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Florida v. Alabama

396 U.S. 490 (1970)

Paul J. Wahlbeck, George Washington University

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 37 Orig. - Florida v. Alabama, et al.

49 other

On January 26, 1970 the Plaintiff lodged in this Court a purported complaint naming ~~the above named~~ States and Robert Finch as Secretary of the Department of Health, Education and Welfare as parties Defendant ~~is~~ asking leave to file the said document dated January 22, 1970 as a complaint. Rule 9 of this Court provides that when a motion is tendered for leave to file a complaint invoking the original jurisdiction of this Court, the adverse parties may file motions or briefs in opposition within 60 days. The rule also provides

When such brief or briefs in opposition have been filed, or the time within which they may be filed has expired, the motion, pleading and briefs shall be distributed to the Court by the Clerk. The Court may thereafter grant or deny the motion or set it down for argument.

Under this Rule there is no occasion for the Court to act on or indeed even to become aware of a motion for leave to file a complaint seeking to invoke the original jurisdiction of the Court until responses are made or time for such has run out.

~~However, the filing of~~ Plaintiff's motion for leave to file the complaint has now been drawn to the attention of the Court by a pleading styled Motion to Accelerate Time to File Responsive Pleadings. To act on that motion calls for an examination of the complaint to determine whether the time allowed for responsive pleadings ~~is to be abridged, and~~ this in turn requires

can properly

us to determine whether granting the motion to accelerate would impose a hardship on the named Defendants or any of them. Taken together, this process requires a determination whether the complaint states a cause of action against the Defendants or any of them, *for if it does not state a cause of action there is no occasion for any of them to respond.*

In essence, the complaint seeks something in the nature of a declaratory judgment clarifying prior opinions of this Court including hypothetical questions resting on assumptions made by the Plaintiff as a purported factual basis for the relief sought. In Alexander v. Holmes County, this Court directed that the Respondent Board of Education "begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color." That language defines a unitary school system. It does not command what school boards must do or how it should be done, but only what they may not lawfully do.

The complaint does not state a cause of action against the 49 states named as Defendants; the complaint against Robert Finch as Secretary, and a citizen of California, similarly fails to state a cause of action.

The motion of the State of Florida for leave to file the complaint should, in my view, be denied.

Whether the confusion over what we meant by a "unitary school system" is genuine, I am not sure. But if we think anyone has good faith doubts on the "bus" issue, I am prepared to address myself to it.

If it is agreeable to all, we can meet at 10:00 AM on Tuesday.

W.E.B.
W. E. B.

No. 37 ORIG. FLA v. ALA.

REC'D - 1/27/70

Per Curiam

On January 26, 1970 the Plaintiff filed a motion for leave to file a complaint invoking the original jurisdiction of this Court naming 49 other States and Robert Finch as Secretary of the Department of Health, Education and Welfare as parties Defendant. Rule 9 of this Court provides that when a motion is filed for leave to file a complaint invoking original jurisdiction the adverse parties may file motions or briefs in opposition within 60 days. The rule also provides that when responses in opposition have been filed, or the time within which they may be filed has expired, the Court may then grant or deny the motion.

After filing the motion for leave to file the Complaint, Plaintiff filed a second motion to accelerate the time for responses by Defendants. Consideration of the latter motion requires us to examine the proffered Complaint to determine inter alia whether it would be appropriate to abridge the 60 day period for responses. Having examined the Complaint we conclude it fails to state a claim against any of the Defendants warranting the exercise of the original jurisdiction of this Court.

Accordingly, the motion to accelerate the time for responses to the proffered Complaint and the motion for leave to file the proffered Complaint are denied.

Note: On request of any member of the Court the Conference will be convened. However, I am unavailable after 2:30.

W. E. B.

Per Curiam

On January 26, 1970 the Plaintiff filed a motion for leave to file a complaint invoking the original jurisdiction of this Court naming

49 other States and Robert Finch as Secretary of the Department of

Health, Education and Welfare as parties Defendant. Rule 9 of this Court provides that when a motion is filed for leave to file a complaint invoking original jurisdiction the adverse parties may file motions or briefs in opposition within 60 days. The rule also provides that when

responses in opposition have been filed, or the time within which they may be filed has expired, the Court may then grant or deny the motion.

After filing the motion for leave to file the Complaint, Plaintiff filed a second motion to accelerate the time for responses by Defendants. Consideration of the latter motion requires us to examine the proffered Complaint to determine inter alia whether it would be appropriate to abridge the 60 day period for responses. Having examined the Complaint we conclude it fails to state a claim against any of the Defendants warranting the exercise of the original jurisdiction of this Court.

Accordingly, the motion to accelerate the time for responses to the proffered Complaint and the motion for leave to file the proffered Complaint are denied.

Note: On request of any member of the Court the Conference will be convened. However, I am unavailable after 2:30.

W. E. B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 27, 1970

MEMORANDUM TO THE CONFERENCE:

Because of factors which will confront us in the Alabama case and perhaps others, it seems to me ^{now} we should not rest our Florida order on the Rule 9 aspect but rather on the realistic fact that in a case with "emergency" claims we would invariably look at the Complaint without waiting for 60 days. The following sentence could be substituted for the sentences beginning and ending on lines 4 and 13 respectively. We would then substitute the following:

The alleged emergent nature of the claims for relief led the Court to give expedited consideration to the motion and proffered complaint and, having examined the Complaint we conclude it fails to state a claim against any of the Defendants warranting the exercise of the original jurisdiction of this Court.

Accordingly, the motion to accelerate the time for responses to the proffered Complaint and the motion for leave to file the proffered Complaint are denied.

W E B

W. E. B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

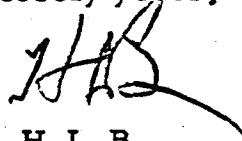
January 27, 1970.

Dear Chief,

Re: No. 37 Orig., Florida v. Alabama,
et al.

The change in your Per Curiam in
this case is agreeable to me.

Sincerely yours,



H. L. B.

The Chief Justice

cc: Members of the Conference

January 27, 1970

Re: No. 37 Orig. - Florida v. Alabama, et al.

Dear Chief:

Your proposed per curiam is satisfactory
to me.

Sincerely,

J.M.H.

CC: The Conference

January 27, 1970

Re: No. 37 Orig. - Florida v. Alabama, et al.

Dear Chief:

The changes reflected in your memorandum, respecting the per curiam as originally circulated, are satisfactory to me.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1970

RE: No. 37 Orig. Florida v. Alabama, et al.

Dear Chief:

I fully agree with the suggested amended Per Curiam. Indeed, save for revision of the first sentence to indicate that the action is against the Attorney General and Secretary of HEW, I should think precisely the same Per Curiam would serve in the Alabama case.

Sincerely,



W. J. B. Jr.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 27, 1970

No. 37 Orig., Florida v. Alabama et al.

Dear Chief,

The Per Curiam you have circulated, either in its original form or with the amendments suggested in your subsequent memorandum, is satisfactory to me.

Sincerely yours,

P.S.
✓

The Chief Justice

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 27, 1970

Re: No. 37 Orig. - Florida v. Alabama, et al.

Dear Chief:

Your proposed Per Curiam is quite
satisfactory with me and I have no suggestions.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

SUPREME COURT OF THE UNITED STATES

October Term, 1969

STATE OF FLORIDA *v.* STATE OF
ALABAMA ET AL.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

No. 37, Original. Decided January 28, 1970

PER CURIAM.

On January 23, 1970, the plaintiff filed a motion for leave to file a complaint invoking the original jurisdiction of this Court naming 49 other States and Robert Finch as Secretary of the Department of Health, Education, and Welfare as parties defendant.

The alleged emergent nature of the claims for relief led the Court to give expedited consideration to the motion and proffered complaint and, having examined the complaint, we conclude it fails to state a claim against any of the defendants warranting the exercise of the original jurisdiction of this Court.

Accordingly, the motion to accelerate the time for responses to the proffered complaint and the motion for leave to file the proffered complaint are denied.

SUPREME COURT OF THE UNITED STATES

October Term, 1969

**STATE OF FLORIDA v. STATE OF
ALABAMA ET AL.**

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

No. 37, Original. Decided January 28, 1970

PER CURIAM.

On January 23, 1970, the plaintiff filed a motion for leave to file a complaint invoking the original jurisdiction of this Court naming 49 other States and Robert Finch as Secretary of the Department of Health, Education, and Welfare as parties defendant.

The alleged emergent nature of the claims for relief led the Court to give expedited consideration to the motion and proffered complaint and, having examined the complaint, we conclude it fails to state a claim against any of the defendants warranting the exercise of the original jurisdiction of this Court.

Accordingly, the motion to accelerate the time for responses to the proffered complaint and the motion for leave to file the proffered complaint are denied.