

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

October Term, 1969

No. 37

ORIG.

Office-Supreme Court, U.S.
FILED

JAN 28 1970

JOHN F. DAVIS, CLERK

THE STATE OF FLORIDA

vs.

ALABAMA, ALASKA, ARIZONA, ARKANSAS,
CALIFORNIA, COLORADO, CONNECTICUT,
DELAWARE, GEORGIA, HAWAII, IDAHO,
ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY,
LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI,
MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE,
NEW JERSEY, NEW MEXICO, NEW YORK, NORTH
CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA,
OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH
CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS,
UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST
VIRGINIA, WISCONSIN, WYOMING,

and

ROBERT FINCH AS SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE, AND AS
A CITIZEN OF THE STATE OF CALIFORNIA,

**MOTION FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

**MOTION TO ACCELERATE TIME
TO FILE RESPONSIVE PLEADINGS**

Gerald Mager
Office of the Governor
The Capitol
Tallahassee, Florida 32304
Of Counsel

TOPICAL INDEX

	Page
MOTION FOR LEAVE TO FILE COMPLAINT	1
COMPLAINT	3
PROOF OF SERVICE	12
MOTION TO ACCELERATE TIME TO FILE RESPONSIVE PLEADINGS	15
PROOF OF SERVICE	17

TABLE OF CITATIONS

	Page
Alexander v. Holmes Co. Board of Education, et al., 396 U.S. 19	4, 5
Carter et al. v. West Feliciana Parish School Board et al. (Docket No. 944)	5
Singleton et al. v. Jackson Municipal Separate School District, et al. (Docket No. 972)	5

STATUTES

78 Stat. 248 (42 U.S.C. §2000c-6)	5, 7, 9
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**IN THE
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THE STATE OF FLORIDA

Plaintiff

vs.

**ALABAMA, ALASKA, ARIZONA, ARKANSAS,
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CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS,
UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST
VIRGINIA, WISCONSIN, WYOMING,**

and

**ROBERT FINCH AS SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE, AND AS
A CITIZEN OF THE STATE OF CALIFORNIA,**

Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Florida, acting by and through its Governor, asks leave of Court to file the Complaint attached hereto in typewritten form and to substitute therefor in due course printed copies.

The State of Florida

by _____

Gerald Mager
Office of the Governor
The Capitol
Tallahassee, Florida

Claude R. Kirk, Jr.
Governor
The Capitol
Tallahassee, Florida

Of Counsel

January 23, 1970

**IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA**

October Term, 1969

No. 37

THE STATE OF FLORIDA

vs.

**ALABAMA, ALASKA, ARIZONA, ARKANSAS,
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CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS,
UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST
VIRGINIA, WISCONSIN, WYOMING,
and**

**ROBERT FINCH AS SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE, AND AS
A CITIZEN OF THE STATE OF CALIFORNIA,**

COMPLAINT

The State of Florida, by and through its Governor and Chief Executive Officer, Claude R. Kirk, Jr., brings this complaint, and for its cause of action states:

1. This is a controversy between the State of Florida and the other forty-nine states of the United States and a citizen of another state. Original jurisdiction of this cause is therefore vested in the Supreme Court of the United States.

2. Plaintiff is the State of Florida acting by and through its Governor and Chief Executive Officer, Claude R. Kirk, Jr. The State of Florida brings this action to preserve for all of the citizens of the State of Florida the privileges and immunities accorded to the citizens of the several states as provided by Article 4, Section 2 of the Constitution of the United States. In his capacity as Governor of the State of Florida, he is empowered and authorized to bring and maintain this suit.

3. Defendants are the States of Alabama and the other forty-eight states named as defendants in the caption of this cause, and Robert Finch, as Secretary of the United States Department of Health, Education and Welfare, who is a citizen of the State of California.

4. On October 29, 1969, the Supreme Court of the United States in *Alexander v. Holmes Co. Board of Education, et al.*, 396 U.S. 19, ordered all segregated schools which have continued such segregated operation under the standard of allowing "all deliberate speed" for desegregation are no longer permitted to maintain and operate such schools on a segregated basis under the Constitution of the United States. In that case the Supreme Court of the United States ordered the termination of a dual school system at once and ordered the school district there involved to operate now and hereafter only "unitary schools". In such judgment the Supreme Court of the United States directed the school districts there involved to "begin immediately" to operate as unitary school systems within which no person could be effectively excluded from any school because of race or color.

5. On January 14, 1970, the Supreme Court of the United States, in the consolidated cases of *Carter et al. v. West Feliciana Parish School Board et al.*, and *Singleton et al. v. Jackson Municipal Separate School District, et al.* (Docket Nos. 944 and 972) interpreted the language of *Alexander v. Holmes County, supra*, to require the States of the United States to effect a unitary school system within which no person is to be effectively excluded from any school because of race or color by February 1, 1970.

6. Under 78 Stat. 248 (42 U.S.C. §2000c-6), the Congress of the United States provided that the Attorney General of the United States was required to bring and maintain appropriate proceedings in the event any person is denied admission to, or is not permitted to continue in attendance at a public college by reason of "race, color, religion, or national origin" and further provided no official or "court of the United States" shall be empowered "to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance or otherwise enlarge the existing power of the court to insure compliance with the constitutional standards." The practical effect of the requirement of a unitary school system by February 1, 1970 is to require transportation of pupils and students from one school to another in order to achieve racial balance and such order forces the State of Florida and its educational system to expend millions of dollars in order to achieve such transportation and forces the State of Florida to violate the provisions set forth above in not permitting thousands of pupils to continue their attendance at a public college by reason of their color.

7. The United States Commission on Civil Rights has determined that a number of States of the United States have

and maintain a greater racial imbalance in their schools than the State of Florida. The result of the provisions and orders of the Supreme Court of the United States will compel and require defendant, Robert Finch, as Secretary of the Department of Health, Education and Welfare, to withhold from the people of Florida and its school districts, funds that have been allocated to them from the federal government unless they can accomplish a unitary school system by February 1, 1970, which in truth and in fact is totally impossible. Thus the laws of the United States which award to each of the States its fair share of the funds appropriated for the public school systems will be frustrated. The State of Florida and its citizens will be denied immunities and privileges accorded to the citizens of the other States of the United States notwithstanding the fact that the citizens of the State of Florida are required to and do pay to the Federal government their full proportion of the taxes levied by the Federal government. The inability of the State of Florida to inaugurate a unitary school system by February 1, 1970 compels defendant, Robert Finch, as administrator of the funds appropriated by federal statute for public schools to refuse to distribute and allocate to the public schools of the State of Florida their just share of the school funds, although the other states will continue to receive a full share of such federally appropriated school funds because they are not required at the present time to accomplish a unitary school system by February 1, 1970. This discrimination against the State of Florida and its citizens is in violation of Section 2, Article 4, of the Constitution of the United States and denies to the citizens of the State of Florida equal protection of the laws under the Constitution of the United States.

8. Assuming that compliance with a unitary school system by February 1, 1970, requires the transportation by bus of hundreds of thousands of white children to schools to which

they have not been in attendance and requires the transporting of thousands of black children to schools to which they have not heretofore been in attendance, then the cost of such compliance will run into millions of dollars, funds which are not now available to the State of Florida and which cannot be appropriated until the next session of the legislature. Thus, the order may well require the suspension of the school operation for some indeterminate period of time and may very well submit the school board officials of the State of Florida to punitive action by the federal courts for the failure to comply with orders which are for all practical purposes impossible to implement. The Legislature of the State of Florida will not convene in time to provide the funds necessary for the State to accomplish a unitary school system before September 1, 1970.

9. The State of Florida will suffer irreparable injury if it is required to install a unitary school system by February 1, 1970 in that the impossibility of performance by the State of Florida will permit the other States to receive their proportionate allocation of tax funds derived from the federal government for their citizens and schools, while the State of Florida will be denied an allocation of its proportionate share for its citizens and its schools.

10. The State of Florida alleges that unless the Supreme Court of the United States declares and defines the meaning of "unitary school system" fixing thereby an ascertainable standard of conduct, the school officials of the State of Florida will be compelled to bus and transport pupils contrary to the spirit and intent of 78 Stat. 247 (42 U.S.C., §2000c-6) because of possible impending punitive court action.

11. The State of Florida alleges that the definition of "unitary school system" is necessary in order to afford all

parties the same standard of conduct by which implementation thereof may be determined and accomplished.

12. The State of Florida alleges that it is essential for the United States Supreme Court to resolve the rights, privileges, immunities, duties and responsibilities of the Department of Health, Education and Welfare insofar as it concerns the allocation and distribution of funds for education to the states, which are now under the mandatory duty to accomplish a unitary school system by February 1, 1970, in relation to the rights, privileges, immunities, duties and responsibilities of the Department of Health, Education and Welfare to those States now placed under such mandatory duty. Moreover, an ascertainable standard of conduct and guidelines be established to govern that department in the distribution of said funds to each of the States of the Union.

13. The State of Florida alleges that the purpose of the complaint is to resolve the aforementioned questions and thereby avoid the multiplicity of suits in every other State that would result from the absence of any definition of unitary school system as well as the clarification of the date on which implementation of pupil desegregation plans are to be accomplished by all such States.

14. The State of Florida's sole and exclusive purpose in seeking to file the complaint submitted herewith is to firmly establish once and for all for the State of Florida and all other States exactly what is required to be performed so as to comply with the Constitution of the United States and the applicable federal law and the applicable rules, regulations, and guidelines of the Department. The State of Florida alleges that said declaration by the Supreme Court of the United States will enable the State of Florida and all other States to

more fully and equitably implement and carry out what is declared to be the law of the land and to place the State of Florida and all other States on an equal footing in keeping with the traditional notions of justice and fair play.

15. The absence of a declaration of the rights of the respective parties as aforesaid have caused and will continue to cause irreparable injury to the State of Florida for which there is no other adequate remedy save this Court taking jurisdiction thereof and resolving the issues herein.

WHEREFORE, the State of Florida prays that the Supreme Court of the United States:

1. Take jurisdiction of this cause.
2. Enjoin and restrain each and every of the forty-nine defendant States and the defendant, Robert Finch, as Secretary of the United States Department of Health, Education and Welfare, from applying a standard of a unified school system different from that as may be enunciated by the Supreme Court of the United States as applicable to the State of Florida.
3. Declare that no State of the United States in establishing a unitary school system be compelled to bus and transport pupils contrary to 78 Stat. 247 (42 U.S.C. §2000c-6.)
4. Order the defendant, Robert Finch, as Secretary of the United States Department of Health, Education and Welfare to apply uniform standards and guidelines in the distribution of funds for education to each of the States of the Union.

5. Declare and establish a uniform standard applicable to all States of the Union for a unitary school system in conformance with the United States Constitution and the laws adopted thereunder.

and to grant such further relief as the Supreme Court of the United States deems appropriate.

THE STATE OF FLORIDA

By: _____
CLAUDE R. KIRK, JR.,
Governor of the State of Florida

Gerald Mager
Office of the Governor
State Capitol
Tallahassee, Florida 32304

Of counsel.

AFFIDAVIT

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

CLAUDE R. KIRK, JR., first being duly sworn, deposes and says:

1. He is the Governor of the State of Florida.

2. He has read the allegations of the foregoing complaint and verily believes that the facts therein stated are true.

CLAUDE R. KIRK, JR.

Sworn and subscribed to
before me, this 23rd day
of January, A. D. 1970.

Notary Public, State of Florida at Large

My commission expires:

PROOF OF SERVICE

This is to certify that the undersigned has on this 23rd day of January, 1970, served by mail on the Governor and the Attorney General of each of the above-named defendant States, and upon the defendant, Robert Finch, Secretary of the Department of Health, Education and Welfare, a copy of Motion for Leave to File Complaint and copy of the Complaint in this cause.

Gerald Mager
Office of the Governor
The Capitol
Tallahassee, Florida 32304

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and

ROBERT FINCH AS SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE, AND AS
A CITIZEN OF THE STATE OF CALIFORNIA,

Defendants,

**MOTION TO ACCELERATE TIME TO FILE
RESPONSIVE PLEADINGS**

The State of Florida, acting by and through its Governor respectfully requests that the United States Supreme Court accelerate the time period within which parties may file responsive pleadings and to fix such reasonable time as would permit an expeditious disposition of this cause.

The State of Florida

by _____
Claude R. Kirk, Jr.
Governor
The Capitol
Tallahassee, Florida

Gerald Mager
Office of the Governor
The Capitol
Tallahassee, Florida 32304
Of Counsel

January 23, 1970

PROOF OF SERVICE

This is to certify that the undersigned has on this 23rd day of January, 1970, served by mail on the Governor and the Attorney General of each of the above-named defendant States, and upon the defendant, Robert Finch, Secretary of the Department of Health, Education and Welfare, a copy of the Motion.

Gerald Mager
Governor's Office
The Capitol
Tallahassee, Florida 32304
Of Counsel

