IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

RON AND KATHY TEAGUE, on and behalf of minor children;
DARRIN AND JULIE HARDY, on and behalf of minor child; RHONDA RICHARDSON on and behalf of minor child;
MARK AND JENNIFER DRAPER on and behalf of minor children **PLAINTIFFS**

V. **CASE NO.** 10 **CV-** 6098

ARKANSAS BOARD OF EDUCATION: DR. NACCAMAN WILLIAMS, JIM COOPER, SHERRY BURROW, BRENDA GULLETT, SAMUEL LEDBETTER, ALICE MAHONY, DR. BEN MAYS, TOYCE NEWTON, and VICKI SAVIERS, in their official capacity; MAGNET COVE SCHOOL DISTRICT: KAREN SCOTT, DANNY LINAM, LISA LOFTIS, KIM BRAY, and JACK RYNDERS, in their official capacity

DEFENDANTS

COMPLAINT

COMES Ron and Kathy Teague, et al., Plaintiffs herein (hereinafter referred to as "Plaintiffs"), and for their Complaint against Randy Lawson, Chair of the State Board of Education; Dr. Naccaman Williams, Vice Chair of the State Board of Education; Sherry Burrow, member of the State Board of Education; Jim Cooper, member of the State Board of Education; Brenda Gullett, member of the State Board of Education; Samuel Ledbetter, member of the State Board of Education; Alice Williams Mahony, member of the State Board of Education; Dr. Ben Mays, member of the State Board of Education; Diane Tatum, member of the State Board of

Education, Magnet Cove School Board; Karen Scott, Danny Linam, Lisa Loftis, Kim Bray, and Jack Rynders, in their official capacity (hereinafter collectively "Defendants") states:

NATURE OF THE CASE

1. This suit is brought by a group of parents and taxpayers residing in the Malvern School District, challenging the Defendants' impermissible use of a race in deciding which students may attend specific schools under the Arkansas Public School Choice Act of 1989.

2. The Plaintiffs are comprised of parents whose children have been, or will likely be, denied admission to the school of their choice because of their race.

3. Plaintiffs request: (1) a declaratory judgment that Defendants' race-based student admission and school choice plan and the disbursement of public funds thereunder violates federal and state law, specifically the federal and state equal protection provisions, Title VII of the Civil Rights Act of 1964; (2) a declaratory judgment that the portion of Arkansas Code Annotated 6-18-206, specifically Section (f)(1), mandating race-based school choice, violates equal protection and Title VII of the Civil Rights Act of 1964 and is unconstitutional under both the federal and state constitutions and laws; (3) an injunction permanently prohibiting Defendants from using race as a factor in student admissions plans in Arkansas public schools; (4) an injunction permanently prohibiting individual Defendant, State Board, from disbursing state tax monies based on race-based choice pursuant to School Choice Act of 1989; (5) an injunction prohibiting Magnet Cove School District from using race as a factor to continuing to deny student admission plans.

PARTIES

4. Plaintiffs are citizens, residents, and taxpayers of Hot Spring County, Arkansas with minor children attending, or having to attend, Malvern School District, or having duel residency to attend another school district.

5. The Arkansas State Board of Education is a nine-member board. In keeping with the requirements of Act 885 of 1999, the Board is composed of two members of each of the state's four congressional districts, and the remaining member is selected at-large. The Governor appoints members for seven-year terms. Composed of business and community leaders, the State Board represents the diverse population of Arkansas. The Board currently consists of the following individual members: Randy Lawson, Chair of the State Board of Education; Dr. Naccaman Williams, Vice Chair of the State Board of Education; Sherry Burrow, member of the State Board of Education; Jim Cooper, member of the State Board of Education; Samuel Ledbetter, member of the State Board of Education; Alice Williams Mahony, member of the State Board of Education; Dr. Ben Mays, member of the State Board of Education; and Diane Tatum, member of the State Board of Education. The Board is the policy making body for public elementary and secondary education in Arkansas.

JURISDICTION AND VENUE

6. This action arises under the Fourteenth Amendment to the United States Constitution, under 42 U.S.C. §§ 1331 and 1343 and jurisdiction of the state law claim under 28 U.S.C. § 1367.

7. Venue is proper in this Court under 28 U.S.C. § 1391, and the Court has personal jurisdiction over Defendants because the actions giving rise to the claims were committed in the Western District of Arkansas.

ADDITIONAL FACTS AND LEGAL CLAIMS

8. Arkansas Code Annotated § 616-206 (hereinafter "Arkansas Public School Choice Act of 1989") makes it permissible for students to transfer to the school of their choice if, and only if, it meets the racial guidelines where: "[n]o student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district..." A.C.A. § 6-16-206(f)(1).

9. The District of Malvern is estimated at 35% minority.

10. To this end, when deciding who will be eligible to participate in the Arkansas Public School Choice Act of 1989, the school district defendant herein consider whether admission of a particular student to a particular school will further or impede achievement of the specified racial balance, and the State Board then disburses public tax monies based on this race-based statute. Specifically in this case, Malvern School District receives public tax monies, an illegal exaction of approximately $5,800 per student, which should be returned to the appropriate school districts.

11. A.C.A. § 6-18-206 provides that the legislative intent behind the Arkansas Public School Choice Act of 1989 is that the:

> "parents will become more informed about and involved in the public education system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no right school for every student, and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students will stay in school and that other, more motivated students will find their full academic potential."
> (3) The General Assembly further finds that giving more options to parents and students with respect to where the students attend public school will increase the responsiveness and effectiveness of the state's schools, since teachers, administrators, and school board members will have added incentive to satisfy the educational needs of the students who reside in the district.

12. Section (5) of the § 6-18-206 designates the public school choice program with certain requirements applying. Those requirements consist of the guardian submitting and application by July 1 of the year a student wants to transfer. Other than that requirement, there is a single limitation and it is based solely on race: "(f)(1) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district..."

13. The Plaintiffs have sought to enroll their children in other districts such as Magnet Cove. Due to the sole reason of race, these students are being denied a right to choose which school would be the best for their academic careers. The parents of children affected by these race-based admissions decisions are referred to herein as "aggrieved parents."

14. Ron and Kathy Teague have both completed the requisite School Choice Paperwork for the school year 2010-2011. See Exhibit "A1-3" attached hereto and incorporated by reference. Mr. and Mrs. Teague were denied under the School Choice Act.

15. Darrin and Julie Hardy have completed the requisite School Choice Paperwork for the school year 2010-2011. See Exhibit "B" attached hereto and incorporated by reference. Mr. and Mrs. Hardy were denied under the School Choice Act. Mr. and Mrs. Hardy have duel residency, in which they have a home in Malvern School District and in Ouachita School District. Mr. and Mrs. Hardy continue to pay for both homes in order for their daughter to attend school at Ouachita School District.

16. Rhonda Richardson has completed the requisite School Choice Paperwork for the school year 2010-2011. See Exhibit "C1-2" attached hereto and incorporated by reference. Mrs. Richardson was denied under the School Choice Act. Mrs. Richardson has placed her daughter

in private school because she was denied the opportunity to transfer to Magnet Cove School District.

17. Mark and Jennifer Draper have completed the requisite School Choice Paperwork for the school year 2010-2011. See Exhibit "D1-2" attached hereto and incorporated by reference. Mr. and Mrs. Draper were denied under the School Choice Act. Mrs. Draper has become employed at Ouachita School District in order to keep her children out of Malvern School District.

18. Plaintiffs have submitted the proper Application for Transfer to a Non-Resident District "Arkansas Public School Choice Act of 1989," for the 2010-2011 school year. Ron and Kathy Teague submitted an application to Magnet Cove School District on May 4, 2010 (Exhibit "A1" and "A2"); Darrin and Julie Hardy submitted an application to Magnet Cove School District on June 30, 2010 (Exhibit "B"); Jason and Rhonda Richardson submitted an application to Magnet Cove School District on May 6, 2010 (Exhibit "C1"); Mark and Jennifer Draper submitted an application to Magnet Cove School District on June 30, 2010 (Exhibit "D-1" and "D-2"). See all referenced exhibits attached and are incorporated herein.

19. The Non-Resident School Districts have thirty days to either admit or deny these students. See ARKANSAS DEPARTMENT OF EDUCATION RULES GOVERNING THE GUIDELINES, PROCEDURES, AND ENFORCEMENT OF THE ARKANSAS PUBLIC SCHOOL CHOICE ACT. Specifically, Rule 5.03 states that "[w]ithin thirty (30) days of receipt of an application for public school choice transfer from a nonresident student, the nonresident district shall notify the parent or guardian and the resident district in writing (via first class United States mail) as to whether the nonresident district accepted or rejected the student's application."

20. On June 30, 2010, a petition appealing the decision of Magnet Cove School District to deny the Arkansas Public School Choice Act applications was filed for the Plaintiffs. A hearing was held on August 9, 2010 for the petitions for transfer filed by the Plaintiffs, see Exhibits "E1-2", incorporated herein by reference.

21. On September 22, 2010, Plaintiffs received the Board of Education's Findings of Facts and Conclusions of Law and Order regarding the appeal of the Plaintiffs' denied Arkansas School Choice Act applications (Exhibit "F"). The Board of Education stated within its Conclusions of Law and Order that "The State Board is aware of no state or federal court decision that held Ark. Code Ann. § 6-18-206 to be unconstitutional. Indeed, the State Board lacks the authority to rule a statute unconstitutional." The Order further states that "Ark. Code Ann. § 6-18-206(a)(5) generally allows any student in Arkansas to attend a school in a district in which the student does not reside. This general allowance is subject to the following provisions of Ark. Code Ann. § 6-18-206(f):

> (1) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's race except in the circumstances set for in subdivisions (f)(2) and (3) of this section;
>
> (2)(A) A transfer to a district is exempt from the restriction set forth in subdivision (f)(1) of this section if the transfer is between two (2) districts within a county and the minority percentage in the student's race and the majority percentages of school enrollment in both the resident and nonresident district remain within an acceptable range of the county's

overall minority percentage in the student's race and majority percentages of school population as set forth by the department....;

(3) A transfer is exempt from the restriction set forth in subdivision (f)(1) of this section if each school district affected by the transfer does not have a critical mass of minority percentage in the student's race of more than ten percent (10%) of any single race."

22. The State Board is a nine-member board which makes policy for public elementary and secondary education in Arkansas within the Department of Education. Enforcement of the Arkansas School Choice Act is unconstitutional for the reasons stated herein, and no such state agency should enforce an unconstitutional statute based on race. For that reason, the individual members of the Arkansas State Board of Education are Defendants to this complaint.

23. The acts of Defendants described above were committed under color of law. Defendants have discriminated, and will likely continue to discriminate, against students under the Arkansas Public School Choice Act of 1989 on the basis of race. Defendants' acts have denied and will likely continue to deny members of the Malvern School District the equal protection of the laws. Defendants' acts violate the Fourteenth Amendment of the United States Constitution and are actionable under 42 U.S.C. § 1983 and, also, violate the equal protection and illegal exaction provisions of the Arkansas Constitution and Title VII of the Civil Rights Act of 1964.

24. Defendants are all recipients of public tax monies, and their discrimination on the basis of race, color, or ethnicity violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

25. The United States Supreme Court in *Parents Involved in Community Schools v. Seattle School District No. 1 et al,* 127 S. Ct. 2738 (2007) recently determined that plans under which race could be the basis for assigning students to particular school districts in an asserted effort to maintain racial diversity violated the equal protection clause of the Federal Constitution's Fourteenth Amendment.

26. Plaintiffs are entitled to injunctive relief against Defendants as there is no plain, adequate, or speedy remedy at law to prevent continuation of the acts complained of herein and because the harm they have suffered, and will otherwise continue to suffer, is irreparable.

27. The students, who have been denied the statutory right to choose the school district they shall attend, have been denied on grounds of race and without any individualized consideration. This strikes at the heart of the Equal Protection Clause, which commands that Government treat people as individuals, not simply as members of a racial class.

28. Under the Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Public School Choice Act, Minority is defined as: "the following racial groups: African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native." Therefore, diversity is being defined as a white/non-white racial balance and that alone is not a compelling interest that justifies the use of race discrimination in school choice.

29. When government makes a benefit available, such as the opportunity to choose one's school, it cannot deny that benefit to someone because of her membership in a racial class without infringing on her right to equal protection. *Powers v. Ohio,* 499 U.S. 400, 409 (1991).

30. Plaintiffs are suffering harm by the denial of admission to the higher quality schools close to their homes.

31. Because the Arkansas Public School Choice Act of 1989 has the purpose of ensuring that nonwhite students have access to schools with a sufficient number of white students, it reinforces the notion that there must be something inferior about non-whites that prevents them from achieving on their own.

RELIEF SOUGHT

Wherefore, Plaintiffs pray for the following relief:

A. A declaratory judgment by the Court that Defendants' policy of considering race in their Arkansas Public School Choice Act decisions violates the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964, and the equal protection and illegal exaction provisions of the Arkansas Constitution;

B. A declaratory judgment prohibiting Defendants' race-based student admission and school choice plan and the disbursement of public funds due to violation of federal and state law, specifically the federal and state equal protection provisions, Title VII of the Civil Rights Act of 1964, and the Illegal Exaction provision of the Arkansas Constitution (Arc 16, § 13);

C. A declaratory judgment that the portion of Arkansas Code Ann. 6-18-206, specifically Section (f)(1), mandating race-based school choice violates equal protection and Title VII of the Civil Rights Act of 1964 and is unconstitutional under both the federal and state constitutions and laws;

D. An injunction permanently prohibiting Defendant, Members of the Arkansas State Board of Education, from disbursing state tax monies based on race-based choice pursuant to School Choice Act of 1989;

E. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988, the Illegal Exaction provision of the Arkansas Constitution, and any other applicable statute;

F. Any other relief that is appropriate and just.

Respectfully submitted,

ANDI DAVIS LAW FIRM, P.A.
534 Ouachita Avenue, Suite 2
Hot Springs, AR 71901
Telephone No: 501-622-6767
Fax: 501-622-3117

By _____
Andi Davis, AR Bar #2008056
Attorney for Plaintiffs