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Brief for Petitioners

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Brief for Petitioners

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1952

BROWN, ET AL.,

PETITIONER,

-V.-

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS,

RESPONDENT.

BRIEF FOR PETITIONERS

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* I want to thank Diidri Wells for her excellent research assistance.

I. STATE MANDATED SEGREGATION IN THE PUBLIC SCHOOLS OF KANSAS DENIES AFRICAN AMERICAN CHILDREN EQUAL PROTECTION OF THE LAW.

The Fourteenth Amendment to the U.S. Constitution reads in part that no state can "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Amendment was adopted to ensure that persons of color could enjoy the same civil rights enjoyed by white persons. *See Strauder v. West Virginia*, 100 U.S. 303, 306 (1879) (holding that excluding African American men from jury service on account of race violates the Equal Protection Clause of the Fourteenth Amendment). Equal protection is not achieved through "indiscriminate imposition of inequalities." *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948).

A. **In requiring segregation of the races in public schools, Kansas adopted a classification lacking any rational foundation.**

The legislature may make classifications in the application of a statute so long as the classifications are relevant to the legislative purpose. *See, e.g.*, *Asbury Hosp. v. Cass County*, 326 U.S. 207, 214 (1945) (evaluating the constitutionality of a North Dakota statute that discriminated against corporate farmers). The test to determine if a classification is reasonable is to examine "whether the differences between [the classes] are relevant to the subject for which the classification is made." *Id.* (citing *Metropolitan Ins. Casualty Co. v. Brownell*, 294 U.S. 580, 583 (1935)). Equal protection is violated when racial classifications are irrelevant to the subject of the statute and the legislature's actions are patently arbitrary and capricious. *See, e.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356, 368 (1886) (invalidating a city ordinance requiring laundries be located in brick or stone buildings because it discriminated against Chinese people without a valid purpose). Although this Court has recognized the need for deference to legislative judgments, it has said that the judiciary may overturn legislative decisions when there is "no reasonable basis" for that body's judgment. *See Dennis v. United States*, 341 U.S. 494, 525 (1951) (Frankfurter, J., concurring).

1. <u>There is no legitimate justification for the state to mandate racial separation in education.</u>

The only valid justification the state of Kansas has to offer for segregated schools is that, sometimes, the educational interests of children are best served by having separate school facilities for white children and African American children. However, the state offers

no evidence to support this contention. PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY OF THE STATE OF KANSAS 661 (1870). The differences between the races, whether physical or cultural, do not adversely affect the quality of a child's education. In fact, desegregation could actually promote friendly relations between the races, especially when the segregation is eliminated from all schools within a school system simultaneously. *See generally* Ralph D. Minard, *Race Relationships in the Pocahontas Coal Field*, 8 J. SOCIAL ISSUES 29, 31-32 (1952) (observing improved race relations among integrated coal miners). Over time, as students of different races interact, stereotypes will end and attitudes with regard to race likely will change in society. Because the differences between the races are irrelevant to the state's goal of achieving optimal educational opportunities for children, the state-mandated segregation fails the reasonableness test noted in *Asbury*, 326 U.S. at 214. Kansas's decision to mandate segregation in public schools violates equal protection because it fails even the most deferential rational basis test.

2. State-mandated racial separation is so arbitrary and irrational as to deny equal protection.

The segregation of public schools by Kansas is irrelevant to the state's purported goal of attaining ideal educational facilities and, therefore, equal protection under the Fourteenth Amendment is violated. As noted in *Yick Wo*, 118 U.S. at 373, when government action is so irrelevant as to represent the epitome of arbitrariness and capriciousness, it is intolerable under the Constitution. Rather than aiming to prevent racial discrimination, as in *Railway Mail Ass'n v. Corsi*, 326 U.S. 88, 97 (1945) (upholding a New York law forbidding an all-white labor union from discriminating on the basis of race), the imposition of segregation by Topeka's Board of Education instead promotes racial stereotypes and is psychologically harmful to the students of color who are segregated. *See, e.g.*, Max Deutscher & Isador Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. PSYCHOL. 259, 274 (1948) (concluding that enforced segregation causes feelings of inferiority in the segregated group and a feeling of dominance by the enforcing group). Segregation is so irrational as to deny equal protection, and hence the practice should be declared unconstitutional.

B. **State-mandated segregation of public education is impermissible discrimination based on race and thus a violation of equal protection.**

1. The central purpose of the Fourteenth Amendment was to eliminate state-mandated discrimination based on race.

a) The history of the Fourteenth Amendment reveals that it was intended to eliminate state-imposed invidious discrimination based on race, particularly against African Americans.

As stated in *Strauder*, the Fourteenth Amendment is a declaration that "the law in the States shall be the same for the black as for the white;" that all persons shall "stand equal before the laws of the States," and that no discrimination by law shall be made against African Americans simply because of the color of their skin. 100 U.S. at 307. The Amendment was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race. *See id.* at 306 (stating that the purpose of the Fourteenth Amendment was to "secure to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy."); *Ry. Mail Ass'n*, 326 U.S. at 94 (stating that the Fourteenth Amendment was "adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color"). The main objective was to place African Americans on the same level as whites, especially with respect to the enjoyment of civil rights. *See Virginia v. Rives*, 100 U.S. 313, 318 (1879) (holding that African American defendants are entitled to a jury selected without discrimination against members of their race). This Court consistently has held that the right to equal protection of the laws is both a personal and a private right, and the Fourteenth Amendment precludes the state from treating its citizens differently just because of their race. *See Sweatt v. Painter*, 339 U.S. 629, 635; *McLaurin v. Oklahoma State Regents for Higher Educ.*, 339 U.S. 637, 642 (1950).

The underlying principles that dictated the adoption of the Fourteenth Amendment mandate that racial segregation in public education be banned because the practice denies African American students equal protection of the laws. As noted in *Railway Mail Ass'n*, history indicates that the Fourteenth Amendment aimed to prevent government actions that perpetuated discrimination. 326 U.S. at 94. If this Court were to uphold Kansas's discriminatory segregation practices, it would be in blatant disregard for the principles of equality that the Constitution aims to uphold.

b) This Court has held that government laws based on race are "immediately suspect" and will be subjected to "the most rigid scrutiny."

Korematsu v. United States establishes that any government action that impinges on the civil rights of a single racial group is immediately suspect. 323 U.S. 214, 216 (1944). Although all such actions are not necessarily unconstitutional (*e.g.* in cases of pressing public necessity), racial antagonism can never be the driving motivation behind a suspect classification. *Id.*

The imposition of racial segregation in public schools by Topeka's Board of Education is immediately suspect because it is a government action based solely on race. The state's purported goal of attaining the most ideal educational facilities is not so pressing a need as to outweigh the discriminatory effect of segregation. The practice of separating children simply because of the color of their skin is pure racial antagonism at its worst, and this Court should rule to eliminate it.

2. State-mandated racial segregation in education is an impermissible form of racial discrimination that violates equal protection.

In recent years, this Court consistently has held that the state may not impose restrictions in fields of government activity based solely on race. *See, e.g.*, *Sweatt*, 339 U.S. at 635; *McLaurin*, 339 U.S. at 642; Sipuel v. Univ. of Oklahoma, 332 U.S. 631, 633 (1948). In *Sweatt*, the petitioner sought to compel his admission into the University of Texas Law School, which had denied him admission solely because he was African American. 339 U.S. at 631. Despite choosing not to reexamine the holding of *Plessy v. Ferguson*, 163 U.S. 537 (1896), the Court, in granting relief to the petitioner, declined to rule for respondents and refused to extend the "separate but equal" doctrine of *Plessy* to racial segregation in education. *Sweatt*, 339 U.S. at 635-36. The Court found that the separate law school facilities provided to African American students in no way provided the same opportunities as did the University of Texas Law School. *Id.* at 635. Moreover, the Court characterized the right to a quality education as a "personal right" entitled to full equal protection of the law. *Id.*

In a parallel case, *McLaurin*, this Court ruled that, although the petitioner was admitted into the University of Oklahoma's Doctorate in Education program, the fact that he was required to sit in a separate row in the classroom, eat at a separate table in the cafeteria, and study in a different section of the library, constituted a violation of equal protection. 339 U.S. at 640-41. Even though the ruling did

not guarantee the elimination of prejudices, by allowing the petitioner to commingle with his classmates it at least gave the petitioner the opportunity to secure acceptance by his fellow students on his own merits. *Id.* at 641-42.

Similarly in *Sipuel*, this Court found that because petitioner, an African American student, was denied admission into law school simply as a result of her race, the state must provide her with a legal education in conformity with the equal protection clause of the Fourteenth Amendment. 332 U.S. at 633.

a) The schools in Kansas are both separate and unequal and thus a denial of equal protection.

It is simply illogical to argue that the segregated Kansas public schools can be separate but equal. Inequality is promoted when school children are separated. The majority race will maintain a natural sense of superiority by the mere separation of educational facilities. *See generally* Deutscher & Chein, *supra*, at 274 (describing racial prejudice as a means to support feelings of dominance). Further, as noted in *Sweatt*, the educational opportunities provided to African American students in separate facilities would not be equivalent to those afforded to white students. 339 U.S. at 634. Therefore, the separate facilities violate the Fourteenth Amendment not just because they are unequal, but also because separate schools in general, whether equal or not, promote the same prejudices and stereotypes that the amendment was adopted to prevent.

b) The state's purpose in mandating racial segregation of education in public schools is to protect white children from association with African American children. This is an impermissible purpose under the Fourteenth Amendment.

In *McLaurin*, although the African American petitioner attended the same graduate school as the white students, this Court still ruled that requiring the petitioner to sit in a separate row, eat at a separate table, and study in a separate area was impermissible under the Fourteenth Amendment. 339 U.S. at 642. If racial separation within the one school is impermissible, then certainly separation by way of separate schools is constitutionally intolerable. As in *Sipuel*, the petitioners in the instant case are being denied admission into a school solely because of their race. 332 U.S. at 632. Accordingly, this constitutes a violation of equal protection and hence this Court should eliminate racial segregation in public schools.

C. **This Court's prior decision in Plessy should be overruled.**

More than fifty years ago, *Plessy* ruled that separate but equal railway train cars for whites and African Americans was constitutionally permissible. 163 U.S. at 548. However, in *Sweatt*, this Court declined to extend the "separate but equal" doctrine of *Plessy* to the context of educational facilities. 339 U.S. at 635-36. In so ruling, the *Sweatt* Court noted that equivalent educational opportunities in a separate facility were unavailable, so the doctrine of *Plessy* was impossible to achieve. *Id.* *McLaurin* also shows that the "separate but equal" doctrine of *Plessy* is unattainable, because separation promotes racial prejudices and can impose a sense of inferiority on the African American race. 339 U.S. at 641-42.

Further, even if segregated schools could provide equal facilities, a sense of equality among the different races would still not pervade. As noted in *McLaurin*, separation itself denies equal protection of the laws, and promotes a distorted sense of superiority among white students and a sense of inferiority among African American students. *Id.* To continue to uphold the "separate but equal" doctrine would be to continue to promote the same racist ideals that persisted during the period when slavery was legal. Therefore, *Plessy* should be overruled.

II. THE REMEDY MUST BE FOR THE COURT TO DECLARE STATE LAWS MANDATING SEGREGATION IN EDUCATION UNCONSTITUTIONAL AND ORDER IMMEDIATE IMPLEMENTATION OF REMEDIES TO ENSURE DESEGREGATION OF SCHOOLS AND EQUALITY OF EDUCATIONAL OPPORTUNITY.

A. **Merely ordering equalization of resources in white and African American schools fails to meet the requirement of equal protection.**

1. History shows that resources never will be equal in white and black schools. Only a unitary system of education will provide equal resources for white and black children.

Recent cases that have come before this Court addressing separate educational facilities for white and African American students have not found the African American schools to be the equivalent of the white schools. *See, e.g.*, *Sweatt*, 339 U.S. at 635-36; *McLaurin*, 339 U.S. at 642. Additionally, studies of children show that separate educational facilities do not provide equal resources for white and

black children. *See generally* Isador Chein, *What Are the Psychological Effects of Segregation Under Conditions of Equal Facilities?*, 3 INT'L J. OPINION & ATTITUDE RESEARCH 229, 229 (1949) (noting the difficulty in studying segregated equal facilities because none could be found). If equality cannot be obtained through separate facilities, then the State should abandon the concept of separate but equal, and this Court should require that only unitary schools be instituted.

2. Even if resources were equal, state-mandated segregation denies equal protection because it is inherently based on an impermissible assumption, and transmits an impermissible message, that one race is superior to another.

This Court's ruling in *McLaurin* shows that even when segregation is used within a classroom, cafeteria or library, notions of prejudice are still promoted. 339 U.S. at 641. Therefore, even when the resources being used are equal, if a segregated practice is still used, then a sense of inferiority will continue to be pervasive. For this reason, segregation should be banned.

3. Even if resources were equal, state-mandated segregation denies equal protection because psychological and sociological studies demonstrate that enforced racial separation interferes with the education of African American children. State-mandated racial segregation interferes with the educational and mental development of African American children.

As the lower court found, "State-imposed segregation in education itself results in the Negro children as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated." *Belton v. Gebhart*, 87 A.2d 862, 865 (Del. Ch. 1952). In light of this finding of fact, equalization of tangible resources would be inadequate.

As noted by Minard, when only some institutions are integrated and others remain segregated, whites still classify blacks as inferior. Minard, *supra*, at 32. However, when integration is instituted across the board, there is an increased likelihood of friendly relations between the races. *Id.* at 31-32. Moreover, studies still maintain that segregation is psychologically detrimental to members of the segregated group. Deutscher & Chein, *supra*, at 268. Therefore, this Court should eliminate the promotion of inferiority and rule that racial segregation violates the Fourteenth Amendment.

B. **The appropriate remedy must be for this Court to:**

1. Declare unconstitutional the state law mandating racial segregation in education.

2. Remand the case for the federal district court to implement remedies to ensure the rapid desegregation of the public schools using techniques such as redrawing attendance districts, reassigning students and teachers, busing of students, and all other needed means.

3. Require the immediate equalization of resources expended on education for all children, as measured by per pupil expenditures, class size, and other tangible measures of equal educational opportunity.

CONCLUSION

The time is long overdue for this Court to eliminate state laws mandating segregation in education. Such laws are based on exactly the racism and prejudice that the equal protection clause of the Fourteenth Amendment was meant to eliminate. This Court should declare that separate but equal has no place in American public education.