SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 369

ADA LOIS SIPUEL,

Petitioner,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, MAURICE H. MERRILL, GEORGE WADSACK AND ROY GITTINGER,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF, TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Ada Lois Sipuel, invokes the jurisdiction of this Court under Section 237b of the Judicial Code (28 U. S. C. 344b) as amended February 13, 1925, and respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Oklahoma (R. 61), affirming the judgment of the District Court of Cleveland County denying petitioner's application for a writ of

mandamus to compel respondents to admit her to the first year class of the law school of the University of Oklahoma.

Statement of the Constitutional Problem Presented

Petitioner is a citizen and resident of the State of Oklahoma. She desires to study law and to prepare herself for the practice of the legal profession. Pursuant to this aim she applied for admission to the first year class of the School of Law of the University of Oklahoma, a public institution maintained and supported out of public funds and the only public institution in the State offering facilities for a legal education. Her qualifications for admission to this institution are undenied, and it is admitted that petitioner, except for the fact that she is a Negro, would have been accepted as a first year student in the law school of the University of Oklahoma, which is the only institution of its kind petitioner is eligible to attend.

Petitioner applied to the District Court of Cleveland County for a writ of mandamus against the Board of Regents, George L. Cross, President, Maurice R. Merrill, Dean of the Law School, Roy Gittinger, Dean of Admissions and Roy Wadsack, Registrar to compel her admission to the first year class of the school of law on the same terms and conditions afforded white applicants seeking to matriculate therein (R. 2). The writ was denied (R. 21), and on appeal this judgment was affirmed by the Supreme Court of the State of Oklahoma on April 29, 1947 (R. 35). Petitioner duly entered a motion for rehearing (R. 54), which was denied on June 24, 1947 (R. 61). Whereupon petitioner now seeks from this Court a review and reversal of the judgment below.

The action of respondents in refusing to admit petitioner to the school of law was predicated on the ground (1) that such admission was contrary to the constitution, laws and

public policy of the State; (2) that scholarship aid was offered by the State to Negroes to study law outside the State, and; (3) that no demand had been made on the Board of Regents of Higher Education to provide such legal training at Langston University, the State institution affording college and agricultural training to Negroes in the State.

In this Court petitioner reasserts her claim that the refusal to admit her to the University of Oklahoma solely because of race and color amounts to a denial of the equal protection of the laws guaranteed under the Fourteenth Amendment to the Federal Constitution in that the State is affording legal facilities for whites while denying such facilities to Negroes.

The Salient Facts

The facts in issue are uncontroverted and have been agreed to by both petitioner and respondents (R. 22-25). The following are the stipulated facts:

The petitioner is a resident and citizen of the United States and of the State of Oklahoma, County of Grady and City of Chicakasha, and desires to study law in the School of Law in the University of Oklahoma for the purpose of preparing herself to practice law in the State of Oklahoma (R. 22).

The School of Law of the University of Oklahoma is the only law school in the State maintained by the State and under its control (R. 22).

The Board of Regents of the University of Oklahoma is an administrative agency of the State and exercises over-all authority with reference to the regulation of instruction and admission of students in the University of Oklahoma. The University is a part of the educational system of the State and is maintained by appropriations from public funds

raised by taxation from the citizens and taxpayers of the State of Oklahoma (R. 22-23).

The School of Law of the Oklahoma University specializes in law and procedure which regulates the government and courts of justice in Oklahoma, and there is no other law school maintained by public funds of the State where the petitioner can study Oklahoma law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Oklahoma. The petitioner will be placed at a distinct disadvantage at the bar of Oklahoma and in the public service of the aforesaid State with respect to persons who have had the benefit of the unique preparation in Oklahoma law and procedure offered at the School of Law of the University of Oklahoma, unless she is permitted to attend the aforesaid institution (R. 23).

The petitioner has completed the full college course at Langston University, a college maintained and operated by the State of Oklahoma for the higher education of its Negro citizens (R. 23).

The petitioner made due and timely application for admission to the first year class of the School of Law of the University of Oklahoma on January 14, 1946, for the semester beginning January 15, 1946, and then possessed and still possesses all the scholastic and moral qualifications required for such admission (R. 23).

On January 14, 1946, when petitioner applied for admission to the said School of Law she complied with all of the rules and regulations entitling her to admission by filing with the proper officials of the University an official transcript of her scholastic record. The transcript was duly examined and inspected by the President, Dean of Admission and Registrar of the University (all respondents herein) and was found to be an official transcript entitling

her to admission to the School of Law of the said University (R. 23).

Under the public policy of the State of Oklahoma, as evidenced by the constitutional and statutory provisions referred to in the answer of respondents herein, petitioner was denied admission to the School of Law of the University of Oklahoma solely because of her race and color (R. 23-24).

The petitioner, at the time she applied for admission to the said school of the University of Oklahoma, was and is now ready and willing to pay all of the lawful charges, fees and tuitions required by the rules and regulations of the said University (R. 24).

Petitioner has not applied to the Board of Regents of Higher Education to prescribe a school of law similar to the School of Law of the University of Oklahoma as a part of the standards of higher education of Langston University and as one of the courses of study thereof (R. 24).

It was further stipulated between the parties that after the filing of this case, the Board of Regents of Higher Education had notice that this case was pending and met and considered the questions involved herein and had no unallocated funds on hand or under its control at the time with which to open up and operate a law school and has since made no allocation for such a purpose (R. 24-25).

Question Presented

Does the Constitution of the United States Prohibit the Exclusion of a Qualified Negro Applicant Solely Because of Race from Attending the Only Law School Maintained By a State?

Reason Relied On For Allowance of the Writ

The Decision of the Supreme Court of Oklahoma Is Inconsistent With and Directly Contrary to the Decision of This Court in Gaines v. Canada.[1]

The question presented in this case is identical to that presented to this Court in *Gaines* v. *Canada*. The facts and the Oklahoma Statute governing this case are similar to those involved in the *Gaines* case. Had the *Gaines* case been followed, judgment in petitioner's favor would have been rendered in the court below. In other cases where this Court has been requested to review decisions of State courts denying fundamental civil rights and in direct conflict with previous decisions of this Court *certiorari* has been granted and the judgment reversed without hearing.[2]

Conclusion

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Supreme Court of the State of Oklahoma should be granted and the judgment of the Supreme Court of Oklahoma reversed.

AMOS T. HALL,
THURGOOD MARSHALL,
Attorneys for Petitioner.

ROBERT L. CARTER,
Of Counsel.

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[1] 305 U. S. 337.

[2] *Canty* v. *Alabama,* 309 U. S. 629; *White* v. *Texas,* 309 U. S. 631 rehearing denied 310 U. S. 530.

SUPREME COURT OF THE UNITED STATES

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No. 369

ADA LOIS SIPUEL,

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vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, MAURICE H. MERRILL, GEORGE WADSACK AND ROY GITTINGER,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Opinion of Court Below

The opinion of the Supreme Court of Oklahoma appears in the record filed in this cause (R. 35-51).

Jurisdiction

Jurisdiction of this Court is invoked under Section 237b of the Judicial Code (28 U. S. C. 344b) as amended February 13, 1925.

The Supreme Court of Oklahoma issued its judgment in this case on April 29, 1947 (R. 51). Petition for rehearing

was appropriately filed and was denied on June 24, 1947 (R. 61).

Statement of the Case

The statement of the case and a statement of the salient facts from the record are fully set forth in the accompanying petition for certiorari. Any necessary elaboration on the finding of the points involved will be made in the course of the argument.

Error Below Relied Upon Here

The Decision of the Supreme Court of Oklahoma Is Inconsistent With and Directly Contrary to the Decision of This Court in *Gaines* v. *Canada.*

Argument

The Decision of the Supreme Court of Oklahoma Is Inconsistent With and Directly Contrary to the Decision of This Court in Gaines v. *Canada.*

There is no dispute as to the facts in this case. Petitioner's qualifications for a legal education are admitted. The only law school maintained by the State of Oklahoma is the law school of the University of Oklahoma. Petitioner's application to said school was refused because of her race and color and she sought a writ of mandamus to compel her admission to the law school of the University of Oklahoma (R. 2). The trial court refused to issue the writ (R. 21) and this judgment was affirmed by the Supreme Court of Oklahoma.

Respondents defended their refusal to admit petitioner on the ground that the laws of Oklahoma prohibited Negroes from attending schools established for white pupils. Petitioner relied on the decision of this Court in *Gaines* v. *Canada et al.*,[3] including the principle that: "The admissi-

[3] 305 U. S. 337.

bility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the quality of the privileges which the laws give to the separated groups within the State."[4]

However, the court below in affirming the judgment denying the writ relied upon the constitution and laws of the State requiring the segregation of the races for educational purposes:

> "Petitioner Ada Lois Sipuel, a Negro, sought admission to the law school of the State University at Norman. Though she presented sufficient scholastic attainment and was of good character, the authorities of the University denied her enrollment. They could not have done otherwise for separate education has always been the policy of this state by vote of citizens of all races. See Constitution, Art. 13, Sec. 3, and numerous statutory provisions as to schools" (R. 37).
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> * * * * * * *
>
> "Petitioner contends that since no law school is maintained for Negroes, she is entitled to enter the law school of the University, or if she is denied that, she will be discriminated against on account of race contrary to the 14th Amendment to the United States Constitution. This is specious reasoning, for of course if any person, white or Negro, is unlawfully discriminated against on account of race, the Federal Constitution is thereby violated. But in this claim for University admission petitioner takes no account, or does not take fair account, of the separate school policy of the State as above set out" (R. 38).

This argument postulates an inherently fallacious premise which, if true, would render the equal protection of the laws guaranteed under the Fourteenth Amendment a meaningless and empty provision. This argument means

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[4] Id at p. 349.

in effect that where there exists a policy of racial separation; and a state affords to whites a public facility unavailable to Negroes, it can delay, defeat or deny a claim of infringement of constitutional right by pleading the validity of its segregation laws. The law is clear that the admissibility of segregation statutes is contingent upon proof that there is available to Negroes public facilities within the State equal to those afforded whites within the State.

Hence the segregational statutes or policy of Oklahoma could not validly be before the courts without there being first a showing that petitioner could have obtained within the State a legal education equal to that offered at the University of Oklahoma. This unquestionably is untrue since admittedly the University of Oklahoma is the only State institution offering instruction in law (R. 22). With the establishment of this fact along with petitioner's qualifications for admission to the school of law, a *primie facie* case for issuance of the writ was made and respondents have advanced nothing to justify the court in refusing to render judgment in petitioner's favor.

The similarity between this case and the *Gaines* case is, of course, apparent upon even a cursory examination. Upon close inspection, however, one finds that the two cases are all but identical both as to law and fact.

In the *Gaines* case, as here, application was made for admission to the only law school maintained by the State. The application was referred by the University of Missouri to the President of Lincoln University, the State college for Negroes. The latter officer directed Gaines' attention to the Missouri statute providing out of state scholarship aid to Negroes for educational advantages not offered at Lincoln University. Whereupon Gaines instituted suit against the officers of the state law school, as was done in this case, to compel his admission to that institution. The

record clearly shows in the *Gaines* case that Gaines, like petitioner herein, at no time made application either to the State college for Negroes, its governing board or its officers for a legal education at Lincoln University or for out of State scholarship aid.

> "Q. Now you never at any time made an application to Lincoln University or its Curators or its officers or any representative for any of the rights, whatever, given you by the 1921 statute, namely, either to receive a legal education at a school to be established in Lincoln University or, pending that, to receive a legal education in a school of law in a state university in an adjacent state to Missouri, and Missouri paying that tuition, —you never made application for any of those rights, did you? A. No, sir."[5]

Missouri had a provision as does Oklahoma making it unlawful for Negroes and whites to attend the same school. Chapter 72, Art. 2, Section 10349 of Rev. Stat. of Mo. 1939 provides as follows:

> "Separate free schools shall be established for the education of children of African descent; and it shall hereinafter be unlawful for any colored child to attend any white school, or for any white child to attend any colored school." (R. S. 1929, Sec. 9216, Rev. Stat. Mo. 1939).

In refusing to follow the *Gaines* case, the Supreme Court of Oklahoma sought to distinguish the two cases by assuming facts not present in the record of this case and by assuming facts in the *Gaines* case directly contrary to the record and decision in that case.

Although the Supreme Court of Oklahoma recognized that: "There is no controversy as to the facts presented. Trial was held upon stipulation * * *" (R. 38), the Court

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[5] Transcript of Record *Gaines* v. *Canada et al.,* No. 57, October Term, 1938, p. 85).

relied upon the alleged administration of an out-of-state scholarship fund which does not appear at all in the stipulation. Oklahoma statutes provide for such a fund, but there is no evidence as to whether such fund has ever been used or, if so, the terms under which it has been administered.

The Oklahoma Court in seeking to distinguish the *Gaines* case uses only one alleged difference as to fact:

> "* * * Thus in Missouri there was application for and denial of that which could have been lawfully furnished, that is, law education in a separate school, while in this case the only demand or request was for that which could not be lawfully granted, that was education of petitioner, a Negro, in a white school" (R. 45).

In her Petition for Rehearing in the Oklahoma Supreme Court petitioner pointed out that the Court's assumption of facts in the *Gaines* case was in error (R. 56). It should also be noted that the reported opinion of the Supreme Court of Missouri in the *Gaines* case stated: "He at no time applied to the management of the Lincoln University for legal training."[6]

It should be pointed out that in the agreed Statement of Facts it is admitted:

> "That after the filing of this cause the Board of Regents of Higher Education, having knowledge thereof, met and considered the questions involved therein; that it had no unallocated funds in its hands or under its control at that time with which to open up and operate a law school and has since made no allocation for that purpose; that in order to open up and operate a law school for Negroes in this state, it will be necessary for the board to either withdraw existing allocations, procure moneys, if the law permits, from the Governor's contingent fund, or make an application

[6] 113 S. W. (2d) 783, at p. 789.

> to the next Oklahoma legislature for funds sufficient to not only support the present institutions of higher education but to open up and operate said law school; and that the Board has never included in the budget which it submits to the Legislature an item covering the opening up and operation of a law school in the State for Negroes and has never been requested to do so."

Much emphasis is placed in the opinion of the Court below on the fact that it is a crime under Oklahoma law to admit a Negro into a white school and vice versa. It is evident from the Missouri statute cited *supra* that when Gaines applied for admission to the University of Missouri that it was illegal under Missouri law for a Negro to be admitted to a white school.

In the face of the unquestioned duty of the State under the constitution to provide equal educational facilities as between Negroes and whites, the illegality involved in any breach of the State policy of educational segregation was not considered worthy of even passing mention by this Court in disposing of the constitutional question before it. Petitioner contends that this phase of the opinion of the Court below is without merit or validity and is met by this Court's rule discussed *supra* that the admissibility of segregation statutes rests wholly upon a showing of equality of the facilities.

An examination of the statute governing the State college for Negroes in force in Missouri at the time of the *Gaines* decision and the statute now in force in Oklahoma governing Langston University completes the likeness between the two cases. Argument was made when the *Gaines* case was before this Court that Gaines, rather than having sought admission to the University of Missouri, should have applied to the Board of Curators of Lincoln University for the establishment of a law school at Lincoln University. This Court found such action unnecessary since

there did not exist any mandatory duty on the Board of Curators of Lincoln University to establish a law school. The statute setting forth the duties of the Board are set forth below and were construed by the Missouri Supreme Court as placing no mandatory duty upon that Board. Section 9618, Missouri Revised Statutes 1929 provided as follows:

> "Board of curators authorized to reorganize. The board of curators of the Lincoln University shall be authorized and required to reorganize said institution so that it shall afford to the Negro people of the state opportunity for training up to the standard furnished at the state university of Missouri whenever necessary and practicable in their opinion. To this end the board of curators shall be authorized to purchase necessary additional land, erect necessary additional buildings, to provide necessary additional equipment, and to locate, in the county of Cole the respective units of the university where, in their opinion, the various schools will most effectively promote the purposes of this article. Laws 1921, p. 86, Sec. 3."

In Oklahoma, Langston University is governed by the Board of Regents for Oklahoma, Agricultural and Mechanical College. Title 70, Section 1451 Okla. Stat. 1941 states:

> "Location and purpose—The Colored Agricultural and Normal University of the State of Oklahoma is hereby located and established at Langston in Logan County, Oklahoma. The exclusive purpose of such school shall be the instruction of both male and female colored persons in the art of teaching, and the various branches which pertain to a common school education, and in such higher education as may be deemed advisable by such board and in the fundamental laws of this State and of the United States, and in the rights and duties of citizens, and in the agricultural, mechanical and industrial arts."

This provision was amended in 1945 and now provides as follows:

> "Sec. 1451b. Board of Regents—Management and control—President and personnel.—The operation, management and control of Langston University, at Langston, Okla. is hereby vested in the Board of Regents for Okla. Agr. & Mech. Colleges created by section 31a, Article 6, Okla. Constitution, adopted July 11, 1944. Said Board of Regents is hereby authorized to elect a president of said University and employ necessary instructors, professors and other personnel, and fix salaries thereof, and do any and all things necessary to make the University effective as an educational institution for Negroes of the State."

This Board is under a duty to "do any and all things necessary to make the University effective as an educational institution for Negroes of the State." The Oklahoma State Regents for Higher Education were created pursuant to a constitutional amendment in 1941 under Art. 13A with overall authority over the entire educational system of the State as set out in the constitutional provisions.

> "There is hereby established the Oklahoma State Regents for Higher Education, consisting of nine (9) members, whose qualifications may be prescribed by law. The Bd. shall consist of nine (9) members appointed by the Governor, confirmed by the Senate, and who shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Upon the taking effect of this Art. the Governor shall appoint the said Regents for terms of office as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, one for a term of seven years, one for a term of eight years, and one for a term of nine years. Any appointment to fill a vacancy shall be for the balance of the term only except as above designated,

the term of office of said Regents shall be nine years or until their successors are appointed and qualified.

"The Regents shall constitute a co-ordinating board of control for all state institutions described in Section 1 hereof with the following specific powers: (1) It shall prescribe standards of higher education applicable to each institution; (2) it shall determine the functions and courses of study in each institution to conform to the standards prescribed; (3) it shall grant degrees and other forms of academic recognition for completion of the prescribed courses in all such institutions; (4) it shall recommend to the State Legislature the budget allocations to each institution, and; (5) it shall have the power to recommend to the Legislature proposed fees for all such institutions, and any such fees shall be effective only within the limits prescribed by the Legislature."

The Court below found from these provisions that this Board has a mandatory duty to establish a law school at Langston University upon demand. This conclusion is reached by a strange construction of the law. The Court finds the mandate not in the language of the constitutional provision itself which is unambiguous and specific but in the segregational policy of the State.

"The Constitution of the United States is the Supreme Law of the land. It effectively prohibits discrimination against any race and all state officials are sworn to support, obey and defend it. When we realize that and consider the provisions of our State Constitution and Statutes as to education, we are convinced that it is the mandatory duty of the State Regents for Higher Education to provide equal educational facilities for the races to the full extent that the same is necessary for the patronage thereof. That board has full power, and as we construe the law, the mandatory duty to provide a separate law school for Negroes upon demand or substantial notice as to patronage therefor." (R. 50).

By no stretch of the imagination can this provision be said to create any mandatory duty except as such a construction is used in an attempt to defeat petitioner's constitutional right. The court admits the Board is under a duty to act without formal demand upon definite information that a Negro was available for the desired legal training.

> "The state Regents for Higher Education has undoubted authority to institute a law school for Negroes at Langston. It would be the duty of that board to so act, not only upon formal demand, but on any definite information that a member of that race was available for such instruction and desired the same. The fact that petitioner has made no demand or complaint to that board, and has not even informed that board as to her desires, so far as this record shows, may lend some weight to the suggestion that petitioner is not available for and does not desire such instruction in a legal separate school" (R. 42).

The court also, while recognizing that petitioner's right to a legal education is an individual right which cannot be affected by the actions of members of her race in demanding or failing to demand a legal education, attempts to link petitioner's right with demands made or needs manifested by other Negroes for legal training before requiring the State to afford redress to petitioner for failure to provide her with an opportunity for training in law equal to that afforded whites.

> "As we view the matter the state itself could not place complete reliance upon the lack of a formal demand by petitioner. We do not doubt it would be the duty of the state, without any formal demand, to provide equal educational facilities for the races, to the fullest extent indicated by any desired patronage, whether by formal demand or otherwise. But it does seem that before the state could be accused of dis-

> crimination for failure to institute a certain course of study for Negroes, it should be shown there was some ready patronage therefor, or some one of the race desirous of such instruction. This might be shown by a formal demand, or by some character of notice, or by a condition so prevalent as to charge the proper officials with notice thereof without any demand. Nothing of such kind is here shown. It is stated in oral argument by attorneys for petitioner that so far as this record shows petitioner is the first member of her race to seek or desire education in the law within the state, and upon examination we observe the record is blank on the point. That is not important as being controlling of petitioner's individual rights, but it should be considered in deciding whether there is any actual or intentional discrimination against petitioner or her race'' (R. 41).

This is sophistical and circ-itous reasoning. There is clearly less basis for construing section 13A of Oklahoma Constitution as creating a mandatory duty in the Board of Regents of Higher Education to establish a law school at Langston than there was in finding such a compulsion on the Board of Curators of Lincoln University to establish a law school there. The opinion of the court below gives the definite impression that the court below recognized that petitioner's rights were governed by the decision in the *Gaines* case. However, it was not prepared to accept the results which adherence to that decision would entail.

The Oklahoma Court's third and final effort to distinguish the *Gaines* case was:

> ''* * * Furthermore, in Missouri the out of state education was restricted to states adjacent to Missouri, while, as heretofore pointed out, such out of state education provided for Oklahoma Negroes is not so restricted, the Negro pupil here has complete freedom of choice, and it is a matter of common knowledge that Oklahoma Negro students have attended schools in more than

twenty states extending from New York to California, and including the Nation's Capitol'' (R. 45).

This line of reasoning completely ignores the agreed stipulation of fact:

> ''. . . that there is no other law school maintained by the public funds of the State where the plaintiff can study Oklahoma law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Oklahoma; that the plaintiff will be placed at a distinct disadvantage at the bar of Oklahoma and in the public service of the aforesaid State with persons who have had the benefit of the unique preparation in Oklahoma law and procedure offered to white qualified applicants in the School of Law of the University of Oklahoma, unless she is permitted to attend the School of Law of the University of Oklahoma'' (R. 23).

There is no material difference between the *Gaines* case and the instant case. The reasons advanced by the Oklahoma Court for not following the *Gaines* case are clearly without merit. In the meantime the petitioner has already been deprived of at least a year's legal training enjoyed by white students of similar qualifications who applied for admission at approximately the same time. The sole reason for this discrimination is race and color.

Conclusion

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Supreme Court of the State of Oklahoma should be granted and the judgment of the Supreme Court of Oklahoma reversed.

Amos T. Hall,
Thurgood Marshall,
Attorneys for Petitioner.

Robert L. Carter,
Of Counsel.

APPENDIX

Oklahoma Constitution—1941

Article 13A. Section 2.—Oklahoma State Regents for Higher Education — Establishment — Membership — Appointments—Terms—Vacancy—Powers as Co-ordinating Board of Control.

There is hereby established the Oklahoma State Regents for Higher Education, consisting of nine (9) members, whose qualifications may be prescribed by law. The Board shall consist of nine (9) members appointed by the Governor, confirmed by the Senate, and who shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Upon the taking effect of this Article, the Governor shall appoint the said Regents for terms of office as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, one for a term of seven years, one for a term of eight years, and one for a term of nine years. Any appointment to fill a vacancy shall be for the balance of the term only. Except as above designated, the term of office of said Regents shall be nine years or until their successors are appointed and qualified.

The Regents shall constitute a co-ordinating board of control for all state institutions described in Section 1 hereof, with the following specific powers: (1) it shall prescribe standards of higher education applicable to each institution; (2) it shall determine the functions and courses of study in each institution to conform to the standards prescribed; (3) it shall grant degrees and other forms of academic recognition for completion of the prescribed courses in all such institutions; (4) it shall recommend to the State Legislature the budget allocations to each institution, and; (5) it shall have the power to recommend to the Legislature proposed fees for all such institutions, and any such fees shall be effective only within the limits prescribed by the Legislature.

Section 1451—Tit. 70—Okla. Stat. 1941

Location and purpose—The Colored Agricultural and Normal University of the State of Oklahoma is hereby located and established at Langston in Logan County, Oklahoma. The exclusive purpose of such school shall be the instruction of both male and female colored persons in the art of teaching, and the various branches which pertain to a common school education, and in such higher education as may be deemed advisable by such board and in the fundamental laws of this State and of the United States, and in the rights and duties of citizens, and in the agricultural mechanical and industrial arts.

Section 1451b—Tit. 70—Okla. Stat. 1945

Board of Regents—Management and control—President and personnel—The operation, management and control of Langston University, at Langston, Oklahoma, is hereby vested in the Board of Regents for Oklahoma Agricultural & Mechanical Colleges created by Section 31a, Article 6, Oklahoma Constitution, adopted July 11, 1944. Said Board of Regents is hereby authorized to elect a President of said University and employ necessary instructors, professors and other personnel, and fix salaries thereof, and do any and all things necessary to make the University effective as an educational institution for Negroes of the State.

Section 455

It shall be unlawful for any person, corporation or association of persons, to maintain or operate any *college,* school or institution of this state where persons of both white and colored races are received as pupils for instruction, and any person or corporation who shall operate or maintain any such *college,* school or institution in violation hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and each day such school, college, or institution shall be open and maintained shall be deemed a separate offense.

Section 456

Any instructor who shall teach in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense, and each day any instructor shall continue to teach in any such *college,* school or institution, shall be considered a separate offense.

Section 457

It shall be unlawful for any white person to attend any school, college or institution, where colored persons are received as pupils for instruction, and any one so offending shall be fined not less than five dollars, nor more than twenty dollars for each offense, and each day such person so offends, as herein provided, shall be deemed a distinct and separate offense; provided, that nothing in this article shall be construed as to prevent any private school, *college* or institution of learning from maintaining a separate or distinct branch thereof in a different locality.

Chapter 72—Article 2, Section 10349—Revised Statute Missouri—1939:

Separate schools for white and colored children—Separate free schools shall be established for the education of children of African descent; and it shall hereinafter be unlawful for any colored child to attend any white school, or for any white child to attend any colored school (R. S. 1929, Sec. 9216, Rev. Stat. Mo. 1939).

Section 9618, Mo. Rev. Stat. 1929, is as follows:

Sec. 9618. Board of curators authorized to reorganize—The board of curators of the Lincoln university shall be authorized and required to reorganize said institution so that it shall afford to the Negro people of the state opportunity for training up to the standard furnished at the state university of Missouri whenever necessary and practicable

in their opinion. To this end the board of curators shall be authorized to purchase necessary additional land, erect necessary additional buildings, to provide necessary additional equipment, and to locate, in the county of Cole the respective units of the university where, in their opinion, the various schools will most effectively promote the purposes of this article. Laws 1921, p. 86, Sec. 3.

(2585)