

# In the Supreme Court of the United States

OCTOBER TERM, 1952

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No. 8\*

OLIVER BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE  
COUNTY, KANSAS, ET AL.

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## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

Because of the national importance of the constitutional questions presented in these cases, the United States considers it appropriate to submit this brief as *amicus curiae*. We shall not undertake, however, to deal with every aspect of the issues involved. Comprehensive briefs have been submitted by the parties and other *amici curiae*; and, so far as possible, this brief will avoid repetition of arguments and materials contained in those briefs. We shall try to confine ourselves to those aspects of the cases which are of particular concern to the Government or within its special competence to discuss.

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\*Together with No. 101, *Briggs, et al. v. Elliott*; No. 191, *Davis, et al. v. County School Board, et al.*; No. 413, *Bolling, et al. v. Sharpe, et al.*; and No. 448, *Gebhart, et al. v. Belton, et al.*

## The interest of the United States

In recent years the Federal Government has increasingly recognized its special responsibility for assuring vindication of the fundamental civil rights guaranteed by the Constitution. The President has stated: "We shall not \* \* \* finally achieve the ideals for which this Nation was founded so long as any American suffers discrimination as a result of his race, or religion, or color, or the land of origin of his forefathers. \* \* \* The Federal Government has a clear duty to see that constitutional guaranties of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union."<sup>1</sup>

Recognition of the responsibility of the Federal Government with regard to civil rights is not a matter of partisan controversy, even though differences of opinion may exist as to the need for particular legislative or executive action. Few Americans believe that government should pursue a *laissez-faire* policy in the field of civil rights, or that it adequately discharges its duty to the people so long as it does not itself intrude on their civil liberties. Instead, there is general acceptance of an affirmative government obligation to insure respect for fundamental human rights.

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<sup>1</sup> Message to the Congress, February 2, 1948, H. Doc. No. 516, 80th Cong., 2d sess., p. 2.

The constitutional right invoked in these cases is the basic right, secured to all Americans, to equal treatment before the law. The cases at bar do not involve isolated acts of racial discrimination by private individuals or groups. On the contrary, it is contended in these cases that public school systems established in the states of Kansas, South Carolina, Virginia, and Delaware, and in the District of Columbia, unconstitutionally discriminate against Negroes solely because of their color.

This contention raises questions of the first importance in our society. For racial discriminations imposed by law, or having the sanction or support of government, inevitably tend to undermine the foundations of a society dedicated to freedom, justice, and equality. The proposition that all men are created equal is not mere rhetoric. It implies a rule of law—an indispensable condition to a civilized society—under which all men stand equal and alike in the rights and opportunities secured to them by their government. Under the Constitution every agency of government, national and local, legislative, executive, and judicial, must treat each of our people as an *American*, and not as a member of a particular group classified on the basis of race or some other constitutional irrelevancy. The color of a man's skin—like his religious beliefs, or his political attachments, or the country from which he or his ancestors came to the United States—does not

diminish or alter his legal status or constitutional rights. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."<sup>2</sup>

The problem of racial discrimination is particularly acute in the District of Columbia, the nation's capital. This city is the window through which the world looks into our house. The embassies, legations, and representatives of all nations are here, at the seat of the Federal Government. Foreign officials and visitors naturally judge this country and our people by their experiences and observations in the nation's capital; and the treatment of colored persons here is taken as the measure of our attitude toward minorities generally. The President has stated that "The District of Columbia should be a true symbol of American freedom and democracy for our own people, and for the people of the world."<sup>3</sup> Instead, as the President's Committee on Civil Rights found, the District of Columbia "is a graphic illustration of a failure of democracy."<sup>4</sup> The Committee summarized its findings as follows:

For Negro Americans, Washington is not just the nation's capital. It is the

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<sup>2</sup> Mr. Justice Harlan in *Plessy v. Ferguson*, 163 U. S. 537, 559. Regrettably, he was speaking only for himself, in dissent.

<sup>3</sup> Message to the Congress, note 1, *supra*, p. 5.

<sup>4</sup> *To Secure These Rights*, Report of the President's Committee on Civil Rights (1947), p. 89.

point at which all public transportation into the South becomes "Jim Crow." If he stops in Washington, a Negro may dine like other men in the Union Station, but as soon as he steps out into the capital, he leaves such democratic practices behind. With very few exceptions, he is refused service at downtown restaurants, he may not attend a downtown movie or play, and he has to go into the poorer section of the city to find a night's lodging. The Negro who decides to settle in the District must often find a home in an overcrowded, substandard area. He must often take a job below the level of his ability. He must send his children to the inferior public schools set aside for Negroes and entrust his family's health to medical agencies which give inferior service. In addition, he must endure the countless daily humiliations that the system of segregation imposes upon the one-third of Washington that is Negro.

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The shameful and absurdity of Washington's treatment of Negro Americans is highlighted by the presence of many dark-skinned foreign visitors. Capital custom not only humiliates colored citizens, but is a source of considerable embarrassment to these visitors. \* \* \* Foreign officials are often mistaken for American Negroes and refused food, lodging and entertainment. However, once it

is established that they are not Americans, they are accommodated.<sup>5</sup>

It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed. The United States is trying to prove to the people of the world, of every nationality, race, and color, that a free democracy is the most civilized and most secure form of government yet devised by man. We must set an example for others by showing firm determination to remove existing flaws in our democracy.

The existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith. In response to the request of the Attorney General for an authoritative statement of the effects of racial discrimination in the United States upon the conduct of foreign relations, the Secretary of State has written as follows:

\* \* \* I wrote the Chairman of the Fair Employment Practices Committee on May 8, 1946, that the existence of discrimination against minority groups was having an adverse effect upon our relations with other countries. At that time I pointed out that

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<sup>5</sup> *Id.*, pp. 89, 95.

discrimination against such groups in the United States created suspicion and resentment in other countries, and that we would have better international relations were these reasons for suspicion and resentment to be removed.

During the past six years, the damage to our foreign relations attributable to this source has become progressively greater. The United States is under constant attack in the foreign press, over the foreign radio, and in such international bodies as the United Nations because of various practices of discrimination against minority groups in this country. As might be expected, Soviet spokesmen regularly exploit this situation in propaganda against the United States, both within the United Nations and through radio broadcasts and the press, which reaches all corners of the world. Some of these attacks against us are based on falsehood or distortion; but the undeniable existence of racial discrimination gives unfriendly governments the most effective kind of ammunition for their propaganda warfare. The hostile reaction among normally friendly peoples, many of whom are particularly sensitive in regard to the status of non-European races, is growing in alarming proportions. In such countries the view is expressed more and more vocally that the United States is hypocritical in claiming to be the champion of democracy while permitting practices of racial discrimination here in this country.

The segregation of school children on a racial basis is one of the practices in the United States that has been singled out for hostile foreign comment in the United Nations and elsewhere. Other peoples cannot understand how such a practice can exist in a country which professes to be a staunch supporter of freedom, justice, and democracy. The sincerity of the United States in this respect will be judged by its deeds as well as by its words.

Although progress is being made, the continuance of racial discrimination in the United States remains a source of constant embarrassment to this Government in the day-to-day conduct of its foreign relations; and it jeopardizes the effective maintenance of our moral leadership of the free and democratic nations of the world.<sup>6</sup>

## II

**The Court may not find it necessary to reach the question whether the "separate but equal" doctrine should be reaffirmed or overruled**

The briefs in these cases are largely concerned with the question, specifically reserved in *Sweatt v. Painter*, 339 U. S. 629, 635-636, whether the "separate but equal" doctrine of *Plessy v. Ferguson*, 163 U. S. 537, "should be reexamined in the light of contemporary knowledge respecting

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<sup>6</sup> Letter to the Attorney General, dated December 2, 1952. The earlier letter of May 8, 1946, referred to by the Secretary, is quoted in *To Secure These Rights*, note 4, *supra*, pp. 146-147.