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995 F.2d 184

83 Ed. Law Rep. 979

Anthony T. LEE, et al., Plaintiffs-Appellees,  
United States of America, Plaintiff-Intervenor and Amicus  
Curiae-Appellee,  
National Education Association, Inc., Plaintiff-Intervenor-Appellee,  
Brandie McKee, a minor, by Thomas McKee, her father and next  
friend; Ishbah Cox, et al.,  
Plaintiffs-Intervenors-Appellees,  
v.  
MACON COUNTY BOARD OF EDUCATION, et al.,  
Defendants-Appellants.

*No. 91-7640.*

**United States Court of Appeals,  
Eleventh Circuit.**

*June 18, 1993.*

Deborah H. Biggers, Tuskegee, AL, for appellant.

George L. Beck, Jr., Dennis R. Pierson, Montgomery, AL, for Brandie McKee, Thomas McKee, Ishbah Cox, Ruben Cox, Anderson, Redding and Save Our School Committee.

Appeal from the United States District Court for the Middle District of Alabama. (No. 846-E), Robert E. Varner, District Judge.

Before TJOFLAT, Chief Judge, FAY, KRAVITCH, HATCHETT, ANDERSON, EDMONDSON, COX, BIRCH, DUBINA, BLACK, and CARNES, Circuit Judges, and CLARK \* , Senior Circuit Judge.

PER CURIAM:

1 The facts and procedural history of this case are set out in the panel decision at *Lee v. Macon County Board of Education*, 970 F.2d 767 (1992), reh'g granted, 987 F.2d 1521 (11th Cir.1993). This court, sitting en banc, affirms the judgment of the district court by an equally divided vote.

2 IT IS SO ORDERED.

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\* Senior U.S. Circuit Judge Thomas A. Clark elected to participate in this decision, pursuant to 28 U.S.C. § 46(c)

