## II.
## JURISDICTION

The judgment of the Court of Appeals was entered August 18, 1958. On August 28, 1958, by order of this Court, the Petitioners were given leave to file petition for a Writ of Certiorari not later than September 8, 1958. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

## III.
## QUESTIONS PRESENTED

The District Court found that the school board's plan of desegregation has resulted in severe impairment of the educational program and an over-all intolerable situation because of overt resistance and opposition by the state government, students, parents, organized groups, and segments of the community. The questions presented are:

(1) Whether a court of equity may postpone the enforcement of the respondents' constitutional rights if the continued enforcement thereof will result in an intolerable situation and great disruption of the educational process to the detriment of the public interest, the schools, and the students including the respondents.

(2) Whether a school district has a duty and obligation, by invoking extraordinary legal processes and otherwise, to quell violence, disorder and organized resistance to desegregation.

## IV.
## CONSTITUTIONAL AMENDMENT INVOLVED

Amendment 14 to the Constitution of the United States, Section 1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## V.

## STATEMENT

Little Rock School District, hereinafter referred to as "the District," after the first *Brown* decision and before the second *Brown* decision, evolved a Plan of Integration. The good faith of the District has never been challenged. The Plan contemplated integration in the senior high schools of the District during the 1957-1958 term, later in the junior high schools, and still later in the grade schools. It was assumed that within a period of seven years integration would be complete.

The NAACP was not satisfied with the Plan or the time schedule and caused a suit to be filed contending that complete integration should be required overnight. The District Court and the Circuit Court of Appeals approved the seven year plan. See *Aaron* v. *Cooper*, 143 F. Supp. 855 (E.D. Ark.); 243 F. 2d 361 (C.C.A. 8th).

The District commenced functioning under the Plan in September, 1957, and it operated during the 1957-1958 term with disastrous results. With an experience which taught the futility of compliance without sacrificing those values uppermost in the minds of educators, the District

filed a Petition asking that the District Court, in the exercise of its discretion, postpone operations under the Plan for a period of two and one-half years. On undisputed testimony as to what had happened, the District Court concluded that the education of all pupils was being harmed and in the public interest an interruption in the desegregation plan should be permitted.

The District Court expressly found, among other things, that there were acts of destruction and threats of destruction; that tension and violence occurred among students leading to more than 200 suspensions and expulsions; that the State has acted in opposition to the process of integration; that the community and the press have condemned the principle of integration, abused the school officials and federal authority, and announced that integration could be avoided; that teachers and school officials were exhausted, tense, frustrated, and apprehensive in the face of threats; that normal enforcement processes were inadequate to cope with the situation and troops or the equivalent would be necessary again; that education has suffered and will continue to suffer; that there was chaos, bedlam and turmoil from the beginning; that the situation is intolerable.

In addition to these findings, other factors are revealed in the record. Many of the mob participants were identifiable but none were charged by federal law enforcement agencies. The pupils who became involved in disciplinary investigations were being guided by adults. The F.B.I. made a full report of the situation; the Department of Justice has not seen fit to make this report available to the school board. Nor was the report utilized by the Department of Justice since it publicly dropped plans to prosecute agitators. The legislative, executive, and judicial departments of the state government opposed the desegregation of Little Rock schools by enacting laws, calling out troops, making statements vilifying federal law and federal courts, and failing to utilize state law enforcement agencies and judicial processes to maintain public peace.

On the basis of its findings, the District Court held that the request for a postponement was made in good faith and was manifestly justifiable; that severe impairment of the educational program and of the welfare of the students and the community would result were the postponement not granted; that the inherent powers of equity and the spirit of the second *Brown* decision dictated that the school district be allowed to operate its school on a segregated basis for a time without being considered in contempt of court.

The Circuit Court of Appeals for the Eighth Circuit agreed with the findings of the District Court that the evidence is appalling but that great additional expense, disruption of normal educational procedures, tension and nervous collapse of the school personnel, turmoil, bedlam, and chaos, are not a legal basis for suspension of the plan since this would be an accession to the demands of insurrectionists.

## VI.
## REASONS FOR GRANTING THE WRIT

The tremendous importance of the questions presented by this case is manifest. To this point little can be stated that would not be merely cumulative to the arguments expressed in the petition for writ of certiorari previously made, the application to vacate the stay granted by the Circuit Court of Appeals, the response to that application, the oral argument directed to the application to vacate, the briefs filed by *amici curiae*, and the certified record heretofore lodged with the Court.

This case calls for a decision more far reaching, studied and comprehensive than the superficial treatment accorded the matter in the Circuit Court of Appeals. Negro children claim that their right to attend unsegregated schools is violated by the District Court judgment. But no one contends that the Little Rock School District has denied to the chil-

dren their constitutional rights under the *Brown* decisions. Rather, the action offensive to the Fourteenth Amendment to the Constitution of the United States is mass opposition to integration by the people of the state and obstruction by the state itself.

Whatever the answer may be, it certainly is not to simply return the school district to the bedlam, turmoil, and chaos which has been destroying the school district and has emasculated the educational program.

The argument of petitioners is reflected by the questions presented. First, where a school board has made a prompt start toward desegregation and has continued throughout to exercise good faith, severe impairment of the educational system both present and prospective because of desegregation entitles the school district to a postponement regardless of the source and motivation of the destructive forces. The second *Brown* decision was so construed by the District Court.

If the *Brown* rule is not sufficiently flexible to allow time for the subsidence of forces such as are arrayed here against it, then it may be seriously doubted whether courts are able to effectively cope with "state action" such as this, and perhaps this Court should so hold. Certainly the legislative and political departments of the United States government have displayed little willingness to assist in the implementation of the *Brown* decisions, although the matter would seem to rest more appropriately in those departments where obstruction by the governor and legislature and mass opposition by the people of a state is concerned.

Even though this is an area which courts have often shunned for lack of practical power to act, the Circuit Court of Appeals has suggested that the duty of resisting the concerted opposition of the state and its populace lies with the school district. Certainly the responsibilities of defendant school districts should be clarified and delineated by this Court.

And finally, denial of relief to the school district will have a profound effect over the nation. There are thousands of school districts that have not made a step toward desegregation. In their repose these districts are conducting educational programs without harrassment of any sort albeit constitutional rights declared by the *Brown* decisions are being violated. Thus it would be the height of irony if the Little Rock School District, having made the start in good faith, were denied this postponement at the expense of the entire educational program at the high school level. The attorneys for the respondents have, at every stage, tacitly conceded the existence of the situation as found by the District Court, but have ignored and skirted the equities of the school district and of the thousands of students, parents and teachers. Affirmance of the Circuit Court of Appeals, or denial of this petition for writ of certiorari, would discourage any further voluntary compliance by school districts with the *Brown* decision.

## VII.
## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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