

LEXSEE 358 U.S. 1

**COOPER ET AL., MEMBERS OF THE BOARD OF DIRECTORS OF THE LITTLE  
ROCK, ARKANSAS, INDEPENDENT SCHOOL DISTRICT, ET AL. v. AARON ET AL.**

No. 1

**SUPREME COURT OF THE UNITED STATES**

*358 U.S. 1; 78 S. Ct. 1401; 3 L. Ed. 2d 5; 1958 U.S. LEXIS 657; 79 Ohio L. Abs. 452*

**September 11, 1958, Argued  
September 12, 1958, Decided**

**SUBSEQUENT HISTORY:**

Opinion announced September 29, 1958.

**PRIOR HISTORY:**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. +

+ NOTE: The per curiam opinion announced on September 12, 1958, and printed in a footnote, post, p. 5, applies not only to this case but also to No. 1, Misc., August Special Term, 1958, Aaron et al. v. Cooper et al., on application for vacation of order of the United States Court of Appeals for the Eighth Circuit staying issuance of its mandate, for stay of order of the United States District Court for the Eastern District of Arkansas, and for such other orders as petitioners may be entitled to, argued August 28, 1958.

**DISPOSITION:**

*257 F.2d 33*, affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Petitioners, the Little Rock School Board and School Superintendent (school authorities), asked a district court to postpone their program for desegregation mandated by the Brown v. Board of Education decision because of great difficulties in implementing the program. The district court granted the requested relief but the United States Court of Appeals for the Eighth Circuit reversed. Certiorari was granted to review this judgment.

**OVERVIEW:** The school authorities claimed that while they made good faith efforts to implement the desegregation program, the Governor and Legislature of Arkansas

resisted the program and enacted laws and took other actions to make implementation impossible. The Court upheld the appellate decision requiring the desegregation program to proceed. The prohibitions of the Fourteenth Amendment extended to all action of a state denying equal protection of the laws; whatever the agency of the state taking the action, or whatever the guise in which it was taken. While one might sympathize with the position of the school authorities, they were in fact agents of the State of Arkansas. Moreover, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color could neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation. Finally, the Court noted that the Constitution was the supreme law of the land. No state legislator or executive or judicial officer could war against the Constitution without violating his undertaking to support it.

**OUTCOME:** The Court affirmed the judgment of the appellate court.

**LexisNexis (TM) HEADNOTES- Core Concepts:**

*Constitutional Law > Equal Protection > RaceEducation Law > Administration & Operation > Boards of Elementary & Secondary Schools > AuthorityEducation Law > Departments of Education > State Departments of Education > Authority*

[HN1] The Fourteenth Amendment forbids states to use their governmental powers to bar children on racial grounds from attending schools when there is state participation through any arrangement, management, funds, or property.

*Constitutional Law > Equal Protection > Scope of Protection*

[HN2] The command of the Fourteenth Amendment is

that no "state" shall deny to any person within its jurisdiction the equal protection of the laws. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The prohibitions of the Fourteenth Amendment extend to all action of a state denying equal protection of the laws; whatever the agency of the state taking the action, or whatever the guise in which it is taken.

***Constitutional Law > Equal Protection > Race Governments > State & Territorial Governments > Employees & Officials Constitutional Law > Equal Protection > Scope of Protection***

[HN3] The constitutional rights of children not to be discriminated against in school admission on grounds of race or color can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted ingeniously or ingenuously.

***Constitutional Law > The Judiciary > Jurisdiction Constitutional Law > Supremacy Clause***

[HN4] U.S. Const. art. VI makes the Constitution the supreme law of the land. It is emphatically the province and duty of the judicial department to say what the law is. The federal judiciary is supreme in the exposition of the law of the Constitution.

***Constitutional Law > Supremacy Clause***

[HN5] Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to U.S. Const. art. VI, cl. 3, to support the Constitution. No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.

**SYLLABUS:**

Under a plan of gradual desegregation of the races in the public schools of Little Rock, Arkansas, adopted by petitioners and approved by the courts below, respondents, Negro children, were ordered admitted to a previously all-white high school at the beginning of the 1957-1958 school year. Due to actions by the Legislature and Governor of the State opposing desegregation, and to threats of mob violence resulting therefrom, respondents were unable to attend the school until troops were sent and maintained there by the Federal Government for their protection; but they attended the school for the remainder of that school year. Finding that these events had resulted in tensions, bedlam, chaos and turmoil in the school, which disrupted the educational process, the District Court, in June 1958, granted petitioners' request that operation of their plan of desegregation be suspended for two and one-half years, and that respondents be sent back to segregated

schools. The Court of Appeals reversed. *Held*: The judgment of the Court of Appeals is affirmed, and the orders of the District Court enforcing petitioners' plan of desegregation are reinstated, effective immediately. Pp. 4-20.

1. This Court cannot countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution in *Brown v. Board of Education*, 347 U.S. 483. P. 4.

2. This Court rejects the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the *Brown* case have been further challenged and tested in the courts. P. 4.

3. In many locations, obedience to the duty of desegregation will require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools. P. 7.

4. If, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), a District Court concludes that justification exists for not requiring the present nonsegregated admission of all qualified Negro children to public schools, it should scrutinize the program of the school authorities to make sure that they have developed arrangements pointed toward the earliest practicable completion of desegregation, and have taken appropriate steps to put their program into effective operation. P. 7.

5. The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights, when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 15-16.

6. The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights. P. 16.

7. The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." Pp. 16-

17.

8. The interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." P. 18.

9. No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. P. 18.

10. State support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws. P. 19.

**COUNSEL:**

Richard C. Butler argued the cause for petitioners. With him on the brief were A. F. House and, by special leave of Court, John H. Haley, pro hac vice.

Thurgood Marshall argued the cause for respondents. With him on the brief were Wiley A. Branton, William Coleman, Jr., Jack Greenberg and Louis H. Pollak.

Solicitor General Rankin, at the invitation of the Court, post, p. 27, argued the cause for the United States, as amicus curiae, urging that the relief sought by respondents should be granted. With him on the brief were Oscar H. Davis, Philip Elman and Ralph S. Spritzer.

**JUDGES:**

Warren, Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan, Whittaker

**OPINIONBY:**

WARREN

**OPINION:**

[\*4] [\*\*\*8] [\*\*1402] Opinion of the Court by THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE BURTON, MR. JUSTICE CLARK, MR. JUSTICE HARLAN, MR. JUSTICE [\*\*\*9] BRENNAN, and MR. JUSTICE WHITTAKER.

[\*\*1403]

[\*\*\*HR1] As this case reaches us it raises questions of the highest importance to the maintenance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no

duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution. Specifically it involves actions by the Governor and Legislature of Arkansas upon the premise that they are not bound by our holding in *Brown v. Board of Education*, 347 U.S. 483. That holding was that [HN1] the Fourteenth Amendment forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property. We are urged to uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify our holding in *Brown v. Board of Education* have been further challenged and tested in the courts. We reject these contentions.

The case was argued before us on September 11, 1958. On the following day we unanimously affirmed the judgment of the Court of Appeals for the Eighth Circuit, 257 F.2d 33, which had reversed a judgment of the District Court for the Eastern District of Arkansas, 163 F.Supp. 13. The District Court had granted the application of the petitioners, the Little Rock School Board and School Superintendent, to suspend for two and one-half years the operation of the School Board's court-approved desegregation program. In order that the School Board [\*5] might know, without doubt, its duty in this regard before the opening of school, which had been set for the following Monday, September 15, 1958, we immediately issued the judgment, reserving the expression of our supporting views to a later date. \* This opinion of all of the members of the Court embodies those views.

\* The following was the Court's *per curiam* opinion:

"PER CURIAM.

"The Court, having fully deliberated upon the oral arguments had on August 28, 1958, as supplemented by the arguments presented on September 11, 1958, and all the briefs on file, is unanimously of the opinion that the judgment of the Court of Appeals for the Eighth Circuit of August 18, 1958, 257 F.2d 33, must be affirmed. In view of the imminent commencement of the new school year at the Central High School of Little Rock, Arkansas, we deem it important to make prompt announcement of our judgment affirming the Court of Appeals. The expression of the views supporting our judgment will be prepared and announced in due course.

"It is accordingly ordered that the judgment of the Court of Appeals for the Eighth Circuit, dated August 18, 1958, 257 F.2d 33, reversing the judg-

ment of the District Court for the Eastern District of Arkansas, dated *June 20, 1958, 163 F.Supp. 13*, be affirmed, and that the judgments of the District Court for the Eastern District of Arkansas, dated *August 28, 1956, see 143 F.Supp. 855*, and September 3, 1957, enforcing the School Board's plan for desegregation in compliance with the decision of this Court in *Brown v. Board of Education, 347 U.S. 483, 349 U.S. 294*, be reinstated. It follows that the order of the Court of Appeals dated August 21, 1958, staying its own mandate is of no further effect.

"The judgment of this Court shall be effective immediately, and shall be communicated forthwith to the District Court for the Eastern District of Arkansas."

The following are the facts and circumstances so far as necessary to show how the legal questions are presented.

On May 17, 1954, this Court decided [\*\*\*10] that enforced racial segregation in the public schools of a State is a denial of the equal protection of the laws enjoined by the Fourteenth Amendment. *Brown v. Board of Education, 347 U.S. 483*. [\*6] The Court postponed, pending further argument, formulation of a decree to effectuate this decision. That decree was rendered May 31, 1955. *Brown v. Board of Education, 349 U.S. 294*. In the formulation of that decree the Court recognized that good [\*\*1404] faith compliance with the principles declared in *Brown* might in some situations "call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision." *Id.*, at 300. The Court went on to state:

"Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

"While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.

To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." *349 U.S., at 300-301*.

[\*7]

[\*\*\*HR2] [\*\*\*HR3] Under such circumstances, the District Courts were directed to require "a prompt and reasonable start toward full compliance," and to take such action as was necessary to bring about the end of racial segregation in the public schools "with all deliberate speed." *Ibid.* Of course, in many locations, obedience to the duty of desegregation would require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes, at particular schools. On the other hand, a District Court, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), might conclude that justification existed for not requiring the present non-segregated admission of all qualified Negro children. In such circumstances, however, the courts should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation, and had taken appropriate steps to put their program into effective operation. It was made plain that delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced, and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could [\*\*\*11] constitute good faith compliance. State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system.

On May 20, 1954, three days after the first *Brown* opinion, the Little Rock District School Board adopted, and on May 23, 1954, made public, a statement of policy entitled "Supreme Court Decision — Segregation in Public Schools." In this statement the Board recognized that

"It is our responsibility to comply with Federal Constitutional Requirements and we intend to do so when the Supreme Court of the United States outlines the method to be followed."

[\*8] Thereafter the Board undertook studies of the administrative problems confronting the transition to a

desegregated public school system at Little Rock. It [\*\*1405] instructed the Superintendent of Schools to prepare a plan for desegregation, and approved such a plan on May 24, 1955, seven days before the second *Brown* opinion. The plan provided for desegregation at the senior high school level (grades 10 through 12) as the first stage. Desegregation at the junior high and elementary levels was to follow. It was contemplated that desegregation at the high school level would commence in the fall of 1957, and the expectation was that complete desegregation of the school system would be accomplished by 1963. Following the adoption of this plan, the Superintendent of Schools discussed it with a large number of citizen groups in the city. As a result of these discussions, the Board reached the conclusion that "a large majority of the residents" of Little Rock were of "the belief . . . that the Plan, although objectionable in principle," from the point of view of those supporting segregated schools, "was still the best for the interests of all pupils in the District."

Upon challenge by a group of Negro plaintiffs desiring more rapid completion of the desegregation process, the District Court upheld the School Board's plan, *Aaron v. Cooper*, 143 F.Supp. 855. The Court of Appeals affirmed. 243 F.2d 361. Review of that judgment was not sought here.

While the School Board was thus going forward with its preparation for desegregating the Little Rock school system, other state authorities, in contrast, were actively pursuing a program designed to perpetuate in Arkansas the system of racial segregation which this Court had held violated the Fourteenth Amendment. First came, in November 1956, an amendment to the State Constitution flatly commanding the Arkansas General Assembly to oppose "in every Constitutional manner the Un-constitutional [\*9] desegregation decisions of May 17, 1954 and May 31, 1955 of the United States Supreme Court," Ark. Const., Amend. 44, and, through the initiative, a pupil assignment law, Ark. Stat. 80-1519 to 80-1524. Pursuant to this state constitutional command, a law relieving school children from compulsory attendance at racially mixed schools, Ark. Stat. 80-1525, and a law establishing a State Sovereignty Commission, Ark. Stat. 6-801 to 6-824, were enacted by the General Assembly in February 1957.

The School Board and the Superintendent of Schools nevertheless continued with preparations to carry out the first stage of the desegregation program. Nine Negro children were scheduled for admission in September 1957 to Central [\*\*\*12] High School, which has more than two thousand students. Various administrative measures, designed to assure the smooth transition of this first stage of desegregation, were undertaken.

On September 2, 1957, the day before these Negro students were to enter Central High, the school authorities were met with drastic opposing action on the part of the Governor of Arkansas who dispatched units of the Arkansas National Guard to the Central High School grounds and placed the school "off limits" to colored students. As found by the District Court in subsequent proceedings, the Governor's action had not been requested by the school authorities, and was entirely unheralded. The findings were these:

"Up to this time [September 2], no crowds had gathered about Central High School and no acts of violence or threats of violence in connection with the carrying out of the plan had occurred. Nevertheless, out of an abundance of caution, the school authorities had frequently conferred with the Mayor and Chief of Police of Little Rock about taking appropriate [\*10] steps by the Little Rock police to prevent any possible disturbances or acts of violence in connection with the attendance of the 9 colored students at Central High School. The Mayor considered that the Little Rock police force could adequately cope with any incidents [\*\*1406] which might arise at the opening of school. The Mayor, the Chief of Police, and the school authorities made no request to the Governor or any representative of his for State assistance in maintaining peace and order at Central High School. Neither the Governor nor any other official of the State government consulted with the Little Rock authorities about whether the Little Rock police were prepared to cope with any incidents which might arise at the school, about any need for State assistance in maintaining peace and order, or about stationing the Arkansas National Guard at Central High School." *Aaron v. Cooper*, 156 F.Supp. 220, 225.

The Board's petition for postponement in this proceeding states: "The effect of that action [of the Governor] was to harden the core of opposition to the Plan and cause many persons who theretofore had reluctantly accepted the Plan to believe there was some power in the State of Arkansas which, when exerted, could nullify the Federal law and permit disobedience of the decree of this [District] Court, and from that date hostility to the Plan was increased and criticism of the officials of the [School] District has become more bitter and unrestrained." The Governor's action caused the School Board to request the Negro students on September 2 not to attend the high school "until the legal dilemma was solved." The next day, September 3, 1957, the Board petitioned the District Court for instructions, and the court, after a hearing, found that the Board's [\*11] request of the Negro students to stay away from the high school had been made because of the stationing of the military guards by the state authori-

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ties. The court determined that this was not a reason for departing from the approved plan, and ordered the School Board and Superintendent to proceed with it.

On the morning of the next day, September 4, 1957, the Negro children attempted to enter the high school but, as the District Court later found, units of the Arkansas [\*\*\*13] National Guard "acting pursuant to the Governor's order, stood shoulder to shoulder at the school grounds and thereby forcibly prevented the 9 Negro students . . . from entering," as they continued to do every school day during the following three weeks. *156 F.Supp.*, at 225.

That same day, September 4, 1957, the United States Attorney for the Eastern District of Arkansas was requested by the District Court to begin an immediate investigation in order to fix responsibility for the interference with the orderly implementation of the District Court's direction to carry out the desegregation program. Three days later, September 7, the District Court denied a petition of the School Board and the Superintendent of Schools for an order temporarily suspending continuance of the program.

Upon completion of the United States Attorney's investigation, he and the Attorney General of the United States, at the District Court's request, entered the proceedings and filed a petition on behalf of the United States, as *amicus curiae*, to enjoin the Governor of Arkansas and officers of the Arkansas National Guard from further attempts to prevent obedience to the court's order. After hearings on the petition, the District Court found that the School Board's plan had been obstructed by the Governor through the use of National Guard troops, and granted a preliminary injunction on September [\*12] 20, 1957, enjoining the Governor and the officers of the Guard from preventing the attendance of Negro children at Central High School, and from otherwise obstructing or interfering with the orders of the court in connection with the plan. *156 F.Supp.* 220, affirmed, *Faubus v. United States*, 254 F.2d 797. The National Guard was then withdrawn from the school.

[\*\*1407] The next school day was Monday, September 23, 1957. The Negro children entered the high school that morning under the protection of the Little Rock Police Department and members of the Arkansas State Police. But the officers caused the children to be removed from the school during the morning because they had difficulty controlling a large and demonstrating crowd which had gathered at the high school. *163 F.Supp.*, at 16. On September 25, however, the President of the United States dispatched federal troops to Central High School and admission of the Negro students to the school was thereby effected. Regular army troops con-

tinued at the high school until November 27, 1957. They were then replaced by federalized National Guardsmen who remained throughout the balance of the school year. Eight of the Negro students remained in attendance at the school throughout the school year.

We come now to the aspect of the proceedings presently before us. On February 20, 1958, the School Board and the Superintendent of Schools filed a petition in the District Court seeking a postponement of their program for desegregation. Their position in essence was that because of extreme public hostility, which they stated had been engendered largely by the official attitudes and actions of the Governor and the Legislature, the maintenance of a sound educational program at Central High School, with the Negro students in attendance, would be impossible. The Board therefore proposed that the Negro students already admitted to the [\*\*\*14] school be withdrawn [\*13] and sent to segregated schools, and that all further steps to carry out the Board's desegregation program be postponed for a period later suggested by the Board to be two and one-half years.

After a hearing the District Court granted the relief requested by the Board. Among other things the court found that the past year at Central High School had been attended by conditions of "chaos, bedlam and turmoil"; that there were "repeated incidents of more or less serious violence directed against the Negro students and their property"; that there was "tension and unrest among the school administrators, the class-room teachers, the pupils, and the latter's parents, which inevitably had an adverse effect upon the educational program"; that a school official was threatened with violence; that a "serious financial burden" had been cast on the School District; that the education of the students had suffered "and under existing conditions will continue to suffer"; that the Board would continue to need "military assistance or its equivalent"; that the local police department would not be able "to detail enough men to afford the necessary protection"; and that the situation was "intolerable." *163 F.Supp.*, at 20-26.

The District Court's judgment was dated June 20, 1958. The Negro respondents appealed to the Court of Appeals for the Eighth Circuit and also sought there a stay of the District Court's judgment. At the same time they filed a petition for certiorari in this Court asking us to review the District Court's judgment without awaiting the disposition of their appeal to the Court of Appeals, or of their petition to that court for a stay. That we declined to do. *357 U.S.* 566. The Court of Appeals did not act on the petition for a stay, but, on August 18, 1958, after convening in special session on August 4 and hearing the appeal, reversed the District Court, *257 F.2d* 33. On

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August 21, 1958, the Court of Appeals stayed its mandate [\*14] to permit the School Board to petition this Court for certiorari. Pending the filing of the School Board's petition for certiorari, the Negro respondents, on August 23, 1958, applied to MR. JUSTICE WHITTAKER, as Circuit Justice for the Eighth Circuit, to stay the order of the Court of Appeals withholding its own mandate and also to stay the District Court's judgment. In view of the nature of the motions, he referred them to the [\*1408] entire Court. Recognizing the vital importance of a decision of the issues in time to permit arrangements to be made for the 1958-1959 school year, see *Aaron v. Cooper*, 357 U.S. 566, 567, we convened in Special Term on August 28, 1958, and heard oral argument on the respondents' motions, and also argument of the Solicitor General who, by invitation, appeared for the United States as *amicus curiae*, and asserted that the Court of Appeals' judgment was clearly correct on the merits, and urged that we vacate its stay forthwith. Finding that respondents' application necessarily involved consideration of the merits of the litigation, we entered an order which deferred decision upon the motions pending the disposition of the School Board's petition for certiorari, and fixed September 8, 1958, as the day on or before which such petition might be filed, and September 11, 1958, for oral argument upon the petition. The petition for certiorari, duly filed, was granted in open Court [\*\*\*15] on September 11, 1958, *post*, p. 29, and further arguments were had, the Solicitor General again urging the correctness of the judgment of the Court of Appeals. On September 12, 1958, as already mentioned, we unanimously affirmed the judgment of the Court of Appeals in the *per curiam* opinion set forth in the margin at the outset of this opinion, *ante*, p. 5.

[\*\*\*HR4] In affirming the judgment of the Court of Appeals which reversed the District Court we have accepted without reservation the position of the School Board, the [\*15] Superintendent of Schools, and their counsel that they displayed entire good faith in the conduct of these proceedings and in dealing with the unfortunate and distressing sequence of events which has been outlined. We likewise have accepted the findings of the District Court as to the conditions at Central High School during the 1957-1958 school year, and also the findings that the educational progress of all the students, white and colored, of that school has suffered and will continue to suffer if the conditions which prevailed last year are permitted to continue.

The significance of these findings, however, is to be considered in light of the fact, indisputably revealed by the record before us, that the conditions they depict are directly traceable to the actions of legislators and executive officials of the State of Arkansas, taken in their official

capacities, which reflect their own determination to resist this Court's decision in the *Brown* case and which have brought about violent resistance to that decision in Arkansas. In its petition for certiorari filed in this Court, the School Board itself describes the situation in this language: "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 villifying federal law and federal courts, and failing to utilize state law enforcement agencies and judicial processes to maintain public peace."

[\*\*\*HR5] One may well sympathize with the position of the Board in the face of the frustrating conditions which have confronted it, but, regardless of the Board's good faith, the actions of the other state agencies responsible for those conditions compel us to reject the Board's legal position. Had Central High School been under the direct management of the State itself, it could hardly be suggested [\*16] that those immediately in charge of the school should be heard to assert their own good faith as a legal excuse for delay in implementing the constitutional rights of these respondents, when vindication of those rights was rendered difficult or impossible by the actions of other state officials. The situation here is in no different posture because the members of the School Board and the Superintendent of Schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State.

[\*\*1409]

[\*\*\*HR6] [\*\*\*HR7] [\*\*\*HR8] The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some 41 years ago in a unanimous opinion in a case involving another aspect of racial segregation: "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable [\*\*\*16] as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." *Buchanan v. Warley*, 245 U.S. 60, 81. Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights. The record before us clearly establishes that the growth of the Board's difficulties to a magnitude beyond its unaided power to control is the product of state action. Those difficulties, as counsel for the Board forthrightly conceded on the oral argument in this Court, can also be brought under control by state action.

[\*\*\*HR9] [\*\*\*HR10] [\*\*\*HR11] The controlling

legal principles are plain. [HN2] The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no [\*17] other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." *Ex parte Virginia*, 100 U.S. 339, 347. Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see *Virginia v. Rives*, 100 U.S. 313; *Pennsylvania v. Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230; *Shelley v. Kraemer*, 334 U.S. 1; or whatever the guise in which it is taken, see *Derrington v. Plummer*, 240 F.2d 922; *Department of Conservation and Development v. Tate*, 231 F.2d 615. In short, [HN3] the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." *Smith v. Texas*, 311 U.S. 128, 132.

What has been said, in the light of the facts developed, is enough to dispose of the case. However, we should answer the premise of the actions of the Governor and Legislature that they are not bound by our holding in the *Brown* case. It is necessary only to recall some basic constitutional propositions which are settled doctrine.

[\*18]

[\*\*HR12] [\*\*HR13] [\*\*HR14] [\*\*HR15]  
[HN4] Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, [\*\*17] that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been [\*\*1410] respected by this Court and the Country as a permanent and indispensable

feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." [HN5] Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State . . ." *Ableman v. Booth*, 21 How. 506, 524.

[\*\*HR16] No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . ." *United States v. Peters*, 5 Cranch 115, 136. A Governor who asserts a [\*19] power to nullify a federal court order is similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court, "it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases . . ." *Sterling v. Constantin*, 287 U.S. 378, 397-398.

[\*\*HR17] [\*\*HR18] [\*\*HR19] It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law. *Bolling v. Sharpe*, 347 U.S. 497. The basic decision in *Brown* was unanimously reached by this Court only after the case had been briefed and twice argued and the issues had [\*\*18] been given the most serious consideration. Since the first

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*Brown* opinion three new Justices have come to the Court. They are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, [\*20] are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.

**REFERENCES:** Return To Full Text Opinion

Race discrimination

Annotation References:

1. Racial discrimination, 94 L ed 1121, 96 L ed 1291, 98 L ed 882, 100 L ed 488. See comment note in 38 *ALR2d* 1188.

2. As of historic interest see annotation in 103 *ALR* 713, dealing with equivalence of educational facilities extended by public school system to members of white and members of colored race.