 11, 2024), ECF No. 162. Instead, the district court left the Rule 60(b)(5) motion "pending" and held Texas in contempt for failing to fully comply with its orders. *Id.* When Texas appealed, and the Fifth Circuit (Elrod, Haynes, Douglas, JJ.) administratively stayed both the contempt order and the district court proceedings. *See M. D. by Stukenberg v. Abbott*, No. 24-40248, 2024 WL 1651273, at *1 (5th Cir. Apr. 17, 2024). The Fifth Circuit (Jones, Clement, Wilson, JJ.) later replaced those administrative

stays with full stays pending appeal "pending further order of [that] court." *See M. D. by next friend Stukenberg v. Abbott*, No. 24-40248, 2024 WL 2309123, at *6 (5th Cir. May 20, 2024).

Just three days ago, that Fifth Circuit decided that appeal. It not only reversed the contempt order but directed that the case be reassigned on remand. *See* Published Opinion 36, *Stukenberg IV*, No. 24-40248 (5th Cir. Oct. 11, 2024), ECF No. 261.

That is not a faithful attempt to guard our federalism and respect State sovereignty. And the Fifth Circuit took the opportunity to issue three reminders.

First, "as a general rule of law federal judges are not allowed to become permanent de facto superintendents of major state [and local] agencies." *Id.* at 35 (citing *Horne*, 557 U.S. at 453; *United States v. Mississippi*, 82 F.4th 387, 400 (5th Cir. 2023)). *Second*, it is never "appropriate," "under the federalist structure," "for federal court intervention to thwart the [state and local government's] self-management, where [they are] taking strides to eliminate the abuses that led to the original decree." *Id.* at 35–36 (citing *Horne*, 557 U.S. at 448). *And third*, "federal judges [are not] even suited, by training or temperament, to manage institutions, personnel, or the provision of vital state [and local] services, even if counselled by monitors." *Id.* at 36.

Unfortunately, that approach is not unique to *Stukenberg*. A few examples:

Voting Rights: Just two months ago, the Fifth Circuit "revers[ed] and render[ed] judgment in favor of the State" in a case involving the denial of the State's Rule 60(b)(5) motion to vacate a forty-year old consent judgment settling a dispute

over Section 2 of the Voting Rights Act (VRA). *See Chisom*, 2024 WL 3982181, at *7. In the consent judgment, the State disclaimed any Section 2 liability but, to settle the suit and dismiss the claims, agreed to pass legislation creating a majority-Black voting district around New Orleans for its State Supreme Court map. *See* Mot. Dissolve Consent Decree, Ex. C at 2, 7, *Chisom v. Edwards*, No. 2:86-cv-04075 (E.D. La. Dec. 2, 2021), ECF No. 257-4.

For decades, everyone agreed the State had satisfied each of its obligations under the agreement. But in 2022, after the State moved to vacate the judgment under Rule 60(b)(5), a panel of this Court affirmed the district court's requirement that the State had to show the impossible: more than perfect compliance with the consent judgment. *Chisom v. Louisiana ex rel. Landry*, 85 F.4th 288, 298 (5th Cir. 2023) ("The district court correctly determined that the Consent Judgment's final remedy is the State's prospective compliance with Section 2 of the VRA."), *reh'g granted and opinion vacated*, No. 22-30320, 2024 WL 323496 (5th Cir. Jan. 29, 2024).

The Fifth Circuit eventually took the case en banc—and the drama continued. A few days before the en banc argument, the plaintiffs (also represented by the NAACP Legal Defense Fund and the Department of Justice) asked the district court to issue an indicative ruling (in light of Louisiana's new Supreme Court map) that it would dissolve the agreement if this Court remanded for that purpose. But *even then*, the district court was willing to admit only that the plaintiffs had raised "substantial issues" that would "require extensive litigation." Order and Reasons 6–7, *Chisom v.*

Edwards, No. 2:86-cv-04075 (E.D. La. May 15, 2024) (quoting Fed. R. Civ. P. 62.1 advisory committee's note to 2009 adoption).

In reversing and rendering, the en banc Fifth Circuit clarified that, in school desegregation cases (like this one), the standard is doubly "flexible." *Chisom*, 2024 WL 3982181, at *5 n.3. District courts "analyze a motion under Rule 60(b)(5)" using "*Dowell*'s 'flexible standard,'" while "*Horne*'s 'flexible approach'" is "the standard of review" the Fifth Circuit "use[s] to assess how a district court analyzed a motion under Rule 60(b)(5)." *Id.*

PLRA: Within the past two years, the Fifth Circuit has put the brakes on overbroad remedial decrees in several prison-reform cases. For example, just months ago, this Court heard an appeal from a Remedial Order in a case seeking to put the Louisiana State Penitentiary in Angola, the country's largest maximum-security prison, under federal-court supervision. *See Parker v. Hooper*, No. 23-30825 (5th Cir. Mar. 4, 2024), ECF No. 145 (noting oral argument was heard). The Remedial Order appointed "three Special Masters to prepare proposed Remedial Plans and monitor and report on implementation and compliance." Record Excerpts at 258, *Parker v. Hooper*, No. 23-30825 (5th Cir. Jan. 11, 2024), ECF No. 113-1. The district court would then "review the proposed Remedial Plans and any requests for amendment and will enter Orders necessary and appropriate to effect remedies." *Id.* at 260. Two days after oral argument, the Fifth Circuit stayed the Remedial Order "pending further order of [that] court." Order, *Parker v. Hooper*, No. 23-30825 (5th Cir. Mar. 6, 2024), ECF No. 156-2.

A similar pattern played out in litigation involving another Louisiana prison, the David Wade Correctional Center. *See Charles v. Wescott*, No. 24-30484 (5th Cir.). When the State appealed that Remedial Order (which is a virtual copy of the *Parker* Remedial Order), the plaintiffs there asked the district court to fix some of the periphery errors in the Remedial Order. *See* Pls' Cross-Motion, *Tellis v. LeBlanc*, No. 18-cv-00541 (W.D. La. Aug. 14, 2024), ECF No. 787.[4]

The State asked to hold the appeal in abeyance pending the district court's resolution of that motion, and the Fifth Circuit agreed. *See Charles v. LeBlanc*, No. 24-30484, 2024 WL 3842581 (5th Cir. Aug. 16, 2024) (holding appeal in abeyance "pending the district court's ruling on the Plaintiffs' pending cross-motion, which must occur within 30 days of the date of this order"). The Fifth Circuit, however, left the door open for the State to "renew[]" its "stay motion" or "seek[] mandamus or other appropriate relief in the event that the district court effectuate[d] its Remedial Order without first ruling on Plaintiffs' pending cross-motion" and made clear that the same "panel" would hear "[a]ny subsequent stay motion or mandamus petition." *Id.* at *2.

So too with Mississippi's institutional reform cases. One example is Mississippi's defense against an institutional reform injunction over the Hinds County prison system, which includes one of the largest county jails in Mississippi. Nearly a year-and-a-half ago, the Fifth Circuit stayed pending appeal an injunction and broad receivership orders. *See* Order, *United States v. Hinds Cnty. Bd. of Sup'rs*,

[4] This case has different names in the district court and on appeal. In the district court, it is *Tellis v. LeBlanc*, No. 18-cv-00541 (W.D. La.). On appeal it is *Charles v. Wescott*, No. 24-30484 (5th Cir.).

No. 22-60203 (5th Cir. Dec. 28, 2022), ECF No. 102. That appeal was argued several months ago and remains pending. *See United States v. Hinds Cnty. Bd. of Sup'rs*, No. 22-60203 (5th Cir. Dec. 8, 2023), ECF No. 188 (noting oral argument was heard).

* * *

These examples put an exclamation point on the Fifth Circuit's efforts to restore the proper balance between State sovereignty—which includes the right to set up state and local government as States see fit under their general police powers—and "the use of equity power." *In re Gee*, 941 F.3d at 167 (quoting *Jenkins*, 515 U.S. at 131 (Thomas, J., concurring)). The district courts' bottom-line obligation is to "flexibl[y]" apply Rule 60(b)(5) to "promptly return[]" responsibility to state and local governments "precisely because [of] federalism." *Horne*, 557 U.S. at 452 (quoting *Frew*, 540 U.S. at 442). State and local governments should enjoy *Horne*'s and *Rufo*'s presumption *in favor* of relieving them from judgments and orders under Rule 60(b)(5).

Flexibility inherently means that state and local governments deserve "play in the joints,"[5] as they, in good faith, seek to satisfy the terms of an institutional-reform injunction. By definition, therefore, it does not require perfect compliance, or even near-perfect compliance. And however low (or high) the Court opts to draw the line, the procedural history here shows the St. Mary Parish School Board "ha[s] complied

[5] Paul M. Smith, Dun & Bradstreet v. Greenmoss Builders *As an Example of Justice Powell's Approach to Constitutional Jurisprudence*, 88 Wash. L. Rev. 143, 144 (2013) (describing Justice Powell's approach in *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)).

in good faith with the desegregation decree since it was entered." *Dowell*, 498 U.S. 237 at 249–50.

Promptly inherently means that state and local governments deserve to recover their sovereign rights immediately—but immediately upon what? When there is no longer a current and ongoing violation of the federal right at issue that warrants prospective relief. That is the limit the Supreme Court and the Fifth Circuit have set: "Once the alleged constitutional deficiency has been remedied, it is the courts' duty to bring federal control over the issue to its proper end." *Chisom*, 2024 WL 3982181, at *4; *accord Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) ("[J]udicial powers may be exercised only on the basis of a constitutional violation."); *Frew*, 540 U.S. at 441 (warning against "federal-court oversight of state programs for long periods of time even absent an ongoing violation of federal law"). That is also the limit Congress has set under the PLRA: "Prospective relief shall . . . terminate" when there is no longer a "current and ongoing violation of the Federal right." 18 U.S.C. § 3626(b)(3).

IV. THE COURT SHOULD GRANT THE BOARD'S MOTION.

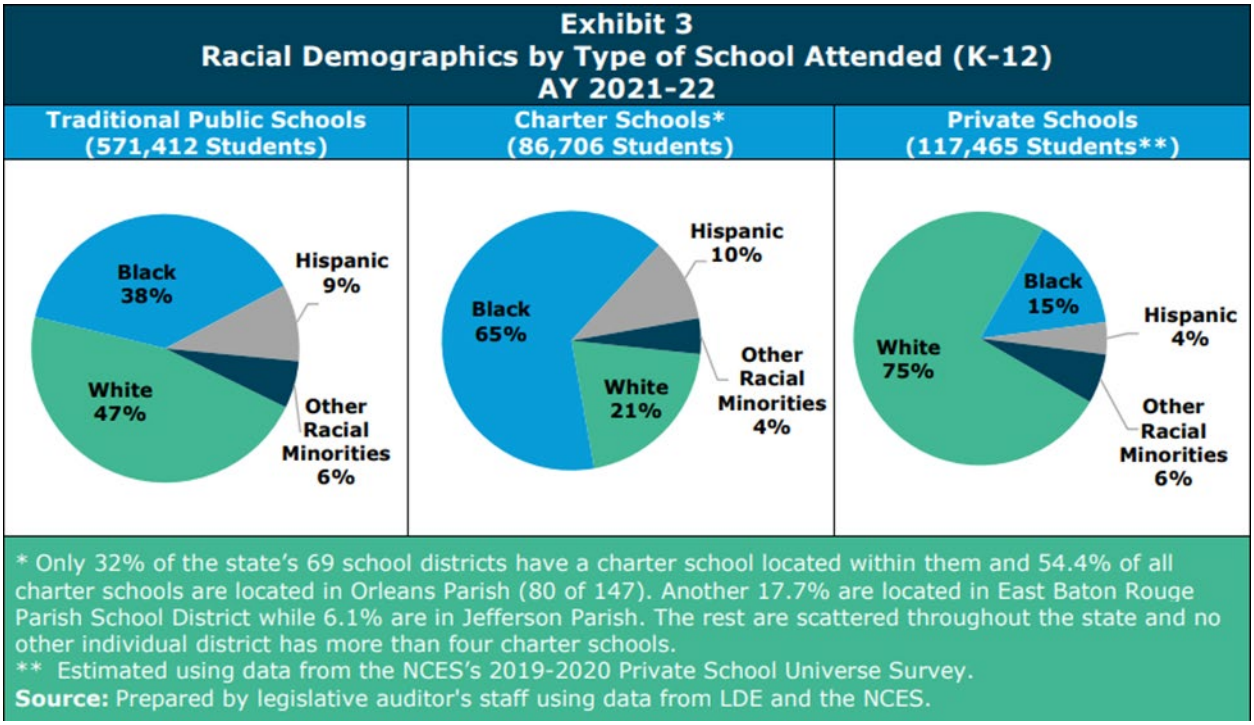
A. The State Has Eradicated the Effects of State-Sponsored School Segregation.

Long gone are the days of State-mandated Black schools and White schools in Louisiana. Today, the State has put in its Constitution a ban on discrimination "because of race" and a guarantee to "the equal protection of the laws" for all within Louisiana's borders. La. Const. art. I, § 3. "The goal of the [State's] education system," proclaims the State's Constitution, "is to provide learning environments and

experiences, at all stages of human development, that are humane, *just*, and designed to promote excellence in order that *every individual* may be afforded an *equal opportunity* to develop to his full potential." Preamble, La. Const. art. VIII (emphasis added). To that end, "no state dollars shall be used to discriminate or to have the effect of discriminating in providing equal educational opportunity for all students." La. Const, art VIII, § 13(D)(1).

Add to those constitutional protections the statutory protections the State has erected. The State guarantees equal access to its schools: "No person shall be refused admission into or be excluded from any public school in the state of Louisiana on account of race, creed, color, . . . national origin, or natural, protective, or cultural hairstyle." La. Rev. Stat. § 17:111(A)(1). The same holds for the State's alternative schools. *See id.* § 17.105.1 (prohibiting "racial, sexual, or ethnic discrimination in either the compilation of the eligibility list or in the operation of [an alternative] school"). The State prohibits racial discrimination in school sports, even at private tournaments. *See id.* § 4:461 ("Any private sports club which hosts a sports tournament shall not discriminate against any eligible team or participant on a team because of his race."). Even in awarding higher education scholarships, the State goes beyond prohibiting discrimination: "The board of commissioners shall provide that an affirmative action program for the selection of recipients be established which shall include that no discrimination occur on the basis of race, creed, sex, age, or ethnic origin." *Id.* § 46:1104.

The State's equality-in-education guarantees and anti-discrimination laws have eradicated the effects of the State's former school segregation laws. Per the 2020 Census, Louisiana's population is 32.6% Black (alone), 62.6% White (alone), and about 5% other races. United States Census Bureau, Quick Facts for Louisiana.[6] The public-school demographics in Louisiana generally follow these State-wide numbers. On average, the students in Louisiana's public schools are 38% Black, 47% White, and 15% other races:



Louisiana Legislative Auditor, Student Racial Demographics Louisiana Elementary and Secondary Public and Private Schools, Informational Brief at 4 (Jan. 25, 2023).[7]

[6] https://www.census.gov/quickfacts/fact/table/LA/POP060210.
[7]https://app.lla.state.la.us/publicreports.nsf/0/a4fa835e5738df42862589420071c04c/$file/00000951.pdf?openelement&.7773098.

The average Black public school student in Louisiana attends a school that is only 58% Black, and the average White public school student in Louisiana attends a school that is only 63% White:

Exhibit 1
Demographics of Schools Attended by Average Students by Race
AY 2021-22

School Type	Average Black Student Attends School that is:		Average White Student Attends School that is:	
	% Black	% White	% Black	% White
Traditional Public	58%	29%	24%	63%
Charter	78%	10%	31%	52%
Private	51%	39%	8%	83%

Source: Prepared by legislative auditor's staff using data from LDE.

Id. at 2.

These numbers (which include school districts that successfully ended their desegregations cases) show just how far Louisiana schools have come since 1965 when this case was filed. Long gone are the days of legally mandated White and Black schools as well as the direct effects of that State-mandated system.

That is true not only at the State level but also at the parish level. Current conditions in the State's schools in St. Mary Parish are in line with State-wide averages. As of October 2023, the students in St. Mary Parish public schools were, on average, 36.6% Black, 36.6% White, and 15.7% other races. *See* ECF No. 226-13 at 1.

Current conditions in St. Mary Parish public schools are also on par with (if not better than) the averages of other Louisiana school districts at the time they successfully ended their desegregation cases.

Take Lincoln Parish, for example. In 2022, Judge James (with consent from the Department of Justice) held that the remaining defendants (a public school located on the campus of Louisiana Tech University and a charter school) had "effectively eradicated to the extent practicable any remaining vestiges of the prior *de jure* segregated education system." Memorandum Order 1, *United States v. Lincoln Par. Sch. Bd.*, No. 66-cv-12071 (W.D. La. Mar. 21, 2022), ECF No. 413. At the time, the students at the public school were 69.7 % White, 25.51% Black, and about 5% biracial or another race. Status Report, Ex. B (Race Number & Percent by Grade 2021-2022), *United States v. Lincoln Par. Sch. Bd.*, No. 66-cv-12071 (W.D. La. Oct. 15, 2021), ECF No. 395-3.

Another example is Catahoula Parish. In 2020, Judge Doughty held that, "[b]ased on the information and data and the applicable law," the Catahoula Parish School Board had "acted in good faith to comply with the Court's 1969 Order and its subsequent amendments for a reasonable period of time" and had "eliminated the vestiges of past *de jure* discrimination to the extent practicable." *United States v. Catahoula Par. Sch. Bd.*, No. CV 69-14430, 2020 WL 5261198, at *5 (W.D. La. Sept. 3, 2020). At the time, the student body in all Catahoula Parish public schools was "59% white, 39% black, and 2% other." *Id.* at *3.

One final example: Richland Parish. In 2018, the Richland Parish School Board (without opposition from the Department of Justice) moved to dismiss the case and terminate federal-court "supervision over the Richland Parish School Board." Unopposed Mot. for Declaration of Unitary Status and to Dismiss 2, *United States v. Richland Par. Sch. Bd.*, No. 66-cv-12169 (W.D. La. Feb. 9, 2018), ECF No. 149. At the time, the parish-wide ratio for students attending Richland Parish public schools was 43.6% Black, 55.2% White, and 1.2% other races. Report of Student Enrollment as of October 1, 2017, *United States v. Richland Par. Sch. Bd.*, No. 66-cv-12169 (W.D. La. Oct. 16, 2017), ECF No. 144-1.

Just three days after that motion was filed, Judge James granted that motion. The Richland Parish School Board had "complied" with the relevant orders "in good faith," eliminated "the vestiges of the prior *de jure* system," and made "further federal supervision . . . no longer warranted." Judgment, *United States v. Richland Par. Sch. Bd.*, No. 66-cv-12169 (W.D. La. Feb. 12, 2018), ECF No. 150. Accordingly, the district court "dissolved" all "injunctions" and "dismissed" the case "with prejudice." *Id.*

These "modern" state-wide and parish-wide averages—while not necessary to the Court's analysis because the direct effects of the 1965 Board's intentionally discriminatory policies and procedures were eliminated by 1983 (if not earlier), *see infra* Section II(B)—show that the State's equality-in-education guarantees and anti-discrimination laws are doing their job. Current conditions are a far cry from the 100% Black / 100% White legally-mandated divide from sixty years ago. With so many intervening and superseding causes arising over the last six decades, "no benefit can

be derived from further probing for the perhaps unmeasurable sins of the past." *Ross v. Houston Indep. Sch. Dist.*, 699 F.2d 218, 227 (5th Cir. 1983).

B. The Board Has Eradicated the Effects of Board-Sponsored Segregation.

On top of complying with these current State laws, the Board has complied in good faith with this Court's institutional-reform injunctions—found in the 1967 *Jefferson* Decree (as modified in 1969, 1970, and 1971). And it has done so for decades. That record of good faith compliance eliminated the 1965 Board's practices and policies that intentionally separated the races. It also eliminated the direct effects of those intentional practices and policies that have been gone for sixty years. That is because "[a] history of good-faith compliance is" itself "evidence that any current racial imbalance is not the produce of a new *de jure* violation." *Anderson*, 517 F.3d at 297 (quoting *Freeman*, 503 U.S. at 498).

The St. Mary Parish School Board has that evidence in spades here. The Board's good-faith compliance started immediately at the inception of this case in 1965 when it voluntarily abolished its policies that intentionally separated students by race, followed by the Court's permanent injunction to that effect. *See* ECF No. 226-2 at 33 ("All school attendance zones and districts previously existing are hereby abolished."); *id.* at 45–47 (1965 Decree permanently enjoining the Board from "[c]ontinuing to operate a segregated or biracial public school system" while deferring action on "desegregation of teaching personnel and other administrative staff").

The Board followed the 1965 Decree until 1967 when the *Jefferson* Decree "super[s]ed[ed]" the 1965 Decree and abolished racial discrimination in all *Green*

factors (not just student assignment). *Id.* at 260. The Jefferson Decree "permanently enjoined" "the defendants, their agents, officers, employees and successors and all those in active concert and participation with them" "from discriminating on the basis of race or color in [all areas of] the operation of the St. Mary Parish public school system." *Id.* at 261 (*Jefferson* Decree).

From 1967 to 1971, the Boudreaux and Bourgeois routinely modified the *Jefferson* Decree to reach all direct effects of the 1965 Board's intentional policies:

(1) In 1967, they moved to modify the *Jefferson* Decree seven months after it was issued. *See id.* at 332–42 (Mot. Further Relief); *id.* at 351 (Ruling on Motion for Further Relief explaining that Jefferson Decree was entered in May 1967 and the Boudreaux and Bourgeois moved to modify it in December 1967).

(2) In 1968, when they lost that motion, they appealed. *See id.* at 355–56 (Ruling on Motion for Further Relief), 594–600 (Notice of Appeal).

(3) In 1969, on appeal, the Fifth Circuit overturned the *Jefferson* Decree. *See* ECF No. 226-3 at 36–55 (*Hall v. St. Helena Par. Sch. Bd.*, 417 F.2d 801 (5th Cir. 1969)).

(4) On remand in August 1969, this Court issued a new Decree—the 1969 Decree—that governed the 1969–70 school year. *See id.* at 143–46 (1969 Decree).

(5) Right when that school year ended, in May 1970, the Boudreaux and Bourgeois moved to modify the 1969 Decree. *See id.* at 279 (Docket entry showing they filed a Motion for Further Relief in May 1970).

(6) Three months later, in August 1970, the Court issued an Order and Opinion (1970 Order) ruling in their favor. *See id.* at 327–30 (1970 Order).

(7) Twenty-one days later, the Boudreaux and Bourgeois again moved to modify the 1969 Decree. *See id.* at 336 (Docket entry showing they filed a Motion for Further Relief on August 28, 1970).

(8) Three days later, on August 31, 1970, the Court granted that Motion. *See* ECF No. 226-2 at 9 (Docket sheet showing the Court issued an order "granting" that motion).

(9) The next year, in June 1971, the Court responded to "developments in the law which ha[d] occurred since entry of [the 1969] decree" and ordered the School Board "to follow the policies and inaugurate the practices prescribed by [*Singleton v. Jackson Mun. Sch. Dist.*, 419 F.2d 1211 (5th Cir. 1970)]." ECF No. 226-3 at 336.

(10) Two months later, in August 1971, the Court issued an "Amended Judgment" (1971 Amended Judgment) that "amended" the 1969 Decree "so as to include" the *Singleton* policies and practices. *See id.* at 354–56 (1971 Amended Judgment).

The Board complied with each of those modifications. In fact, in December 1971, the Board itself amended the *Jefferson* Decree as directed by the Court. *See id.* at 474. From there, the evidence of good-faith compliance only gets stronger.

From the end of 1971 to mid-1975, the Boudreaux and Bourgeois were satisfied with the policies and practices required by the *Jefferson* Decree and its modifications. That is why, after six years (1965 to 1971) of consistently seeking to modify the Decree—first the 1965 Decree and then the *Jefferson* Decree that superseded the 1965 Decree—they stopped.

Then in 1974, they stipulated that they were "satisfied" that the Board's proposed "construction" would not "lead to the reestablishment of a dual school system." ECF No. 226-4 at 261 (Stipulation).

In 1975, they agreed to stay the case after four years (1971 to 1975) of satisfaction with how the Board was carrying out the *Jefferson* Decree and its modifications. *See id.* at 348 (1975 Order requiring the Boudreaux and Bourgeois, "on or before thirty (30) days from the date of [that] Order," to "file any and all objections . . . to the operation of the public school system in the parish of St. Mary, Louisiana" and "any other matters pertaining to the operation of said system to which they may object, otherwise this Court shall, in the absence of such objections," place the case "on the inactive docket"). Indeed, they had zero objections to any aspect of how the Board was operating its schools.

All that can mean only one thing. By 1975 (at the latest), the Boudreaux and Bourgeois—who were much closer in time to the 1965 intentional violation—were

satisfied that the remedial policies and practices required by the *Jefferson* Decree and its modifications had eliminated the direct effects of the 1965 Board's intentional policies and practices.

What happened next further cements that fact. From 1975 to 1983 (and beyond), the Board continued carrying out the remedial policies and practices required by the *Jefferson* Decree and its modifications. And it did so with zero complaints from either the Boudreaux or Bourgeois, any of the students or parents they purported to represent, or the Department of Justice as *amicus*.

In 1983, the Board submitted its last report. *See* ECF No. 226-5 at 525–79 (Dec. 15, 1983 Report). Again, not the Boudreaux, not the Bourgeois, and not anyone else asked to modify the *Jefferson* Decree or its modifications. At that point (if not before), the Board had complied with the *Jefferson* Decree and its modifications for a "reasonable amount of time." *Dowell*, 498 U.S. at 248. The decades of silence that followed are deafening "evidence" that "any current racial imbalance is not the produce of a new *de jure* violation." *Anderson*, 517 F.3d at 297 (quoting *Freeman*, 503 U.S. at 498).

And yet, the Court still has "regulatory control" of the State's schools in St. Mary Parish. *Dowell*, 498 U.S. at 248. That control (from 1965 to 2024) has extended well "beyond the time required to remedy the effects of the past intentional discrimination" of the 1965 Board's policies and practices. *Id.* (quoting *Spangler v. Pasadena City Bd. of Educ.*, 611 F.2d 1239, 1245 n.5 (9th Cir. 1979) (Kennedy, J., concurring)). Requiring more of the Board would amount to making the Board

"litigate whether" the *Jefferson* Decree (as modified in 1969, 1970, and 1971) had a desegregative "result" before the Board can be released from "that plan." *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 480 (1997). Such an approach would "increase further the serious federalism costs already implicated by" requiring federal-court preclearance of any board policy. *Id.*

CONCLUSION

For all these reasons, the State urges the Court to grant the Board's Motion to Dismiss the Complaint and Dissolve the Injunctions. It is time to restore the Board as the policy-maker that the State intended for its schools in St. Mary Parish.

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Respectfully submitted,

LIZ MURRILL
ATTORNEY GENERAL

/s/ *Carey T. Jones*
CAREY T. JONES (# 07474)
Assistant Attorney General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third Street
Baton Rouge, LA 70802
(225) 326-6705
Email : jonescar@ag.louisiana.gov