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OLIVER BROWN, ET AL.,
Appellants,
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BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS ET AL. — **No. 1**

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FRANCIS B. GEBHART ET AL.,
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BRIEF OF MAC Q. WILLIAMSON, ATTORNEY GENERAL OF OKLAHOMA, AMICUS CURIAE

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Amicus Curiae.

NOVEMBER, 1954.

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AUTHORITY

Authority for the filing of this *Amicus Curiae* brief may be found in the concluding paragraph of this Court's opinion in the cases (as consolidated) above listed. 347 U. S. 483, 98 L. ed. (advance) p. 583. See, also, Par. 4 of Rule 42 of this Court.

The State of Oklahoma is one of the states requiring segregation in public education; and principally because of both constitutional and legislative restrictions as to the financing of separate educational facilities for white and negro children, it is probably more immediately concerned than some, if not all, of the other states having segregation in public education in whether this Court directs that existing segregated systems be stopped immediately, or adjusted gradually to a procedure not based upon color distinctions.

At the outset, it may be noted that Oklahoma's dual system of tax-gathering is unique and different from most other "segregation" States.

Basically—as will hereinafter be pointed out—our Oklahoma district or "majority" schools (which are usually but not always for white children, because of the numerical preponderance of white children in such school districts) are financed by a school-district-wide ad valorem tax levy, whereas separate schools, (which are usually but not always for negro children, because of the

smaller number of negro children) are financed by a county-wide ad valorem tax levy. These levies—the first, to be administered by school district officers, while the second, or separate school funds, are expended by county officers—are supplemented by State excise taxes, etc., and by State appropriations, all of which are presently geared to the segregated or double system of education, as are the ad valorem tax levies for "majority" as well as "separate" schools. The income and revenues allocated for both systems are (usually) barely sufficient to provide appropriate and desirable educational facilities, separately functioning, for all children (of both the white and colored races).

So that if the method of financing and allocating revenues for the education of one race must *now* be used for the education of both races (which apparently will be the case, since the doctrine of "separate but equal" has been determined by this Court to have no place in the field of education), then our entire fiscal program with its "two-pronged" methods of raising and dividing tax moneys (1) on a district-wide basis—as to the majority schools; and (2) on a county-wide basis—as to our separate schools, must needs be recast by Constitutional change, and by our next Legislature (which meets in regular session January 3, 1955).

This Court's determination that the doctrine of "separate but equal" has no place in the field of scholas-

tic education quite apparently means that there can be only one system of public education available to negro and white children alike; and since, in each of these cases, children of the negro race were seeking admission to schools attended by white children, it is logical to assume that, as far as the State of Oklahoma is concerned, negro children are intended to be admitted to and integrated in the district schools(usually but not always for white children) and that separate schools (usually but not always for negro children) can no longer be maintained by the State, as such. Thus it appears that separate schools for white and for negro children, based on color distinctions, must be discontinued; it having been said by the Court in these cases that "separate educational facilities are inherently unequal"; which (among other things) indicates that separate schools (and the finances therefor) in Oklahoma are contrary to the Fourteenth Amendment to the United States Constitution, and are unlawful.

In this connection, it is pointed out that all budgets for both majority and separate schools for the current Oklahoma fiscal year (1954-55) have long since been officially approved, and tax levies made and extended upon the tax-rolls of each of our 77 counties; and such taxes are now payable, and in process of collection—the first half of all said taxes actually becoming delinquent on December 31, 1954. Thus the fiscal program for all

schools on the traditional and divided basis is so far along that it would be a clear impossibility to try at this time to "unscramble" the set purposes and destination of tax moneys of our 77 counties for this year, when and as collected.

Another point to consider is the fact that hundreds of thousands of dollars are being collected—under State constitutional authority—for *separate* school purposes, *with each county—rather than each school district—as a taxing unit;* and if the decision should be—under the Court's Question 4—"integration forthwith," then every dollar so collected (and being held by the various County Treasurers) would remain "locked up" and entirely unavailable for *any* school purposes until new and different constitutional and statutory remedies could be provided; this, for the reason that Sec. 19, Article 10, Oklahoma Constitution, forbids the diverting of any tax moneys away from the original purposes of the levy.

Said Section and Article provide as follows:

> "19. SPECIFICATION OF PURPOSE OF TAX—DEVOTION TO ANOTHER PURPOSE.—Every act enacted by the Legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax shall specify distinctly the purpose for which said tax is levied and no tax levied and collected for one purpose shall ever be devoted to another purpose."

Thus, while necessary remedial legislation can (and doubtless will) be provided by or before June 30, 1955

(the end of the current fiscal year), yet it will reasonably take that long to make the change-over.

Each Oklahoma school district, depending—as it now the case—for its very existence upon revenues allocated to it for education of children of only one race, will thus find it presently impossible to provide funds for adequate education for children of both races, unless and until the Legislature of the State of Oklahoma and the people of the State of Oklahoma have had an opportunity—through amendatory legislation—to give increased revenues to such school districts; which might (and probably will) consist largely of new Acts consolidating revenues formerly allocated for both district and separate schools.

The problem confronting the State of Oklahoma in changing from the heretofore approved "separate but equal" system (which has prevailed since before Statehood, in 1907) can better be understood by a consideration of provisions (hereafter quoted) of the Constitution of Oklahoma and statutes enacted by the Legislature of the State of Oklahoma.

For the purposes of this brief, references to statutes of the State of Oklahoma will be by title and section in Oklahoma Statutes, 1951, as follows:

"_____Oklahoma Statutes 1951,
(Title number)
Sec._____."
(Section number of title)

Section 5, Article I, Oklahoma Constitution, reads as follows:

> "Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools: And *Provided, further, that this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children*" (Emphasis ours).

Section 3, Article XIII, Oklahoma Constitution, reads as follows:

> "Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained. The term 'colored children,' as used in this section, shall be construed to mean children of African descent. The term 'white children' shall include all other children."

Section 11 of Article 23, Oklahoma Constitution, reads as follows:

> "Wherever in this Constitution and laws of this State, the word or words, 'colored' or 'colored race,' 'negro' or 'negro race,' are used, the same shall be construed to mean or apply to all persons of African descent. The term 'white race' shall include all other persons."

70 Oklahoma Statutes 1951, Sec. 5-1 provides that the public schools in Oklahoma "shall be organized and maintained *upon a complete plan of separation* between the white and colored races with impartial facilities for

both races." Other statutes prescribe penalties for teaching pupils of the colored and white races in the same school. 70 Oklahoma Statutes 1951, Secs. 5-4 *et seq.* However, since this Court has already held that segregation of white and colored children in public education is in contravention of the United States Constitution, this Court will not be burdened with any argument herein as to the meaning of the aforecited constitutional and statutory provisions which for many years have been in effect in Oklahoma.

The question of immediate concern to the State of Oklahoma is an adjustment to a single system of public education, which is to be considered by this Court in resolving Questions 4 and 5 that have been previously propounded by the Court. Therefore, it is deemed appropriate to present for this Court's consideration these further constitutional provisions, constituting—as they do—the basic authority for county-unit taxation for separate school purposes, only.

Section 9 of Article 10, Oklahoma Constitution, reads as follows:

> "Except as herein otherwise provided, the total taxes for all purposes, on an ad valorem basis, shall not exceed, in any taxable year, fifteen (15) mills on the dollar, to be apportioned between county, city, town and school district, by the County Excise Board, until such time as the regular apportionment is otherwise provided for by the Legislature.
>
> "No ad valorem tax shall be levied for State purposes, nor shall any part of the proceeds of any ad

valorem tax levy upon any kind of property in this State be used for State purposes; *provided, however, any County of the State may make an additional ad valorem levy, not exceeding two (2) mills on the dollar valuation, on any property within the county, for separate schools for white and negro children, such aid or money raised therefor to be apportioned as provided by law; provided, further, that upon certification of the need therefor by the governing board, an additional levy of not to exceed one (1) mill on the dollar valuation on any property within the county shall be made by the County Excise Board for separate schools for white and negro children; provided, further, that upon certification of the need therefor by the governing board, an additional levy of not to exceed one (1) mill on the dollar valuation on any property within the county shall be levied by the excise board, the proceeds derived therefrom to be used exclusively for the acquisition of sites and erection of buildings for separate schools for white and negro children;* provided, further, the annual ad valorem tax rate for school purposes may be increased, in any school district, by an amount not to exceed fifteen (15) mills on the dollar valuation, upon all property in the district, on condition that a majority of the qualified voters of such district voting at an election, vote for such increase, provided, however, that the Legislature shall by proper laws prescribe the manner and method of conducting said election, but until such legislative provision is made, said levy may be made and said election held as now provided by law; and provided further, that limitations on the levy of such additional 15-mill levy may be made hereafter by the Legislature.

"Provided, also, an additional levy may be made each year, in the State and in the various subdivisions thereof, on all personal and real property subject to ad valorem taxes, to reasonably take care of

> bonded and other valid indebtedness of the State and its various subdivisions existing at the time this amendment is adopted and becomes effective, but such necessary additional levy or assessment on such property to take care of such indebtedness existing and owing by the State and its subdivisions at such time shall in no event exceed levy or assessment for which such property would have been liable under the Constitution and laws of the State as same existed immediately prior to the adoption of this amendment. No provision hereof shall be construed to tax churches or schools."—As amended State Question No. 185, Referendum Petition No. 61, Adopted August 15, 1933; State Question No. 319, Referendum Petition No. 91. Adopted special election July 2, 1946; State Question No. 314, Initiative Petition No. 224. Adopted general election Nov. 5, 1946; State Question No. 316, Initiative Petition No. 226. Adopted general election Nov. 5, 1946; State Question No. 327, Referendum Petition No. 92. Adopted special election July 6, 1948.

It will thus be seen that definite limitations are placed upon ad valorem tax levies for school districts (which are maintained for the "majority" race, which usually means the white race), and for separate schools (which ordinarily means the "minority" or the negro race); and it will also be observed that the *tax levies for majority school districts are invariably on a district-wide basis,* whereas levies for the separate schools *are and always have been on a county-wide basis* (Emphasis ours).

70 Oklahoma Statutes 1951, Sec. 5-8, prescribes the procedure to be followed in levying taxes for the

maintenance of "county separate schools for white and colored children."

While children of both races may be integrated into the school district system, as distinguished from the county separate school system, in the State of Oklahoma, the aforementioned limitations as to financing must be faced and solved, primarily by the people, and as well, by the Legislature, of the State of Oklahoma, since the principal source of revenue for schools is an ad valorem tax levy, which has a definite limitation by the terms of the Constitution, as aforementioned. This means, of course, that appropriate or adequate facilities for public education cannot be given to both white and colored children under a newly-created and required system of non-racial education until a plan for removing or raising the constitutional limitation on ad valorem tax levies has been devised and submitted to the electorate of the State of Oklahoma.

In this connection, it might be pointed out that the State Legislative Council in Oklahoma (which consists of the entire current membership of both Houses, and which functions between regular legislative sessions) has been making a study of this question and is in the process of submitting its recommendations to the Oklahoma Legislature when it convenes in regular session in January, 1955. Probably the recommendations so made will require, and certainly will be entitled to, debate in both

houses of the Oklahoma Legislature; it being necessary to formulate a permanent solution, by way of constitutional amendment, of the future financing of a single system of public education which will include and integrate both white and colored children. Such proposed constitutional amendments will be by the Legislature submitted to the voting citizens of the State. Likewise, it will be necessary for the Oklahoma Legislature, itself, to formulate a system to supplement, by excise taxes, etc., revenues that will be made available from ad valorem tax levies, for the newly arranged school program.

It seems to be settled law that this Court, having once begun an exercise of its equity powers in injunction proceedings, can properly continue its control over the subject matter of the cases, so as to do "entire justice" with respect to such subject matter, which means that this Court has the power—and we think, the corresponding duty—to retain jurisdiction, as long as might reasonably be necessary, to effect entire and complete justice not only to the parties in these cases, but to all others who will be affected by the decision of this Court.

> (U. S. Va. 1830) The process of an equity court should act on known and definite interests and not on such as admit of no medium of estimation, and its decrees should terminate and not instigate litigation.—*Caldwell* v. *Taggart,* 29 U. S. 190; 4 Pet. 190; 7 L. Ed. 828.

(U. S. Va. 1937) Extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule, but rests in sound discretion of court * * * Equity courts may go much farther both to give and withhold relief in furtherance of public interest than they are accustomed to go where only private interests are involved.—*Virginian Ry. Co.* v. *System Federation No. 40,* 57 S. Ct. 592; 300 U. S. 515; 81 L. Ed. 789; affirming CCA, 84 F. 2d 641; affirming D.C. *Ry. Employees Dept. of A.F.L.* v. *Virginian Ry. Co.,* 11 F. Supp. 621; certiorari granted *Virginian Ry. Co.* v. *System Fed. No. 40, Ry. Employees Dept. of A.F.L.,* 57 S. Ct. 43, 299 U. S. 529; 81 L. Ed. 389. Also, see *Scripps-Howard Radio* v. *Federal Communications Comm.,* 62 S. Ct. 875; 316 U. S. 4; 86 L. Ed. 1229. *Mercold Corp.* v. *Mid-Continent Inv. Co.,* 64 S. Ct. 268; 320 U. S. 661; 88 L. Ed. 376;—Rehearing denied—64 S. Ct. 325; 321 U. S. 802; 88 L. Ed. 1089 (also see 89 L. Ed. 546—motion denied).

(U. S. Miss. 1874) It is a rule of a court of equity to do complete justice when such is practicable, not merely by declaring the right, but by enforcing a remedy for its enjoyment, and such a court does not turn the party to another forum to enforce a right which it has itself established.—*Terrell* v. *Allison,* 88 U. S. 289; 21 Wall. 289; 22 L. Ed. 634.

We believe certain generalized rules to be apropos. 30 C. J. S., Equity, Sec. 67, states:

"The aim of a court of equity is to administer complete relief in a single suit and, as a general rule, the court will in the one suit investigate and determine all questions incidental to the main controversy and grant all relief incidental to accomplishment of the principal object of the bill, and it is a well settled rule that a court of equity which has obtained jurisdiction of a controversy on any

> ground, or for any purpose, will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject matter, particularly with respect to the enforcement of its own decree, and this is true whether the question is of remedy or of distinct yet connected topics of dispute, and whether the rights and remedies involved are legal or equitable."

19 Am. Jur., Equity, Sec. 127, states:

> "The rule is that equity will not enter a partial or incomplete decree. Having taken cognizance of a cause for any purpose, a court of equity will ordinarily retain jurisdiction for all purposes; decide all issues which are involved by the subject matter of the dispute between the litigants; award relief which is complete and finally dispose of the litigation so as to make performance of the court's decree perfectly safe to those who may be compelled to obey it; accomplish full justice between the parties litigant; and prevent future litigation. * * *."

Undoubtedly this Court can, and will, consider the ability of States affected by its decision, to endeavor to conform to the doctrine of only one system (without distinction as to color) in public education; and it is respectfully submitted that this Court should consider the financial problems of a State—such as ours—in determining *when and how* there shall be an affirmance from this Court respecting the time for the ultimate cessation of segregation.

The problem of the State of Oklahoma in adjusting or changing the financial structure for maintaining public schools is a serious one, grounded in constitutional

and statutory provisions of long standing—the uprooting of which, in an effort to conform, will take time to solve. Therefore, it is respectfully suggested that this individual problem of the State of Oklahoma be considered by this Court in making a fully equitable and final disposition of these cases, and the principles therein laid down.

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