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CITATIONS.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No._____

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, J. B. CARTER, WILFRID CAVANESS, KIRKE W. DALE, JESSE C. DENIOUS, BENJAMIN F. ENDRES, EWING HERBERT, W. E. IRELAND, WALTER F. JONES, WALTER E. KEEF, FRED R. NUZMAN, ERNEST F. PIHLBLAD, C. W. SCHMIDT, THALE P. SKOVGARD, HARRY M. TOMPKINS, RAY C. TRIPP, ROBERT J. TYSON, N. B. WALL, RAIMON C. WALTERS, GEORGE W. PLUMMER, FRANK C. POMEROY and A. W. RELIHAN,

PETITIONERS,

vs.

CLARENCE W. MILLER as Secretary of the Senate of the State of Kansas, WILLIAM M. LINDSAY, as Lieutenant-Governor and President ex-officio of the Senate of the State of Kansas, H. S. BUZICK, JR., as Speaker of the House of Representatives of the State of Kansas, W. T. BISHOP as Chief Clerk of the House of Representatives of the State of Kansas, and FRANK J. RYAN as Secretary of State of the State of Kansas; and the STATE OF KANSAS,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The above named petitioners, plaintiffs below, present this their petition for a writ of certiorari to be directed to the Supreme Court of the State of Kansas to review a judgment of that court entered on the 16th day of September, 1937, (R. 33). Subsequently and within time a stay was granted by said court pending plaintiff's petition to the Supreme Court of the United States for writ of certiorari to said court. Afterwards, to-wit: on the 29th day of November, 1937, the time was extended by order of Honorable Pierce Butler, Associate Justice of the Supreme Court, for a period of sixty days from December 15, 1937.

The case was brought by the petitioners as an original proceedings in the Supreme Court for writ of mandamus against the defendants respecting certain proceedings by the Legislature of the State of Kansas on the adoption of what is popularly known as the Child Labor Amendment submitted to the states by Congress in 1924.

PARTIES TO THE PROCEEDINGS.

The parties are twenty-one Senators and three members of the House of Representatives of the State of Kansas, and the defendants are the officers of the House and Senate, the Secretary of State, and the State of Kansas which was made a party defendant pursuant to the order of the court and under a resolution adopted

by the Senate directing the attorney-general to appear for the State of Kansas in said action.

The Supreme Court of Kansas decided that "the right of the parties to maintain the action is beyond question." (R. 36).

QUESTION PRESENTED AND JURISDICTION.

The question presented is whether or not the proposal of Congress under date of June 2, 1924, to amend the Constitution of the United States, was ratified by the legislature of the State of Kansas in conformity with the provisions of Article 5 of the Constitution of the United States.

STATEMENT.

Senate concurrent resolution No. 3 was introduced in the Senate of Kansas on January 13, 1937, to ratify the proposal to amend the Constitution of the United States submitted by Congress on June 2, 1924. On February 15, 1937, it received twenty votes in favor of its adoption and twenty votes against its adoption, the full vote of the Senate. Thereupon, over the protest of Senators opposed to the resolution (R. 7), W. M. Lindsay, Lieutenant Governor, cast his vote in favor thereof.

The resolution was messaged to the House where it was passed and was returned to the Senate for certification.

This suit was brought as an original proceeding in mandamus to enjoin further proceedings and to compel

the Secretary of the Senate to erase the endorsement that the resolution had passed the Senate and to endorse thereon a statement that it did not pass. The Senate, by resolution, directed the Attorney General to enter appearance for the State of Kansas, (R. 20). Issues were joined, the petition appears (R. 1-18), the alternative writ was allowed (R. 18) and answers were filed by the Lieutenant Governor (R. 21), Speaker of the House (R. 26). Entry of appearance for the State was filed by the Attorney General. Formal answers were filed by each of the other defendants. On September 16, 1937, the writ of mandamus prayed for was denied (R. 31). Thereupon, a petition for rehearing was filed on the 6th day of October, 1937, and on the 16 day of October, 1937, the petition for rehearing was denied, the court thereby adhering to its former decision (R. 61).

The amendment in question is known as the Child Labor Amendment. Attached to the petition was a release dated April 20, 1935, by the Department of State (R. 13). This release was admitted by the pleadings to be true and shows the following:

On January 27, 1925, the Kansas Legislature adopted a resolution rejecting said amendment which resolution was approved January 30, 1925, and notification thereof received by the Department of State on February 2, 1925.

On or before March 18, 1927, the legislatures of 20 states had by affirmative vote rejected said amendment and notice thereof had been filed with the Department

of State. Prior to that date said amendment had been ratified by the legislatures of five states.

Some of the states which had previously rejected attempted to ratify said amendment but at the time of said release only 24 states had ratified said amendment.

SPECIFICATIONS OF ERROR.

The Supreme Court of the State of Kansas erred:

(1) In holding that the Lieutenant Governor had a right to vote upon the resolution to ratify the proposed amendment to the Constitution of the United States;

(2) In holding that the affirmative resolution rejecting the proposed amendment, adopted by Kansas Legislature on January 27, 1925, approved January 30, 1925, notification of which was filed with the Department of State on February 2, 1925, was not a final and conclusive action of the Legislature of the State of Kansas.

(3) In holding that said proposal to amend having been rejected by the legislatures of more than one-fourth of the states to-wit: by 20 states at the end of 1927 was not definitely and conclusively rejected and thereby withdrawn from further consideration by the states.

(4) In holding that an amendment submitted to the states by Congress in the year 1924 and not yet adopted by the legislatures of ¾ of the states, was in 1937 still pending and open to consideration by the legislatures of the states.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

(1) Article 5 of the Constitution provides that a proposal to amend it shall be valid as part of the Constitution

> "when ratified by the legislatures of three-fourths of the several states."

Only members of a legislature are entitled to vote. The Supreme Court of Kansas in the opinion hereto attached, holds in conformity with the State Constitution that the Lieutenant Governor is not a member of the Kansas Legislature. His vote, therefore, should not be counted and without his vote the amendment failed of ratification. Ratification is a federal function, e. g. the Governor need not sign the resolution. If he should sign it would add nothing. His signature would be surplusage. Under the Constitution, Article V, only the legislature can ratify. *Leser v. Garnett,* 42 S. C. R. 217, 258 U. S. 130.

(2) The legislature in considering a proposed constitutional amendment is acting not as a legislative body but as a constitutional convention and is acting under power conferred upon it by the Constitution of the United States. *25 Harvard Law Review 481, Dillon v. Gloss,* 256 U. S. 368, 41 S. C. 510, *Hawke v. Smith,* 256 U. S. 221, 40 S. C. 495. *Leser v. Garnett,* 258 U. S. 130, 42 S. C. 217. *Rhode Island v. Palmer,* 253 U. S. 350, 40 S. C. 486.

(3) An affirmative vote of the legislature to reject a proposed amendment is a final definite act of the legislature sitting as a constitutional convention. Upon adjournment of that session of the legislature such action is binding and conclusive. The vote of the Kansas Legislature reported to the Department of State, February 2, 1925, (R. 3) rejecting the proposed amendment was binding and conclusive.

In *Rhode Island v. Palmer,* 253 U. S. 350, 40 S. C. 486, "ratification" and "rejection" are used correlatively. By necessity rejection is implied by the terms of Article V as an act converse to ratification.

(4) If a positive vote rejecting the proposed amendment be held conclusive and binding, then the vote of rejection by 26 states filed with the Department of State before March 18, 1927, completely defeated the amendment and it was not open for consideration by the Kansas Legislature in 1937.

(5) The action of the states, whether through the legislature or by special constitutional convention, must be reasonably contemporaneous. *Dillon v. Gloss,* 256 U. S. 368, 40 S. C. 510; *United States v. Chambers,* 291 U. S. 417, 54 S. C. 434; *Jameson on Constitution 4th Ed. §585.* Twelve years intervene between submission in 1924 and ratification vote in 1937.

(6) The decision by this court of the questions involved and at this stage in the proceedings is essential because if Kansas certifies to the Secretary of State that the resolution has been adopted such certification is bind-

ing upon the Department of State and the records of that office with or without proclamation to the effect that the resolution was adopted by Kansas, are binding upon the courts. *Leser v. Garnett,* 258 U. S. 130, 42 S. C. 217.

(7) *Diversity of Decisions.* There has arisen a diversity of decisions of several states which should be determined by this court. Since the decision of the Supreme Court of Kansas was rendered, the Court of Appeals of Kentucky, on October 1, 1937, entered a decree in the case of James E. Wise, et al. v. Albert Benjamin Chandler, et al., 207 Ky. 1, 108 S. W. (2) 1024, involving all of the questions discussed herein, except the right of the Lieutenant Governor to vote. It held inter alia that

> "The conclusion is inescapable that a state can act but once, either by convention or through its legislature, upon a proposed amendment, and whether its vote be in the affirmative or be negative, having acted it has exhausted its power to consider further without submission to Congress."

and further:

> "There are nevertheless the additional questions as to whether or not rejection by more than one-fourth of the states at one time would not terminate the offer of the amendment by Congress, and whether or not under the decision of the Supreme Court in Dillon v. Gloss, *supra,* more than a reasonable time had elapsed between the submission of the amendment and the alleged ratification by Kentucky. Accepting the analogy between the submission of an amendment by Congress and the mak-

> ing of an offer under the principles of the law of contracts, the conclusion that the amendment was no longer before the states at the time of the purported ratification by Kentucky in 1937 seems inevitable. *** It seems clear that the reasonable time during which the offer remained open necessarily expired at some time during the period of apparent abandonment between the end of 1927 and the revival of interest in 1933. Certainly by any yardstick more than a reasonable time had elapsed by January, 1937."

The whole record is before this court upon this application which is made within the time limit prescribed by the rules of this court.

WHEREFORE, your petitioners pray that a writ of certiorari issue to the Supreme Court of the State of Kansas to the end that the errors aforesaid may be corrected by this court.

ROBERT STONE,
JAMES A. McCLURE,
ROBERT L. WEBB,
BERYL R. JOHNSON,
RALPH W. OMAN,
All of Topeka, Kansas,
ROLLA W. COLEMAN,
Olathe, Kansas,
Attorneys for Petitioners.

BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

PARTIES AND NATURE OF SUIT.

The plaintiffs are twenty-one Senators and three Representatives of the Legislature of the State of Kansas. The defendants are the Secretary of the Senate and other officials of the Senate and of the State of Kansas.

The suit is an original proceeding in mandamus and for declaratory judgment under the statutes of Kansas. The Supreme Court of the state has held in the opinion filed in this case that the parties have a right to maintain the suit, that the plaintiffs are proper parties, especially in view of a resolution of the Senate requiring the Attorney General to enter appearance for the State of Kansas as defendant, and that the suit is a proper action under the Kansas practice. (R. 20)

On November 29th, 1937, Honorable Pierce Butler granted to the petitioners an order extending time within which to apply for a writ for a period of sixty days from December 15, 1937.

THE FACTS.

CHRONOLOGY.

On *January 2, 1924,* the Sixty-eighth Congress proposed the following amendment to the Constitution:

> "Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

> "Section 2. The power of the several states is unimpaired by this article except that the operation of the state laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

On *January 30, 1925,* the legislature of the State of Kansas adopted a resolution *affirmatively rejecting* the proposed amendment. (R. 3)

February 2, 1925, notice thereof was filed with the Department of State. (R. 5)

March 18, 1927. On this date and prior thereto twenty-six states adopted resolutions affirmatively rejecting said amendment and filed notice thereof with the Department of State. Only five states had at that time ratified said amendment. (R. 11)

January 1, 1932. Between 1927 and January, 1932, no action was taken in any state, either ratifying or rejecting said amendment, except in 1931 the Legislature of Colorado passed a resolution of ratification. (R. 14)

December 19, 1917. The Congress submitted the Eighteenth Amendment and placed a limit of seven years within which it should be ratified.

May 3, 1932. Congress proposed the Twentieth Amendment with a limitation of seven years.

February 20, 1933. Congress proposed the Twenty-first Amendment with a limitation of seven years.

January 13, 1937. There was introduced in the Kansas Senate concurrent resolution No. 3 to ratify the amendment proposed by Congress on January 2, 1924. (R. 5)

February 15, 1937. This resolution came to a vote in the Kansas Senate. Twenty Senators voted in favor and twenty Senators voted against the adoption of said resolution. Forty senators is the maximum number under the Kansas Constitution (Infra) Thereupon, W. M. Lindsay, Lieutenant Governor, over the protest of the opponents of said resolution, cast a vote in favor of its adoption. The resolution was messaged to the House, where is was passed, returned to the Senate for further procedure and certification, but this suit was filed. (R. 8)

PROVISIONS OF THE KANSAS CONSTITUTION.

The Constitution of the State of Kansas provides:

Article I, Section 1:

> "The executive department shall consist of a governor, lieutenant governor, secretary of state, ***; who shall be chosen by the electors of the state at the time and place of voting for members of the legislature, *** ."

Section 12:

> "The lieutenant governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president *pro tempore*, to preside in case of his absence or impeachment, or when he shall hold the office of governor."

Article II, Section 1:

> "The legislative power of this state shall be vested in a house of representatives and senate."

Section 2:

> "The number of representatives and senators shall be regulated by law, but shall never exceed one hundred and twenty-five representatives and forty senators. *** "

Section 13:

> "A majority of all the members elected to each house shall have the right to protest against any act or resolution; and such protest shall, without delay or alteration, be entered on the journal."

ARGUMENT.

Under the above stated facts, which are undisputed, it is the contention of the plaintiffs—petitioners:

I.

That the Lieutenant Governor was not entitled to vote on the adoption of Senate concurrent resolution No. 3.

Under the Constitution of the State, the Lieutenant Governor is a member of the executive department and not of the legislative department. In this case the Supreme Court of the State of Kansas has so held. (R. 37) The consideration of a proposed constitutional amendment is regulated not by state constitution, laws or regulations, not by any parliamentary rule of procedure which may be adopted by the legislature, but by the Constitution of the United States. Article V of the Constitution of the United States provides for the submission of the proposed amendment to the states either by a convention called for that express purpose

or by the legislature. The legislature is that representative body in each state which has been established for the purpose of passing laws. The action by the legislature in acting upon the proposed amendment is not a legislative act, and does not require the signature of the governor, although the laws may require his signature to statutes. He cannot veto the action taken in ratifying or rejecting the amendment although he may veto the action of the legislature in the passage of laws or joint resolutions. It is contemplated by Article V that the people of the State shall ratify or reject through their representatives. When the legislature sits, in considering a proposed amendment, it is acting as though it were a convention. The action of the legislature in ratifying or rejecting the amendment is exactly the same as the action of a specially elected convention called for the consideration of the measure. Therefore, only those who have been elected as representatives of the people have the right to vote on the question of ratification or rejection. The Constitution of Kansas might have made the Lieutenant Governor a member of the Senate, but it did not do so. It gives him a restricted right to vote upon some matters that come up in the legislature when it is acting as a legislature. That power, however, is by implication and not by direct provision. It is found only in Article I, Section 12, above quoted,

> "and shall vote only when the senate is equally divided."

Suppose it had said directly that the Lieutenant Governor is a member of the executive department and is not a member of the legislative department, is not a member of the Senate but he shall have the right to vote upon any proposals to amend the Constitution of the United States, which may be submitted by the Congress. Of course, that provision could not affect Article V, which says that the proposal to amend shall become effective when ratified by three-fourths of the *legislatures*. Yet that is exactly the effect of the decision of the Kansas court which finds that he is not a member of the Senate but that he may vote on a resolution to ratify.

II.

An affirmative vote to reject the proposed amendment is final.

When the Kansas Legislature of 1925 adjourned, its action in rejecting the proposed amendment became the final conclusion. In considering the amendment it was acting as a constitutional convention and not as a legislature. The affirmative action rejecting the amendment is just as binding as an act of adoption.

In Rhode Island v. Palmer, 253 U. S. 350, 40 S. C. 486, this court speaks of ratification and rejection as though they are corollary terms, using the following language:

> "The referendum provisions of state constitutions and statutes cannot be applied, consistently with the constitution of the United States, in the ratification or rejection of amendments to it."

As stated by Prof. Orfield in *25 Illinois Law Review,* page 481:

> "Conventions like legislatures are mere agents of the people. The ratifying process is equivalent to a roll call of the states. *** "

In the same article, Prof. Orfield says:

> "It is the people acting through the legislature as a constitutional convention and not the state through its legislative body."

It would hardly be contended, if the state had called a constitutional convention for the purpose of considering a proposed amendment and such convention passed the resolution, either adopting or rejecting the amendment, and notice of such vote were filed with the department of the state and the convention adjourned, that the state could assemble another convention and take another action upon a proposed amendment.

III.

But if a state under those circumstances, by calling a new convention, could reconsider its former action, it could hardly be contended, that after more than one-fourth of the states, and in this case, more than half of the states, to-wit, twenty-six, had called constitutional conventions, had affirmatively rejected the amendment and filed notice thereof with the secretary of state, with only five votes in favor of adoption, the action of the convention was not final or conclusive.

It is our contention that when more than one-fourth of the states on and prior to March 18, 1927, had filed notice of positive and definite rejection of the amendment, the

amendment was thereby defeated and withdrawn from further consideration.

IV.

It is the contention of the plaintiffs that the amendment submitted on June 2, 1924, lost its potency before 1937, by June 2, 1931, seven years after its submission and at least long before 1937.

As stated by this court in Dillon v. Gloss, 256 U. S. 368, 41 S. C. 510;

> "An alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress."

And the court continues:

> "We conclude that the fair inference or implication from article 5 is that the ratification must be within some reasonable time after the proposal."

And again,

> "We do not find anything in the article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when

> proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same, which, of course ratification scattered through a long series of years would not do.''
> l. c. 512.

The record in this case shows that at the time the amendment was proposed, more than one-fourth of the states took prompt action and rejected it, thus showing the contemporaneous sentiment of the people. The rejection at that time by more than twenty states was a definite and positive action contemporaneous with the proposal. Action taken by the states in 1937 would not be contemporaneous with the action of Congress in 1924, in proposing the amendment. If Congress at this time entertain the same sentiment as the Sixty-eighth Congress, which proposed the amendment, then it can resubmit the same or a similar amendment which can be acted upon by this generation in approving or rejecting the proposal.

CONFLICT OF DECISIONS.

There has arisen a conflict of decisions as to points two, three and four. Upon these points the Court of Appeals of Kentucky, in the case of Wise, et al. versus Chandler, et al., has rendered an opinion which is contrary to the holding of the Supreme Court of Kansas

upon these propositions. It is there held that an affirmative vote to reject the proposed amendment is binding, final and conclusive and when once taken by a state cannot be changed; that when more than one-fourth of the states had definitely rejected the proposed amendment, said amendment was thereby defeated and withdrawn from further consideration, and also that after a lapse of more than seven years, to-wit: thirteen years, the proposed amendment submitted by Congress on June 2, 1924, lost its potency and is no more subject to consideration by the respective states. This case was decided on October 1, 1937, 207 Ky. 1, 108 S. W. (2) 1024. It is our understanding that an application for writ of certiorari will be made by the Attorney-General of Kentucky for a review of said cause. Arrangements have been made to synchronize that application with the application herewith presented. The situation in respect to the Kentucky appeal is set out in two letters which are hereto attached as part of an appendix, one from Judge Lafon Allen to the undersigned Robert Stone, and the other from Judge Allen to the Assistant Attorney-General of Kentucky, marked Exhibits A and B respectively.

IN CONCLUSION.

Your petitioners submit that the final determination by this court of the questions involved in this case is of the utmost importance to the public generally as well as to the State of Kansas. Your petitioners submit that under the authorities above cited this court should determine that:

1. The Lieutenant-Governor of the State of Kansas had no right to vote upon a question involving the adoption or rejection of the proposed amendment to the Constitution of the United States because he is not a part of the Legislature and under the Constitution of the United States the proposal was not submitted to him.

2. The Legislature of Kansas having definitely and affirmatively rejected the proposed amendment to the Constitution of the United States, had acted finally and definitely upon the question and could not again consider the proposed amendment.

3. At the time of the submission of the proposed resolution in the Legislature of 1937, more than one-fourth of the legislatures of the states, to-wit: more than twenty having definitely rejected said amendment, the amendment was no longer before the states for consideration and had been automatically thereby withdrawn from consideration.

4. The proposed amendment to the Constitution having been submitted by Congress on June 2, 1924, and not having been adopted by a majority of the states within that long period of nearly thirteen years had

already lost its potency and by reason of the lapse of time had fallen into innocuous desuetude and therefore was not subject to consideration by said legislature.

Respectfully submitted,

ROBERT STONE,
JAMES A. McCLURE,
ROBERT L. WEBB,
BERYL R. JOHNSON,
RALPH W. OMAN,
All of Topeka, Kansas,
ROLLA W. COLEMAN,
Olathe, Kansas,
Attorneys for Petitioners.

APPENDIX.

EXHIBIT "A."

ALLEN & CLARKE
KENTUCKY HOME LIEE BUILDING
LOUISVILLE, KENTUCKY

LAFON ALLEN
OLDHAM CLARKE

February 3, 1938

Robert Stone, Esq.
Stone, McClure, Webb, Johnson & Oman
National Reserve Building
Topeka, Kansas

Re: Child Labor Amendment Cases

Dear Mr. Stone:

I enclose herewith a letter which I have just addressed to Assistant Attorney-General Jones at Frankfort, from which you will learn that there has been a disappointing delay in the preparation of his petition.

I had repeatedly explained to him that you had obtained a sixty day extension of time, expiring February 15th., in order to give him an opportunity to prepare his petition, so that both of them might be filed at substantially the same time. By great diligence and a good deal of cooperation on our part, our case has been pushed through the lower court and the Court of Appeals for the second time so that on December 21, 1937 we had procured an affirmance by the Court of Appeals of the judgment entered by the lower court, in conformity with the opinion of the Court of Appeals upon the first appeal. By consent, the mandate of the latter court was issued forthwith, without waiting for the expiration of the thirty days allowed for a petition for

re-hearing. Consequently, General Jones was in a position to file his petition in the Supreme Court at any time after December 21st. The regular session of the Kentucky legislature began on the first of the year and the Attorney-General's office has no doubt been especially busy with hearings on various matters arising from that session. I wrote General Jones on January 22nd. asking him to give me some idea when his petition would be ready, so that I might advise you. Having had no reply to that letter, I telephoned him on the day before yesterday, with the result explained in the enclosed copy of my letter to him of today.

In view of this situation, I think you should be prepared to file your petition before your time expires, without reference to what has been done here. General Jones has said to me that he would make an effort to get his petition ready by that time but I am afraid that this will not turn out to be the case. I have been wondering whether it would not be possible to make some statement in your petition as to the decision in the Kentucky case and the probability that a petition will be filed in that case. If the Supreme Court knew that preparations were being made to bring the Kentucky judgment up for review, it might delay action on your petition until the Kentucky petition had reached it. I trust that you will find it possible to do something of this kind.

With kindest regards, I am

Yours very sincerely,

Lafon Allen.

LA:JC

EXHIBIT "B."

ALLEN & CLARKE
KENTUCKY HOME LIFE BUILDING
LOUISVILLE, KENTUCKY

LAFON ALLEN
OLDHAM CLARKE

February 3, 1938

Hon. J. W. Jones
Assistant Attorney-General
Frankfort, Kentucky

Re: Chandler v. Wise

Dear General:

Referring to our telephone conversation of the day before yesterday, I was sorry to learn that you had not been able to complete your petition for writ of certiorari in the above case, but trust that you will be able to have it ready for filing by the 15th. of this month, in order that it may accompany the petition in the Kansas case, which must be filed on or before that date. It is not necessary for me to go into any explanation of the importance of having these two cases heard together, since that has been the subject of both correspondence and conversations between us during the past two months or more.

I am writing Mr. Stone, of Topeka, to tell him of the delay in the preparation of your petition, and to advise him that he should file his petition before his time expires, even though yours is not ready at that time.

I realize how busy you are but I take the liberty of urging again the importance of getting these two petitions to Washington at substantially the same time, since this showing that there were conflicting decisions from the highest court of two states upon these important

constitutional questions will probably induce the Supreme Court to take jurisdiction, when they might not do so if only one petition was presented for their consideration.

Yours very sincerely,

Lafon Allen.

LA:JC