IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 34

V. W. MCLAURIN,

Appellant,

—v.—

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA, *et al.*

BRIEF OF THE JAPANESE AMERICAN CITIZENS LEAGUE, *AMICUS CURIAE*

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Interest of Japanese American Citizens League

The Japanese American Citizens League, hereinafter referred to as JACL, as *amicus curiae,* files this brief pursuant to the Court's Rule 27(9) and upon the written consent of the parties. JACL is the only national organization representing persons of Japanese ancestry in the United States. Its membership is open to all United States citizens without discrimination as to race, color, creed, or national origin. Its program is best summarized in its slogan "For Better Americans in a Greater America", and in the slogan of its Anti-Discrimination Committee, "Equal Rights, Equal Opportunities for All". Although the JACL is primarily concerned with the problems and welfare of persons of Japanese ancestry in this country, it believes that it is appropriate that it express its views upon the fundamental personal rights involved in the instant case affecting other minorities as well as persons of Japanese ancestry.

Statement

The facts, fully set forth in the briefs of the parties, are essentially that in October 1948 appellant, a Negro, was admitted to the Graduate College of the University of Oklahoma, the only state college offering a doctorate in education, under administrative rules of the University promulgated in order to segregate Negro students from other students and under which he is required to sit apart at a special desk in the classroom doorway. In the school library he is required to sit at a designated desk on an upper floor. He may be served in the school cafeteria only at a special table reserved for him and at a time other than regular cafeteria hours.

ARGUMENT

The appellant's segregation solely on the basis of race or color is a violation of the Fourteenth Amendment's requirement of equal protection of the laws.

This Court has never expressly approved as constitutional the racial segregation practiced in the public school system of many states and of the District of Columbia. The doctrine of so-called "separate but equal" public accommodations has not been held to satisfy the "equal protection of the laws" required by the Fourteenth Amendment in any of the cases involving racial segregation in public education which has come before the Court. *Fisher* v. *Hurst,* 333 U. S. 147; *Sipuel* v. *Board of Regents,* 332 U. S. 631; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Gong Lum* v. *Rice,* 275 U. S. 78; *Berea College* v. *Kentucky,* 211 U. S. 45; *Cummings* v. *Richmond County Board of Education,* 175 U. S. 528.

The fact that in practice the separate public educational facilities for Negroes or other racial minorities are never equal to the facilities for the white majority has been established beyond serious question. The complete failure in fact of the "separate but equal" doctrine is succinctly recorded in the Report of the President's Committee on Civil Rights, "To Secure These Rights", p. 167:

> "The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

During the recent war hostilities an unfortunate and mistaken exercise of the war power involving racial discrimination was allowed as a temporary emergency matter. *Korematsu* v. *United States,* 323 U. S. 214; *Hirabayashi* v. *United States,* 320 U. S. 81; cf. Grodzins, *Americans Betrayed* (1949). But since the end of hostilities racial discrimination by governmental action has been consistently condemned as unconstitutional. *Takahashi* v. *Fish and Game Commission,* 334 U. S. 410; *Shelley* v. *Kraemer,* 334 U. S. 1; *Oyama* v. *California,* 332 U. S. 633.

In education some progress has been made in the last year against the practice of racial segregation. *Civil Rights in the United States in 1949,* pp. 28-36 (issued by the American Jewish Congress and the National Association for the

Advancement of Colored People). It is submitted, however, that an authoritative decision of this Court holding unconstitutional the racial segregation presented by the undisputed facts of this case, and involved in the "separate but equal" doctrine, is absolutely necessary at this time to further the elimination of the ugly and unconstitutional practice of race discrimination in public education.

The Fourteenth Amendment was adopted to protect members of the Negro race, theretofore kept in an ignorant condition, from discrimination in the States in which they resided. *Strauder* v. *West Virginia,* 100 U. S. 303, 307. It was believed that universal and non-discriminatory public education, perhaps more than any other single factor, would rapidly lift them to an equal social and economic status. It was hoped that in the fellowship of the public school the young of both races would achieve a mutual understanding which would eliminate the old hostility. But every effort at such common education in the States where most of the members of the Negro race resided was resisted and finally defeated under the patent evasion of "separate but equal" educational facilities.

The Fourteenth Amendment has not yet, in all these years since its adoption, been exercised fully to prevent this evasion of the constitutional rights of minorities to public education without racial segregation. The instant case presents an opportunity not only to protect those constitutional rights but also to unfetter the forces of democratic public education without segregation which will do more than any other factor to remove the racial tensions in our country. For these reasons it is urged that the segregation here involved, and the "separate but equal" doctrine in public education, be condemned as in violation of the Fourteenth Amendment.

CONCLUSION

Wherefore it is respectfully prayed that the decision of the court below be reversed.

Respectfully submitted,

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