



**FILED**

**DEC 22 2008**

**MICHAEL GANS  
CLERK OF COURT**

**THE ATTORNEY GENERAL  
STATE OF ARKANSAS  
DUSTIN McDANIEL**

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Assistant Attorney General

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December 18, 2008

Michael Gans, Clerk  
United States Court of Appeals  
For the Eighth Circuit  
Thomas F. Eagleton Court House  
111 S. 10th Street, Room 24.329  
St. Louis, MO 63102

RE: ***Little Rock School District v. Joshua, et al.***  
Eighth Circuit Court of Appeals Case No. 07-1866

Dear Mr. Gans:

The State of Arkansas wishes to express its appreciation for the time and attention that the Eighth Circuit has accorded this case. Since this appeal was docketed on April 16, 2007, changes have occurred in the State which have focused great attention on this appeal and, in particular, the question of when it will be decided. The purpose of this letter is to inform the Court of these changes and to ask the Court to decide the case as soon as is reasonably possible.

A year and a half ago, Arkansas Act 395 of 2007 became effective. The Act provided incentives (principally payment of attorney fees if actions were taken by certain dates) to the school districts to encourage them to move forward by seeking declarations of unitary status in the District Court. The State's hope was that some sort of ruling could be obtained on those motions before the next legislative session in January 2009. In October and November of 2007, the North Little Rock and Pulaski County Special School districts did file petitions for declaration of unitary status. The Districts requested hearings on the motions, but the District Court gave notice that it would not hold hearings until the resolution of this appeal. (See attached Order). The motions in the District Court have now remained unaddressed for over a year.

The Arkansas General Assembly will convene again on January 12, 2009. The legislature faces important funding decisions without, to date, guidance from this Court and the District Court on the unitary status of the districts. In addition, student assignment decisions for the Magnet and M-M programs (which account for the bulk of the desegregation funding to the three districts) for the 2009-2010 school year will be made in January 2009.

**RECEIVED**

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**DEC 22 2008**

**U.S. COURT OF APPEALS  
EIGHTH CIRCUIT**

Mr. Michael Gans  
December 18, 2008  
Page 2 of 2

The State and this Office appreciate the seriousness with which this Court has approached this case. The State does not wish to rush the panel to judgment. However, the Court's expeditious guidance on these matters would be of great utility for the decisions facing the District Court and the General Assembly.

Would you please inform the panel of the State's concerns, outlined in this letter, and the State's respectful request that the Court issue its Opinion on this appeal at its earliest convenience?

Best Regards,



Scott P. Richardson  
Assistant Attorney General

SPR/jkh  
Enclosure  
CC (w/encl.): Mr. Christopher Heller  
Mr. John W. Walker  
Mr. M. Samuel Jones, III  
Mr. Steven W. Jones

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**LITTLE ROCK SCHOOL DISTRICT**

**PLAINTIFF**

**V.**

**No. 4:82CV00866-WRW/JTR**

**PULASKI COUNTY SPECIAL SCHOOL  
DISTRICT NO. 1, et al.,**

**DEFENDANTS**

**MRS. LORENE JOSHUA, et al.**

**INTERVENORS**

**KATHERINE KNIGHT, et al.**

**INTERVENORS**

**ORDER**

Pending are the North Little Rock School District's and the Pulaski County Special School District's Motions for Declaration of Unitary Status.<sup>1</sup>

In their motions, NLRSD and PCSSD request that I conduct a hearing and decide their Motions for Declaration of Unitary Status by June 14, 2008.

These requests are denied for three primary reasons.

1. I believe that it is important for everyone to have the opinion of the Eighth Circuit Court of Appeals in *LRSD v. Joshua Intervenors, et al*, 07-1866, before I hear and decide the other two cases. I am sure that the Court of Appeals will resolve the appeal within a reasonable time, but it is highly unlikely that it will render an opinion before June of this year.

Naturally, I think my opinion is right. I believe it was Clarence Darrow who observed that "We all think our opinions are right -- else we wouldn't hold them." But the Circuit Court holds the trump card on these issues.

2. I am not specifically aware of the discovery that has been done in the NLRSD and PCSSD cases, but I am confident that it will not be completed in time for a June hearing.

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<sup>1</sup>Doc. Nos. 4141, 4159.

3. Moreover, my schedule won't permit a hearing as early as requested by these parties -- my plate is full for the next few months. U.S. Magistrate Judge Joe Thomas Ray and I have done our best to resolve the issues in the school cases as soon as reasonably possible, after the issues have been joined, but a hearing and decision as early as June of this year is simply not feasible.

I am quite mindful of the deadlines set by the Arkansas General Assembly with respect to the payment of a portion the School Districts' "legal fees." Furthermore, I understand the concern of the members of the legislature. I believe the members of the Arkansas General Assembly passed this legislation with good intent and purpose. In this instance, however, its deadline loaded the wagon with more poles than a mule can pull.

For the reasons set forth above, the request for a hearing and decision by June 14, 2008 is DENIED.

IT IS SO ORDERED this 22nd day of January, 2008.

/s/ Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE

**JOHN W. WALKER, P.A.**

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December 19, 2008

Mr. Michael Gans  
Clerk of the Court  
8<sup>th</sup> Circuit Court of Appeals  
111 S. 10<sup>th</sup> Street, Room 24.329  
St. Louis, MO 63102

**Re: Little Rock School District v. Joshua, et al.  
Eighth Circuit Case No. 07-1866**

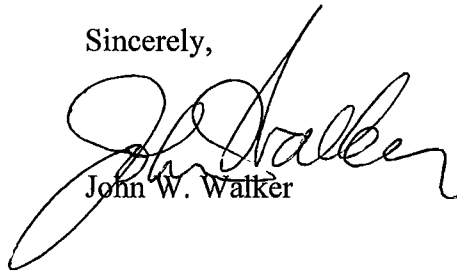
Dear Mr. Gans:

I am in receipt of a letter from Mr. Scott Richardson to you dated December 18, 2008. He seeks to have an ex-parte communication with the Court regarding matters that would be effectively be considered as an appeal of an Order entered on January 22, 2008 by the court below in a case where the Attorney General made no appearance and did not otherwise seek to obtain an appeal within thirty (30) days of January 30, 2008.

The letter is inappropriate to be submitted to the Court as it puts forth positions that were not developed in the court below nor appealed. Moreover, the Attorney General did not see fit to intervene when Judge Wilson entered his Order in January, 2008.

We respectfully request that, if you have not done so, the ex-parte communication to the Court by a non party to the litigation, not be presented to the Panel. The State's reasons for its actions and what it faces does not constitute a justiciable issue.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Walker". The signature is fluid and cursive, with a large initial "J" and "W".

John W. Walker

JWW:js

Cc: Mr. Scott Richardson  
Mr. Christopher Heller  
Mr. M. Samuel Jones  
Mr. Stephen W. Jones

United States Court of Appeals  
For the Eighth Circuit  
Thomas F. Eagleton U.S. Courthouse  
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Michael E. Gans  
Clerk of Court

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January 5, 2009

Mr. Scott P. Richardson  
Assistant Attorney General  
Office of the Attorney General  
State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201

Re: No. 07-1866 Little Rock School District v. Lorene Joshua, et al.

Dear Mr. Richardson:

This will acknowledge receipt of your letter of December 18, 2008. Your letter and Mr. Walker's response were sent to the court on December 24, 2008. The panel of judges to which the case has been submitted informs me that the matter is under active consideration. I do not have any other information to provide the parties at this time.

Please let me know if you have any other questions or concerns.

Sincerely,  
Michael E. Gans  
Clerk of Court

cc: All Counsel of Record