

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ANTHONY T. LEE, et al.,

Plaintiffs

UNITED STATES OF AMERICA,

Plaintiff-
Intervenor
and Amicus Curiae

vs.

MACON COUNTY BOARD OF EDUCATION, et al.,

Defendants.

CIVIL ACTION

NO. 604-E

APPLICATION FOR STAY

Appellants Lurleen Burns Wallace, in her capacity as Governor of the State of Alabama, and as President of Alabama State School Board of Education; Alabama State Board of Education; Ernest Stone, Secretary and Executive Officer of Alabama State Board of Education; James D. Nettles, Ed Dannelly, Mrs. Carl Strang, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Ward and Harold C. Martin, as members of Alabama State Board of Education, having appealed to the Supreme Court of the United States from the final judgment and decree of this court in this cause entered on March 22, 1967, do hereby pray that said judgment and decree of March 22, 1967, be stayed in all respects pending final disposition of said appeal. A copy of the notice of appeal is attached hereto and marked Exhibit "A."

The state-wide desegregation order as shown by the notice of appeal involves serious, and substantial constitutional questions, affecting the entire State of Alabama and its educational system.

Appellants' legal remedies should be allowed to be followed without the possible complication of the case becoming moot by action of this court in effecting its judgment.

In Evans v. Buchanan, 152 F.Supp. 886, 256 F.2d 688, cert. den. 358 U.S. 836, 3 L.Ed.2d 72, the mandate of the Third Circuit Court of Appeals affecting the State of Delaware was withdrawn, the court stating:

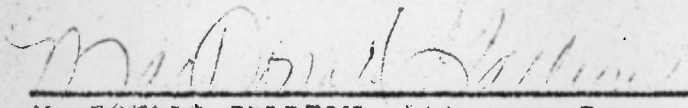
"The mandate of this court which was handed down on June 30, 1958, will be recalled, subject to the proviso that if the appellants have not filed a petition for writ of certiorari to the Supreme Court of the United States on or before August 14, 1958, and have not filed with the clerk of this court a certificate to such effect by August 13, 1958, the mandate of this court shall issue forthwith to the court below to carry out and effect the judgments of this court.

"We take this step so that the appellants, by application to the Supreme Court for writs of certiorari, may exhaust their legal remedies without the possible complication of the cases becoming moot by action of the court below effecting our judgments."

Although the measure of control over local school boards by the State Superintendent of Education and the State Board of Education is greater in Delaware under Supreme Court decisions of that state than similar officials in Alabama under Alabama Supreme Court decisions, nevertheless Evans v. Buchanan, the only other state-wide desegregation case found by our research, stayed the judgment pending decision by the Supreme Court of the United States.

In further support of this application are attached samples of statements and affidavits of affected educators, marked Exhibits B, C, D, E, F, and G.

We respectfully request that the stay be granted pending appeal.


MacDONALD GALLION, Attorney General
State Capitol
Montgomery, Alabama

Hugh Maddox
HUGH MADDOX, Legal Advisor
Governor's Office
State Capitol
Montgomery, Alabama

John C. Satterfield
JOHN C. SATTERFIELD
P.O. Box 466
Yazoo City, Mississippi

Goodwin, Smith & Dornan
GOODWIN, SMITH & DORNAN
325 Bell Building
Montgomery, Alabama

Attorneys for named Appellants

PROOF OF SERVICE

I, MacDonald Gallion, Attorney General of Alabama and one of the attorneys for Lurleen Burns Wallace, in her capacity as Governor of the State of Alabama, and as President of Alabama State School Board of Education; Alabama State Board of Education; Ernest Stone, Secretary and Executive Officer of Alabama State Board of Education; James D. Nettles, Ed Dannelly, Mrs. Carl Strang, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Ward and Harold C. Martin, as members of Alabama State Board of Education, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of April, 1967, I served copies of the foregoing Application for Stay on the several parties, as follows:

1. On the United States, by leaving a copy thereof at the Office of Ben Hardeman, Esq., United States Attorney for the Middle District of Alabama, at Room 302, Federal Building, Montgomery, Alabama, and by mailing a copy in a duly addressed envelope, with

air mail postage prepaid, to the Solicitor General, Department of Justice, Washington, D. C.

2. On the Plaintiffs and Plaintiff-Intervenor and Amicus Curiae, by mailing copies, in a duly addressed envelope, with first class postage prepaid, to the respective attorneys of record as follows:

Ramsay Clark, Esq.
United States Attorney General
Washington, D. C.

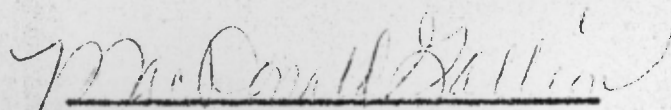
St. John Barrett, Esq.
Department of Justice
Civil Rights Division
Washington, D. C.

Brian K. Landsberg, Esq.
Department of Justice
Civil Rights Division
Washington, D. C.

Fred D. Gray, Esq.
34 North Perry Street
Montgomery, Alabama

Melvyn Zarr, Esq.
NAACP Legal Defense and
Educational Fund
10 Columbus Circle
New York, New York

Henry H. Aronson, Esq.
NAACP Legal Defense and
Educational Fund
10 Columbus Circle
New York, New York


Attorney General of Alabama
Office of the Attorney General
State Capitol
Montgomery, Alabama