AMICUS CURIAE BRIEF IN SUPPORT OF APPLICATION TO EXPEDITE CAUSE AND TO CONVENE SPECIAL TERM OF COURT

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Earl Faircloth, the duly elected Attorney General of the State of Florida, and Floyd Christian, the duly elected Commissioner of Education of the State of Florida, on behalf of all the citizens of Florida and all others similarly situated, respectfully request that this Court expedite final disposition of this cause through the convening of a Special Term of Court, pursuant to Rules 3 and 41 (4) of the Rules of this Court. Earl Faircloth and Floyd Christian further

state their intention to file yet another brief as *amicus curiae* in this cause if a Special Term is convened. Rule 42 (4). As grounds therefor, they state:

I. THIS COURT HAS AUTHORITY TO CONVENE A SPECIAL TERM OF COURT.

It is well established that this Court has the authority to convene a Special Term to hear and decide a particular case. *Ex Parte Quirin*, 317 U.S. 1 (1942); *Rosenberg v. United States*, 346 U.S. 273 (1953); *Cooper v. Aaron*, 358 U. S. 1 (1958). This authority should be exercised where "the public importance of the questions raised [necessitates consideration] without any avoidable delay." *Ex Parte Quirin*, 317 U.S. 1, 19 (1942).

II. THE PUBLIC SCHOOL DESEGREGATION CONTROVERSY HAS ALREADY BEEN FOUND TO WARRANT A SPECIAL TERM OF COURT.

This Court has already found that public school desegregation issues are questions of such great public importance as to warrant a Special Term of court. In 1958 a controversy arose over desegregation of the public schools of Little Rock, Arkansas. Review was sought of various lower federal court orders and this Court stated that since "the opening date of the High School will be September 15," (358 U.S. at 27) that convening of a Special Term was required. This Court then decided the cause in four days (petition for certiorari was filed by September 8 and the decision was announced September 12). *Cooper v.*

Aaron, 358 U.S. 5 (1958), [See 3 L.ed.2d 1-4].

Although the particular legal issues involved in that case might have been different than this one, the overriding general public concern over the desegregation issue remains the same. The perplexing issues still present in this area have escalated, not diminished, since *Cooper* was decided. Thus, this Court must, since it is composed of the only nine individuals on earth who can set these issues to rest, decide this cause now.

The chief distinction between this cause and *Cooper* is that in this cause the Court has already considered and granted the petition for certiorari and the parties have already had considerably more time to prepare their legal

arguments. Furthermore, this Court already has under consideration a motion to expedite the cause.

III. LOWER FEDERAL COURTS ARE IN HOPELESS CONFUSION OVER THE ISSUES PRESENTED BY THIS CAUSE.

The absence of any prior and clear binding pronouncement from this Court on the constitutionality *vel non* of *"de facto vs. de jure"* segregation, the requirement *vel non* of "massive busing" and other issues presented by this case, have left lower federal courts, the federal government, and the nation's school administrators without any guidelines on "the basic practical problems", *Northcross v. Board of Education*, ___U.S.___, 38 L.W. 4219, 4220 (1970) [Burger, C. J.], involved in compliance with constitutional mandates

re "a unitary school system." Chaos, confusion, resentment, defiance, and conflicting decisions have been the results.

It is not necessary to here cite at length the conflicting views adopted by various courts as they attempt to "predict" what the Constitution mandates. A significant number of them have already been collected. *Annot. 11 A. L. R. 3d 780 (1967)* [plus pocket supp.]. The courts of Florida have not found this task any easier and have met with similar conflicting results.

IV. IRREPARABLE HARM WILL OCCUR IF A SPECIAL TERM IS NOT CONVENED.

Failure to provide these "basic practical guidelines" before the next school year is well under way will result

in irreparable harm to the citizens and children of America, no matter which way this case is ultimately decided.

If this Court decides in the middle of the school year that, for example, "de facto segregation" is constitutional, then harm will be great. School districts which will have *already* been under *contrary* lower federal court orders will already have needlessly expended vast sums of taxpayers' money for extra buses, "pairing", etc. School children who will have already been picked up and moved to unfamiliar surroundings will then be told it was all unnecessary. Equally as unnecessary will have been the judicial and administrative time spent in implementing these lower court orders.

On the other hand, if this Court were to rule "de facto segregation" unconstitutional, equally irreparable harm would occur. School boards which will have *already* been under *contrary* lower federal court orders (or none at all) will suddenly have to purchase buses, pair schools, etc. Children will be forcibly moved to new and unfamiliar surroundings on a scale never before imagined. The "hiatus" which occurred last spring would be pale by comparison.

Clearly, if irreparable injury is to be avoided, this Court should provide "the basic practical guidelines" before the nation's school terms are significantly under way. In this case, to all parties concerned, "justice delayed, may well be justice denied." As this Court,

speaking through Chief Justice Marshall, noted over a century ago, in a different context:

> "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass by it because it is doubtful. With whatever doubts, or whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens v. Va.*, 19 U.S. (6 Wheat.) 264, 403 (1821).

WHEREFORE, Earl Faircloth and Floyd Christian respectfully request that this cause be expedited and the Court be convened in a Special Term.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that I have forwarded a copy of the foregoing Amicus Curiae Brief in Support of Application to Expedite Cause and to Convene Special Term of Court to petitioner's counsel, the Honorables Jack Greenberg, James M. Nabrit, III, and Norman J. Chachkin, New York City, New York, J. LeVonne Chambers, Charlotte, North Carolina, and C. O. Pearson, Durham, North Carolina; to Respondent, Charlotte-Mecklenburg Board of Education; to the Honorable John N. Mitchell, Attorney General of the United States; and to the Attorneys General of each of the respective states of the United States, by mail, this 23 day of August, 1970.

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