PETITION FOR WRIT OF MANDATE

TO THE HONORABLE DONALD R. WRIGHT, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioners, _____, _____, _____ and _____, respectfully petition this Court for a Writ of Mandate and in support of their petition allege as follows:

INTRODUCTION

I

On March 16, 1973, Respondents, the State Allocation Board, informed Petitioners that it would not take any steps to insure that state funds allocated by it would not be used to perpetuate racial and ethnic segregation in California schools. The Board predicated its refusal on the fact that Proposition 21 (Wakefield Anti-Busing Initiative) adopted by the voters on November 7, 1972, repealed Education Code Sections 5002 and 5003 and Administrative Code Sections 14020 and 14021 of Title 5. The statutory and administrative sections by establishing the prevention and elimination of racial imbalance as a high priority in decisions relating to school construction imposed a duty on Respondents to insure that the monies it allocates pursuant to the school housing aid for rehabilitation and replacement of structurally inadequate school facilities act are not used by local school districts to perpetuate the racial and ethnic imbalance existing in their schools.

Under the School Housing Aid Act the Respondent Board is charged with apportioning $310,000,000 for rehabilitating or replacing schools which fail to conform to structural standards established by the legislature in 1933. This money is made available at this time to enable local school districts to meet a deadline imposed by the Legislature of June 30, 1975.

Of the 1,593 non-conforming schools located in 226 districts, _____ located in 33 districts are also racially and ethnically imbalanced. Just as 70% of the reconstruction work to be done is in

8 urban school districts, _____% or _____ of _____ of the imbalanced non-conforming schools are located in the same 8 districts.

The schools in these districts in applying for state funds planned to construct new schools on the same sites. Hence, the presently existing racial and ethnic segregation will be perpetuated. This participation by a state agency, the State Allocation Board, and the local district constitutes paton de jure racial segregation.

The State Allocation Board's reliance on the passage of Proposition 21 to avoid their clear duty is misplaced. First, Proposition 21 is unconstitutional in its entirety, including those portions repealing the foregoing Education and Administrative Code Sections. Second, the State of California as well as the local school districts are prohibited by both the federal and California Constitutions from acting to perpetuate racial and ethnic segregation.

The uncertainty created by Proposition 21 is plaguing lower state courts as well as local school districts throughout California. The effect of Proposition 21 goes beyond its singular significance to the question of the School Housing Aid Act and effects the desegregation efforts of parents, students, local boards of education and officials of the Department of Education and will continue to do so until the validity of Proposition 21 is determined by this Court. Further, the funds authorized under the School Housing Aid Act will be apportioned to perpetuate racial segregation commencing no later than August, 1973 unless this Court acts. Accordingly, Petitioners seek a writ of mandate ordering the State Allocation Board to take whatever steps are necessary to insure that the monies it apportions to local districts for school construction are not used to perpetuate racial or ethnic imbalance.

II, III, IV, V

(Individual Plaintiffs - Minority Students who are presently attending a certain school which is non-conforming as well as racially imbalanced and which is proposed to be built on the same site.)

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The foregoing Petitioners bring this action individually and on behalf of all other minority students who are attending and will attend racially imbalanced schools which are also structurally inadequate and who will continue to be assigned to racially segregated schools if their current schools are located on the same site. This class consists of persons too numerous to mention and joinder of all parties is impracticable. There are common questions of law and fact concerning their rights. The claims of the named petitioners are typical of the class and they will fairly and adequately represent the class.

VII

~~P.E.O.P.L.E.~~ NAACP

VIII

C.U.R.E.

IX

The Leaque of Women Voters of San Diego, California

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Respondents are the California State Allocation Board and its members Wilson C. Riles, Superintendent of Public Instruction, Department of Education, Vern Orr, Director of Finance, Department of Finance, Lawrence R. Robinson, Jr., Director of General Services, Department of General Services, Albert S. Rodda, Senator, Lew Cusanovich, Senator, Leroy F. Greene, Assemblyman, and Dickson Arnett, Assemblyman. The State Allocation Board is responsible for making apportionments of legislative ~~apportiations~~ appropriations to local agencies if no other officer or agency is authorized to make the allocations. In regard to the School HOusing Aid Act, the State Allocation Board is specifically charged with responsibility of apportioning $310,000,00 appropriated by the Act.

XI

Pursuant to the School Housing Aid Act, the State Board of Education is empowered to:

> "Establish such qualifications as it deems will best served the purposes of this article for determining the eligibility of districts to apportionments under this article.
>
> "Establish such procedures and policies in connection with the administration of and expenditure of funds made available for the purpose of this article

it deems necessary.

Adopt such rules and regulations for the administration of this article, require such procedure, forms, and information as it may deem necessary." Education Code Section 19700.57.

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In 1933, the California Legislature, by an urgency act, adopted the Field Act which established certain structural standards for public school buildings. Education Code Sections 15451 et seq. Thirty-Four years later, in 1967, the Legislature stated it had originally intended a continuous progress would be made in the repair, reconstruction or replacement of pre-field act buildings. It noted that the matter had been ignored in some school districts. The Legislature announced it was reasonable to expect that all of the pre-field act buildings will have been repaired, reconstructed or replaced by 1983, at which time the newest of the buildings would be 50 years old. Education Code Section 15501. However, in 1968, Section 15516 of the Education Code was enacted to provide that no pre-field act school building shall be used after June 30, 1975.

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To assist local school districts in meeting the 1975 deadline, the Legislature in 1971 enacted the School Housing Aid for rehabilitation and replacement of structurally inadequate school facilities Act (hereinafter School Housing Aid Act). That Act authorized $30,000,000 raised pursuant to the State School Building Aid Bond Law of 1966 to be expended for school construction. In addition, $250,000,000 of the money to be raised by the School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 was authorized for this purpose. This Bond Law was subsequently passed by the voters in the June, 1972 primary election. Further, in 1972, a new provision was added to the Act which authorized an additional $30,000,000 from the School Building Safety Fund to be apportioned for replacing non-conforming school buildings. A total of $310,000,000 has been authorized by the Legislature pursuant to this Act for apportionment to local school districts to rehabilitate or replace their structurally inadequate school buildings.

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As of December 31, 1972, 226 local school districts were using non-conforming buildings. In 33 of those districts _____ of the non-conforming school buildings are also racially and ethnically imbalanced. Of the reconstruction work needed to be done, 70% is in 8 major urban districts. In those 8 districts _____ schools are non-conforming and of those _____ are racially and ethnically imbalanced:

Los Angeles Unified School District - - 99 of 132 non-conforming schools are imbalanced.

Oakland Unified school District - - 25 of 34 non-conforming schools are imbalanced.

San Diego City Unified School District -- 15 of 25 non-conforming schools are imbalanced.

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(A list of the other 25 school districts with racially imbalanced non-conforming schools with the number of each is attached as Exhibit "A" and incorporated herein by reference.)

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For the most part the local school districts plan to replace the present non-conforming schools with a new structure constructed on the same site. For example, the Oakland School District plans to rebuild ____ of the 34 non-conforming schools on the same site, _____ of the 25 imbalanced schools are planned for a location on the same site. Similarly in Los Angeles _____ of the

132 non-conforming and ____ of the 99 which are also racially imbalanced will be located on the same site. In Sacramento _____ of the 20 non-conforming and _____ of the 10 which are also imbalanced will be located on the same site. The San Diego Unified City School District plans to locate _____ of the 25 non-conforming and _____ of the 15 which are also racially imbalanced on the same site. San Jose will locate on the same site _____ of the _____ non-conforming and _____ of the _____ which are also racially imbalanced, and Stockton will replace _____ of the 19 non-conforming and all of the 10 which are also imbalanced at the same location. In San Francisco _____ of the 55 non-conforming and _____ of the 22 which are also racially imbalanced will be rebuilt on the same site. Rebuilding the existing non-conforming racially imbalanced schools on the same site serves merely to perpetuate the racial imbalance which presently exists in those schools.

Incorporate by reference Plans of school district

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There are available to school districts with schools which are both racially imbalanced and non-conforming alternatives to constructing a new school on the same site. These alternatives include, for example, locating new schools on boundaries between minority and Anglo neighborhoods and the construction of larger schools (frequently described as educational parks) to replace several non-conforming schools which are both predominantly minority and predominantly Anglo. (A plan calling for construction of educational parks was prepared in Stockton by school officials but bypassed by the local Board of Education. A description of that plan is attached as Exhibit ____ and incorporated herein by reference.) The utilization of these alternatives by the local school districts would significantly decrease and in some instances eliminate completely racial imbalance.

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Although the foregoing alternative plans of school construction exists and are available to local school districts, they will not be implemented by those districts unless the State Allocation Board takes steps to insure the School Housing Aid Act funds are not used merely to reconstruct schools on sites which result in the per-

petuation of racial segregation. On February 15, 1973, Petitioners made a formal demand on the State Allocation Board that they implement steps to prevent the continuation of racial and ethnic imbalance. At that time Petitioners suggested that the Board could, as part of its application process, require the submission of information concerning the probable racial and ethnic enrollment of any school which is to be constructed with funds allocated by the Board. If the information indicates that the proposed school would be racially imbalanced, the application could be referred to the Department of Education's Bureau of Intergroup Relations for a determination of how the imbalance could be prevented. The Board would then apportion funds only after receiving assurances from the local school district that the proposed project will not promote or perpetuate racial or ethnic segregation. A copy of Petitioners' letter to Respondent Board is attached as Exhibit " " and incorporated herein by reference.

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In support of their demand, Petitioners relied in part on Education Code Sections 5002 and 5003 and 5 California Administrative Code Sections 14020 and 14021. Section 5002 provided:

> "It is the declared policy of the legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas and school attendance practices."

The Administrative Code Section 14020 provided:

> "It is the declared policy of the State Board of Education that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall exert all effort to prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas and school attendance practices."

Section 14021(c) of the Administrative Code defined racial imbalance:

> "For purposes of these regulations, a racial or ethnic imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs by more than 15 percentage points from that in all the schools of the district."

In addition, Petitioners supported their demand on the grounds that Respondents were obligated by the Federal and California Constitutions to act so as not to perpetuate racial and ethnic segregation.

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In response to Petitioners' formal demand, Respondents appeared to recognize that they would be bound to implement Petitioners' suggestions by reason of Education Code Sections 5002 and 5003 and Administrative Code Sections 14020 and 14021 of Title 5 of the California Administrative Code, however, they declined to do so because these sections had previously been repealed by Proposition 21. The Board noted in their response that "It should assume the constitutionality of the Proposition." The Board went on to say that it would be willing to reconsider Petitioners' request if and when any portion of Proposition 21 is invalidated. A copy of the letter from the Board is attached as Exhibit " " and incorporated herein by reference.

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In addition to repealing Education Code Sections 5002 and 5003 and Sections 14020 and 14021 of Title 5 of the California Administrative Code, Proposition 21 added Section 1009.6 of the California Education Code. This section provides "No public school student shall because of his race, creed, or color, be assigned to attend a particular school." Given the historical context, the immediate objectives, and ultimate effect of Proposition 21, it is patently unconstitutional. Proposition 21 is but the latest in a series of efforts to prevent the minority students in California from achieving an integrated quality education. It deprives school authorities of the one tool essential to achieve desegregation and it involves the state in unlawfully encouraging racial segregation.

XXI

Apart from the Education and Administrative Code Sections obstensibly repealed by Proposition 21, the duty of the State Allocation Board to take all necessary steps to prevent the state from expending funds to perpetuate and extend racial and ethnic

segregation exists by virtue of the Equal Protection Provisions of both the State and Federal Constitutions. Specifically, these provisions would prohibit the state from engaging in any act which would perpetuate racial segregation. Hence it is also in violation of these constitutional provisions for the Board to actively participate in providing $310,000,000 (the most mammoth school reconstruction project in the state's history) toward the perpetuation of racial and ethnic segregation. Such participation is illegal and by any standard definable as a state-wide de jure act of racial and ethnic segregation.

XXII

Of the $310,000,000 to be allocated by the State Allocations Board, applications involving $65,800,000 have by this time been approved by the Board. However, substantially less than half of that sum has actually been apportioned by the Board. The remainder will not be apportioned until local school districts submit certain qualifying documents. Apportionments in substantial sums are to be made by the State Allocation Board at its August, 1973 meeting.

XXIII

The necessity of this Court to exercise its original jurisdiction to resolve the issues presented by this case arises first by reason of the grave, and state-wide importance of the questions presented and second because of the urgency of the matter and the unavailability to Petitioners of any other plain, speedy and adequate remedy. Questions concerning the validity and effect of Proposition 21 ~~is~~ are obviously of singular importance to the operations of the State Allocation Board in administering the school housing aid act. However its impact is much broader. The uncertainty created by Proposition 21 is greater today than it was immediately following its passage. Although two Superior Courts have ruled, one held the Proposition unconstitutional in its entirety and the other held it totally constitutionally. Further, the question is now pending in the Courts of Appeals for both the Third and Fifth Appellate Districts. The likelyhood, again, of inconsistent results exists. In addition,

because of the uncertainty engendered by Proposition 21 has clouded the rights and obligations of students and local school boards throughout California and proper educational planning has been hindered and disrupted. Desegregation which constitutionally must be ended at once has come to a halt by reason of the initiative's passage.

Of equal state-wide significance is the necessity for clarifying the duty of the State Allocation Board in apportioning $310,000,000 to reconstruct public schools in the state. Every major school district is affected. Clearly this clarification must come from the state's Supreme Court.

It is clear because of the gravity of the state-wide importance of the questions presented by this case, that a decision by this Court is needed. However, because the State Allocation Board has already apportioned some monies and will in August of this year apportion substantial additional sums there simply is not time for this case or these questions to reach this Court if effective relief is be forthcoming.

WHEREFORE Petitioners pray:

1. That this Court restrain Respondents, during the pendency of this action, from apportioning additional sums of money under the School Housing Aid Act if the expenditure of that money would be used to promote or perpetuate racial or ethnic segregation.

2. That this Court issue its Alternative Writ of Mandate commanding the Respondent State Allocation Board to take all steps necessary to insure that the funds it apportions pursuant to the School Housing Aid Act shall not be used to construct schools which will perpetuate racial or ethnic segregation, or to show cause before this Court at a specified time and place why it has not do so.

3. That on the hearing of the alternative writ and the return thereto, if any, this Court issue its peremptory writ of mandate commanding the respondent State Allocation Board to take all steps necessary to insure that the funds it apportions pursuant to the School Housing Aid Act shall not be used to construct schools which will perpetuate racial or ethnic segregation,

4. For costs of this proceeding, and such other and further relief as the Court deems just.

Verification

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1. That this Court restrain Respondents, during the pendency of this action, from apportioning additional sums of money under the School Housing Aid Act if the expenditure of that money would be used to promote or perpetuate racial or ethnic segregation.

2. That this Court issue its Alternative Writ of Mandate commanding the Respondent State Allocation Board to take all steps necessary to insure that the funds it apportions pursuant to the School Housing Aid Act shall not be used to construct schools which will perpetuate racial or ethnic segregation, or to show cause before this Court at a specified time and place why it has not do so.

3. That on the hearing of the alternative writ and the return thereto, if any, this Court issue its peremptory writ of mandate commanding the respondent State Allocation Board to take all steps necessary to insure that the funds it apportions pursuant to the School Housing Aid Act shall not be used to construct schools which will perpetuate racial or ethnic segregation,

4. For costs of this proceeding, and such other and further relief as the Court deems just.

Verification

SAN DIEGO STATE UNIVERSITY 1897