

91 S.Ct. 1292
Supreme Court of the United States

Mrs. Robert Lee MOORE et al., Appellants,
v.
CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION et al.

No. 444. | Argued Oct. 13, 1970. | Decided April 20,
1971.

Appeal from judgment of three-judge United States District Court for the Western District of North Carolina, [312 F.Supp. 503](#), declaring portion of state antibusing statute unconstitutional and enjoining its enforcement. The Supreme Court held that where both parties to the suit had argued to the three-judge court that the statute was constitutional and urged that desegregation order be set aside and the decision of the District Court was rendered after consolidation with another case, the instant suit presented no ‘case or controversy,’ and further direct appeal to the Supreme Court was not available under statute governing appeals from three-judge district courts.

Appeal dismissed.

****1293 Syllabus***

***47** Since both parties in this section challenging a school desegregation plan seek the same result, viz., a holding that North Carolina’s Anti-Busing Law is constitutional, there is no [Art. III](#) case or controversy. Additionally, on the facts of this case, no direct appeal to this Court lies under [28 U.S.C. s 1253](#).

[312 F.Supp. 503](#), appeal dismissed for lack of jurisdiction.

Attorneys and Law Firms

Whiteford S. Blakeney, Charlotte, N.C., for Mrs. Robert Lee Moore and others.

William J. Waggoner, Charlotte, N.C., for Charlotte-

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See [United States v. Detroit Timber & Lumber Co.](#), 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Mecklenburg Board of Education and others.

Opinion

PER CURIAM.

Appellants seek review of the decision of the United States District Court for the Western District of North Carolina declaring a portion of the North Carolina antibusing statute unconstitutional, and enjoining its enforcement. It is a companion case to No. 498, [North Carolina State Board of Education v. Swann](#), 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586. We postponed decision on the question of jurisdiction, [400 U.S. 803](#), 91 S.Ct. 11, 27 L.Ed.2d 34 (1970), and after hearing on the merits we now dismiss the appeal for lack of jurisdiction.

^[1] ^[2] At the hearing both parties argued to the three-judge court that the anti-busing law was constitutional and urged that the order of the District Court adopting the Finger plan should be set aside. We are thus confronted ***48** with the anomaly that both litigants desire precisely the same result, namely a holding that the anti-busing statute is constitutional. There is, therefore, no case or controversy within the meaning of [Art. III](#) of the Constitution. [Muskrat v. United States](#), 219 U.S. 346, 31 S.Ct. 250, 55 L.Ed. 246 (1911). Additionally, since neither party sought an injunction to restrain a state officer from enforcing a state statute alleged to be unconstitutional, [28 U.S.C. s 2281](#), this is not an appeal from ‘any civil action, suit or proceeding required * * * to be heard * * * by a district court of three judges,’ [28 U.S.C. s 1253](#), and hence no direct appeal to this Court is available.

Dismissed.

Parallel Citations

91 S.Ct. 1292, 28 L.Ed.2d 590

Moore v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 47 (1971)

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