

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT 35  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

ANTHONY T. LEE, et al,            )  
  )  
      Plaintiffs                    )  
  )  
UNITED STATES OF AMERICA,        )            CIVIL ACTION NO. 604-E  
  )  
      Plaintiff-                    )  
      Intervenor                    )  
      and Amicus Curiae            )  
  )  
      -vs-                            )  
  )  
MACON COUNTY BOARD OF            )  
EDUCATION, et al,                 )  
  )  
      Defendants                     )  
  )

NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the following Defendants appeal to the Supreme Court of the United States from the judgment and Decree (including Exhibit A thereto and the Opinion filed therewith, all of which are herein called "the Decree") dated and entered in this cause March 22, 1967, by the three-judge court constituted pursuant to Sections 2261 and 2264, Title 26, United States Code, for the purpose of hearing this cause in the United States District Court for the Middle District of Alabama, Eastern Division, composed of United States Circuit Judge Richard T. Rives, and United States District Judges H. H. Grooms and Frank M. Johnson, Jr., to-wit: 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.

This appeal is taken pursuant to 28 United States Code Section 1253.

II. The Clerk will please prepare a transcript of the record of this cause, for transmission to the Clerk of the Supreme Court of the United States and shall include in said transcript the following:

1. The transcript of proceedings had, evidence introduced and actions taken at the trial of this supplemental proceeding on November 30, December 1 and December 2, 1966, including only the exhibits introduced by the parties which are hereinafter listed and specifically described.

2. All pleadings and motions in this cause, other than motions concerning the production of documents and the issuance of subpoenas and subpoenas duces tecum including (but not limited to) the supplemental complaints filed by the Plaintiffs and Intervenor and all responsive pleadings thereto by the Defendants and the Motion to Dismiss filed by the Defendant, Ernest Stone, Secretary and Executive Officer of the Alabama State Board of Education and the affidavit filed therewith and all orders entered upon such pleadings and motions.

3. The Decree of the Court and the Opinion and exhibit attached thereto dated and entered March 22, 1967.

4. The depositions of Harold Howe, II, and Lawrence E. Crowder introduced as Exhibits 47 and 48 in behalf of the Defendants, together with all exhibits to said depositions.

5. All objections filed by the Defendants to all exhibits and depositions offered in evidence by the Plaintiffs and Intervenors and all Orders of the Court thereon.

6. The Defendants' Motion to Dismiss filed and the Order thereon.

7. Defendants' Exhibits 1, 2, 3, 4, 9, 11, 20, 24, 36, 40, 41, 46, Exhibit offered (Tr. dated December 1, p. 26-28) as Exhibit 47 or 47-A, Exhibits 51, 52, 53, 54, 55, 56, 57-A, 57-B, 68 and 72.

III. The following questions are presented by this appeal:

Did the Court err by taking the actions listed below?

1. Granting a permanent mandatory injunction compelling Defendants to act so as to materially and adversely affect (a) the rights of the ninety-nine local school districts of the State of Alabama named in the Decree, and (b) the rights of all trade schools, junior colleges and state colleges as defined in the decree although none of them have been served with process nor were they actually or constructively before the Court -- all in violation of the Constitution of the United States and particularly the due process clause of the Fifth Amendment.

2. Granting a mandatory injunction requiring affirmative detailed and continuous administrative actions

by state and local officials of Alabama which constitute an intricate process of supervision and administration of the schools, junior colleges and state colleges thereof contrary to the Constitution and Statutes of Alabama and contrary to the Constitution of the United States and particularly the Tenth and Eleventh Amendments thereof, and in violation of the Constitutional separation of governmental powers between the United States of America and the States, and also such separation of powers between the judicial, executive and legislative branches of the States and the United States.

3. Entering a Decree which directly conflicts with the Constitution and Statutes of Alabama as judicially construed by the Supreme Court of Alabama in that the Decree compels the State Superintendent of Education through mandatory injunction, to exercise powers not vested in him under the Constitution and laws of Alabama and specifically vested in local boards of education, to-wit:

(a) The placement, assignment and transfer of students.

(b) The transfer or reassignment of teachers.

(c) The closing of public schools.

(d) The control of expenditure of funds in the nature of grants-in-aid to students in the public school system.

(e) The furnishing, direction and control of the transportation of pupils.

(f) The location and construction of school facilities.

4. Holding Title 52, Section 61(8), Code of Alabama (Tuition Grant Statute, No. 687 approved September

1, 1965), unconstitutional and enjoining the Defendants, their agents, employees and successors in office from approving or permitting the approval or payment of any tuition grants or grants-in-aid under the authority of such statute.

5. Entering a Uniform Decree affecting at least ninety-nine of the school districts in the State of Alabama and requiring each of them to adopt a uniform "plan of desegregation" without any evidentiary hearing by a local United States District Court, thereby denying the local school boards the right to prepare and submit a plan which is proper under local conditions to meet the constitutional requirements, in direct violation of the decisions of the Supreme Court of the United States and the decisions of all of the Courts of Appeal of the United States.

6. Granting a mandatory injunction requiring the adoption of a "plan of desegregation" drawn and calculated to destroy the freedom of choice of all students, arbitrarily and capriciously requiring assignment of all students and teachers in every school and college without any evidentiary hearing contrary to the decisions of the Supreme Court of the United States and of all Courts of Appeals of the United States in many particulars, including the following:

(a) Requiring discriminatory actions by giving preference to students and teachers because of their race in violation of the Fourteenth Amendment.

(b) Requiring a mandatory annual choice by all students in every grade of the schools.

(c) Requiring in the absence of the exercise of a choice that a student "shall be assigned to the school nearest his home where space is available", and that, in assigning students to schools, "no preference shall be given to any student for prior attendance of a school".

(d) Requiring construction of schools and closing of schools for the purpose of desegregation.

(e) Requiring without any evidentiary hearing local expenditures for "physical facilities, equipment, services, courses of instruction and instructional materials" regardless of the ability of either local authorities or state authorities to finance such actions.

7. Entering a Decree contrary to the action of the Congress of the United States under Section 5 of the Fourteenth Amendment providing that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article", such Decree violating the Congressional definition of "discrimination" as applied to the public schools contained in Public Law 88-352 (Civil Rights Act of 1964), particularly Sections 401(b), 407(a), 410, 602, 604, 702 and 702(j) thereof, and Section 604 of the Elementary and Secondary Education Act of 1965 as amended on October 6, 1966.

8. Entering a Decree affecting all school districts, trade schools, junior colleges, state colleges and students thereof, in an action brought by representatives of a class consisting solely of students in the Macon County School District lacking common grounds of

fact and law.

9. Permitting the United States of America to intervene in this case, contrary to the requirements of the statutes of the United States.

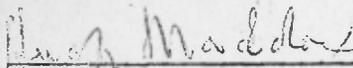
10. Divesting the United States District Courts of Alabama of their jurisdiction over the schools, trade schools, junior colleges and colleges located within their districts.

11. Granting a mandatory injunction which in effect nullifies and holds void and unconstitutional the Alabama School Placement Law, Act No. 201 of the Legislature of Alabama, Regular Session 1955, enacted August 3, 1955, as amended.

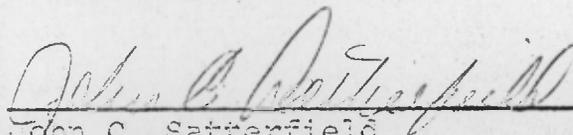
Respectfully submitted,



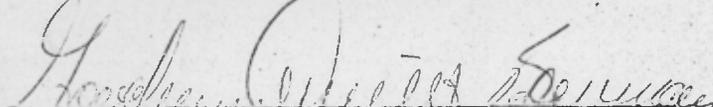
MacDonal Gallion, Attorney General  
State Capitol  
Montgomery, Alabama



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



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



GOODWYN, SMITH & BOWMAN  
325 Bell Building  
Montgomery, Alabama

ATTORNEYS FOR NAMED DEFENDANTS

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 7 day of April, 1967, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, 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:

Ramsey 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 M. 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