L. Houston

September 9, 1939.

S. D. McGill, Esq
Jacksonville, Florida.

Dear McGill:

Recieved your air-mail letter and also record that was forwarded from New York. We stopped work on the Maryland case and have been working on the Florida case. There are still many difficulties in the Florida case that we are afraid are fatal.

As to pay ent of the costs - the national office just cannot adv nce that money and the money must be deposited in advance - not later than Monday. The estimated costs are about $200.

As we see it the entire case turns upon the question as to whether the defendants had a duty (clear duty) to establish a schedule. The statutes seem to indicate that such a duty exists but the Supreme Court of Florida states: "We have not been supplied with citations of authorities to the effect that the Board of Public Instruction of Brevard County had the constitutional or statutory authority to adopt the salary schedule made a part of the petition..." Our brief states "It is true that there is no statute in Florida requiring the Board to establish salary schedule for teachers and it is not the object of this suit to compel the Board to establish such schedules." (Brief in Supreme Court of Florida p4) No mention of the statutes is made in the petition for rehearing. This is a point which puts our case in a very bad light and might be fatal.

The most serious question is the one which concerns the fact that Gilbert is no longer a teacher. That is correct is it not? If this is correct than the whole question is moot and this is fatal. If Gilbert is no longer a teacher than he has no legal right to maintain the suit at all. Our research on this point is complete and is clearly stated in the first case on the Texas Primary (Love v. Griffith 266 U.S. 32, 69 L.ED. 157 (1924). In that case an injunction was so ught. When the case was heard in the appellate court the election had already been held and the appeal was dismissed on the ground that the question was moot. The case was brought to the U.S. Supreme Court where the judgment was affirmed on the ground that the question was moot. The U.S. Supreme Court stated "The bill was for an injunction that could not be granted at that time. There was no constitutional obligation to extend the

remedy beyond what was prayed." No appearance for the defendant in error but the Supreme Court nevertheless thorugh the case out on this ground.

In our case here the defendant in error could file an affidavit that Gilbert was no longer a teacher or raise it in his brief or on argument and our case would be ruined. On top of this we must maintain a certain reputation in the Supreme Court which has been good in the past. If this case is filed without setting out that Gilbert is no longer a teacher we will be guilty of attempting to mislead the court and if it is raised in any way it will be fatal to the case.

We are perfectly willing to fight a case where there is the slightest chance but there is none in this case. The only ything we see to do is what we did with the ma dame case in Virginia - abandon the appeal after the teacher was refused a contratt and file another case with another teacher in the federal court on the basis of the Maryland case. This procedure we believe is good.

I have taken the matter up with the members of the legal committee here in Washington and some in New York. Hastie is not in town but Ransom Houston and I agree. Others here on the Howard Law School Faculty agree. No one seems to have any other ideas than that the appeal should be dropped. Neither Ransom, Houston nor I can t ake part in the case. At the same time we realize that time is short and hope you will appreciate our position.

If you want to go through with it we will file the papers for you but must receive the $200 to deposit with the court.

Mandamus just will not work in these states where they can fire the teachers without cause orrefuse to give them new contracts. It is not our fault that they do these underhand things but it ruins the cases. Our only hope is in the Federal courts to seek injunctive remedy.

We feel awfully bad about the case but can see no way to save it.

Sincerely

Thurgood