

VS

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, AND KENNETH McFARLAND, SUPERINTENDENT OF SCHOOLS OF TOPEKA, KANSAS, and FRANK WILSON, PRINCIPAL OF SUMNER ELEMENTARY SCHOOL

C O M P L A I N T

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1331. This action arises under the Fourteenth Amendment of the Constitution of the United States, section 1, and the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3000.00).

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 1343. This action is authorized by the Act of April 20, 1871, Chapter 22, section 1, 17 Stat. 13 (Title 8, United States Code, section 43), to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, or rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, section 1, and by the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), providing for the equal rights of citizens and of all other persons within the jurisdiction of the United States, as hereinafter more fully appears.

(c) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 2281. This is an action for an interlocutory injunction and a permanent injunction restraining the enforcement, operation and execution of such statutes.

2. This is a proceeding for a declaratory judgment and injunction under Title 28, United States Code, section 2201, for the purpose of determining questions in actual controversy between the parties, to wit:

(a) The question of whether the state statute, Ch 72-1724 of the General Statutes of Kansas, 1935, is unconstitutional in that it gives the defendants the power to organize and maintain separate schools for the education of white and colored children in the city of Topeka, Kansas, for the reason that said authority is an unlawful delegation of legislative power, in that said authority is unlimited and without adequate standards.

(b) The question of whether the customs and practices of the defendants operating under Ch. 72-1724 of the General Statutes of Kansas, 1935, are unconstitutional in that they deny infant plaintiffs and other Negro children similarly situated, the rights and privileges of enrolling, attending and receiving instruction in the school of the district in which they reside; while such rights and privileges are granted to white children similarly situated; where the basis of this refusal and grant is the race and color of the children, and that alone.

(c) The question of whether the denial to infant plaintiffs, solely because of race, of educational opportunities equal to those afforded white children at the Sumner school and other schools similarly situated in the city of Topeka, Kansas is in contravention of the Fourteenth Amendment to the United States Constitution as being a denial of the equal protection of the laws.

3. (a) Infant plaintiffs are citizens of the United States, the State of Kansas, and Shawnee County, the City of Topeka, Kansas. They are among those classified as Negroes. They reside in various school districts, satisfy all requirements for admission to the schools for which adult plaintiffs are taxed to support; that said infant plaintiffs have presented themselves for enrollment and registration at the proper time and place, and were denied the right to enroll in and receive instruction in the schools of their respective districts, on account of their race and color, and these alone.

Instead, they are required, solely because of race and color, to attend a "so-called" Negro school, far removed from the school in the district wherein they reside; which attendance, said

Negro children are exposed to extreme hazards to their physical bodies. As a result thereof, they do not and cannot receive educational advantages, opportunities, and facilities equal to those furnished white children at Sumner School and other schools designated for white children.

(b) Adult plaintiffs are citizens of the United States and the State of Kansas, and residents of and domiciled in Topeka, Shawnee County, Kansas, are taxpayers of said city, county, and state, and of the United States. They are the parents and natural guardians of infant plaintiffs named herein. By being compelled to send their children to the schools outside of, and away from, the schools in the district in which they reside, they must bear burdens and forego advantages, neither of which is suffered by parents of white children situated similarly to children of plaintiffs.

(c) Plaintiffs bring this action on their own behalf and also on behalf of all citizens similarly situated and affected, pursuant to Rule 23A of the Federal Rules of Civil Procedure, there being common questions of law and fact affecting the rights of all Negro citizens of the United States similarly situated who reside in cities in the State of Kansas in which separate public schools are maintained for white and Negro children of public school age, and who are so numerous as to make it impracticable to bring them all before the Court.

4. The State of Kansas has declared public education a state function in the Constitution of the State of Kansas, Article 6, sections 1 and 2. Pursuant to this mandate, the Legislature of Kansas has established a system of free public schools in the State of Kansas, according to a plan set out in Chapter 72 of the General Statutes of Kansas, 1935, and supplements thereto. The establishment, maintenance, and administration of the public school system of Kansas is vested in a Superintendent of Public Instruction, County Superintendent of Schools, and City School Boards. (Constitution of Kansas, Article 6, section 1)

5. The public schools of Topeka, Shawnee County, Kansas, are under the control and supervision of the defendants.

(a) Defendant, Board of education, is under a duty to enforce the school laws of the State of Kansas (General Statutes of Kansas, 1935, and supplements thereto, section 72-1809); to maintain an efficient system of public schools in Topeka, Shawnee County, Kansas; to determine the studies pursued, the methods of teaching, and to establish such schools as may be necessary to the completeness and efficiency of the school system. It is an administrative department of the State of Kansas, which discharges governmental functions pursuant to the Constitution and the laws of the State of Kansas. (Constitution of Kansas, Article 6, sections 1 and 2, General Statutes, 1935, and supplements thereto of Kansas, section 72-1601). It is declared by law to be a body corporate and is sued in its governmental capacity.

(b) Defendant Kenneth McFarland is Superintendent of Schools in Topeka, and holds office pursuant to the Constitution and the laws of the State of Kansas, as an administrative officer of the free public school system of the State of Kansas. He has immediate control of the operation of public schools in Topeka, Shawnee County, Kansas. He is sued in his official capacity.

(c) Defendant Frank Wilson, Principal of Sumner School is an administrative officer of the free public school system of the City of Topeka, Shawnee County, Kansas, and holds office pursuant to the authority vested in the Board of Education, incorporated under and by virtue of the laws of the State of Kansas. He is sued in his official capacity.

6. Defendant, Board of Education of Topeka, Shawnee County, Kansas, has established and at the present time maintains in the City of Topeka, State of Kansas, elementary schools for the education of the school children of the City of Topeka. They are located within different districts of the City of Topeka, whose boundaries are designated by the defendant, Board of Education.

7. White children of elementary school age go to the school within the designated boundaries of the district in which they live. ~~Infant plaintiffs also~~

Infant plaintiffs also live within the same boundaries of designated school districts, but they are required to leave the district and travel from one and one-half miles to two miles to a separated all-Negro school, solely because of their race and color,

and in violation of their rights under the Fourteenth Amendment to the Constitution of the United States.

8. As a result of compelling infant plaintiffs and others similarly situated to attend a separate all-Negro school, remotely located and outside of the school district where infant plaintiffs and others similarly situated reside, infant plaintiffs are not provided the educational opportunities by the defendants as provided for the white children similarly situated and is in violation of infant plaintiffs rights under the Fourteenth Amendment of the Constitution of the United States.

9. Adult Plaintiffs are required to send their children outside the school district in which they reside to a separate all-Negro school, whereas parents of white children are permitted to send their children to schools close at hand within the district in which they live, solely because of race and color. Thus, adult plaintiffs are being denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

10. Infant Plaintiffs and adult plaintiffs are thereby being willfully and unlawfully discriminated against by the defendants on account of their race and color, in that infant plaintiffs are compelled to attend schools outside the school district in which they live, while white children similarly situated are not so compelled; infant plaintiffs and adult plaintiffs are being deprived of their rights guaranteed by the Constitution and laws of the United States.

11. Plaintiffs are suffering irreparable injury and face irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of, other than this suit for a declaration of rights and an injunction. Any other remedy to which plaintiffs might be remitted would be attended by such uncertainties and delays as to deny substantial relief; would involve a multiplicity of suits; and would cause further irreparable injury not only to plaintiffs, but to defendants as

governmental agencies.

WHEREFORE, plaintiffs respectfully pray that:

1. The Honorable Court, upon filing of this complaint, notify the Chief Judge of this Circuit as required by 28 U. S. C. A., section 2284, so that the Chief Judge may designate two other judges to serve as members of a three-judge court as required by Title 28, U. S. C. A., section 2281, to hear and determine this action.

2. The Honorable Court enter a judgment or decree declaring that the General Statutes of Kansas, 1935, 72-1724, is unconstitutional insofar as it empowers defendants to set up separate schools for Negro and white school children.

3. The Honorable Court enter a judgment or decree declaring that the policy, custom, usage and practice of defendants in operation under Ch. 72-1724, General Statutes of Kansas, 1935, in denying plaintiffs and other Negro children similarly situated in the school districts of the City of Topeka, Kansas, solely because of race or color, the right and privilege of enrolling in, attending and receiving instruction in the various school districts as is provided for white children of like qualifications, are denials of their rights under the equal protection clause of the United States Constitution and are therefore unconstitutional and void.

4. The Honorable Court issue a permanent injunction forever restraining and enjoining the defendants from executing so much of Ch. 72-1724, General Statutes of Kansas, 1935, as empowers them to set up separate schools for Negro and white school children.

5. The Honorable Court issue a permanent injunction forever restraining the defendants from denying the Negro school children of the City of Topeka, Kansas, on account of their race or color, the right and privilege of attending the schools within their respective districts, and from making any distinction based on race or color, in the opportunities which the defendants provided for public education.

6. The Honorable Court will allow plaintiffs their costs herein, reasonable fees for attorneys, and such other and further relief as may appear to the Court to be equitable and just.

7. The Honorable Court retain jurisdiction of this cause after judgment to render such relief as may become necessary in the future.

BLEDSON, SCOTT, SCOTT, & SCOTT

By

Chas. E. Bledson
ATTORNEYS FOR PLAINTIFFS

STATE OF KANSAS)
) SS
COUNTY OF SHAWNEE)

CHARLES E. BLEDSON, of lawful age, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the plaintiffs in the above and foregoing complaint. That he has read the above and foregoing statements, and verily believes that all of the statements and allegations therein are true.

Chas. E. Bledson

SUBSCRIBED AND SWORN TO BEFORE ME THIS 26th DAY OF February, A.D., 1951.

Josephine M. Nesbitt
NOTARY PUBLIC

My Commission Expires: Sept. 8, 1954

