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IN THE
Supreme Court of the United States

OCTOBER TERM, 1952 - 1954

No. **413** **1379** 1

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,

v.

C. MELVIN SHARPE, ET AL.,
Respondents.

**Petition for a Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit**

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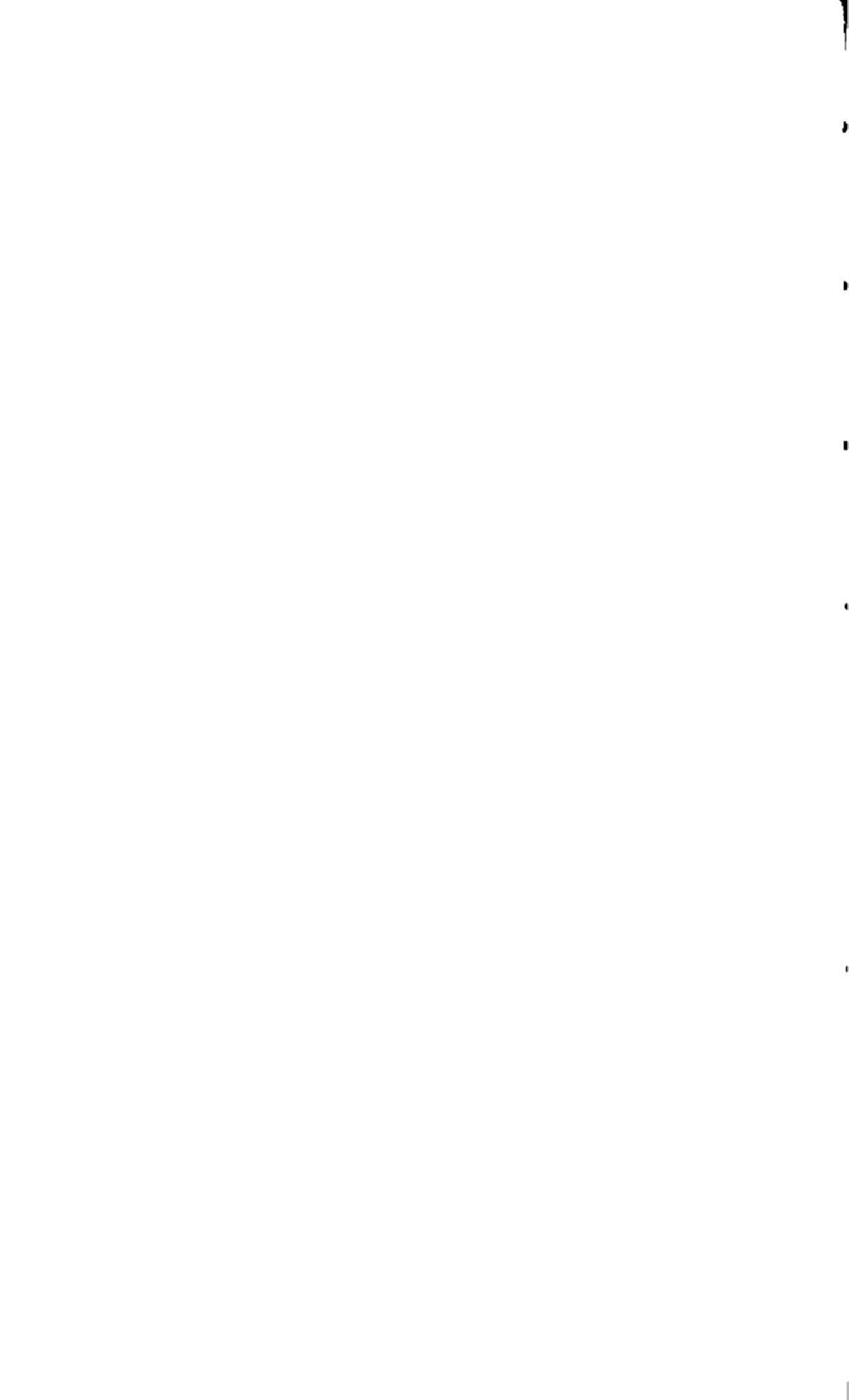


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**Petition for a Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit**

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

Petitioners, Spottswood Thomas Bolling, et al., pray that a writ of certiorari issue to review the judgment of the United States District Court for the District of Columbia in the above-entitled cause which is now pending before the United States Court of Appeals for the District of Columbia Circuit.

SUMMARY STATEMENT OF MATTERS INVOLVED

On the 11th day of September, 1950, and during the time when respondents were receiving students for enrollment and instruction in Sousa Junior High School, a public school in the District of Columbia attended solely by white children, all of the minor petitioners, Negroes between the

ages of 7 and 16 years, citizens of the United States, residents of and domiciled in the District of Columbia, within the statutory age limits for eligibility to attend the public schools of the District of Columbia and subject to the compulsory school attendance law of the District of Columbia, accompanied by their parents, adult petitioners, presented themselves to respondent Eleanor P. McAuliffe, the principal of Sousa Junior High School, for enrollment and instruction therein. The adult petitioners are taxpayers and citizens of the District of Columbia, and are required by law to send their respective children, minor petitioners, to the specific public schools designated by the respondents, and are subject to criminal prosecution for failure so to do. Act of February 4, 1925, 43 Stat. 806, 807, Ch. 140, Art. I, Sec. 1 and 7 (D. C. Code 1951 Ed., Title 31, Sec. 201, 207). Each minor petitioner was denied and excluded from enrollment and instruction at the Sousa Junior High School solely because of his race or color.

On the 27th day of October, 1950, minor petitioners, through their attorneys, appealed to respondent Lawson J. Cantrell, Associate Superintendent of Schools in charge of the vocational and junior high schools in the District of Columbia, Divisions 1-9 (now Division I), restricted to white pupils. Again each minor petitioner was denied and excluded from enrollment and instruction at the Sousa Junior High School solely because of his race or color.

On the 31st day of October, 1950, minor petitioners, through their attorneys, appealed to respondent Norman J. Nelson, First Assistant Superintendent of Schools, Divisions 1-9, restricted to white pupils, and to respondent Hobart M. Corning, Superintendent of all the public schools in the District of Columbia, and each denied and excluded each minor petitioner from enrollment and instruction at Sousa Junior High School solely because of his race or color.

On the 1st day of November, 1950, the respondent Board of Education of the District of Columbia upheld the actions

of the other respondents and itself denied and excluded minor petitioners from enrollment and instruction at Sousa Junior High School solely because of their race or color.

Having exhausted their administrative remedies, thereafter and on November 9, 1950, petitioners, on their own behalf and on behalf of others similarly situated, filed a complaint (R. pp. 2-11) and brought a class suit in the United States District Court for the District of Columbia, against the respondents in their respective official capacities. The action sought a declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that the defendants are without right in construing the statutes having to do with public education in the District of Columbia so as to require said defendants to exclude the minor plaintiffs from attendance at the Sousa Junior High School and denying to them the right of attendance at the Sousa Junior High School in violation of their rights as secured to them by the due process of law clause of the Fifth Amendment to the Constitution of the United States, by Title 8, United States Code, sections 41 and 43, and by Article I, section 9, clause 3, of the Constitution of the United States, prohibiting legislation in the nature of a Bill of Attainder and by the Charter of the United Nations, Chapter I, Article I, Section 3, Article IX, Sections 55 and 56, and further stating that the said defendants are required by the Constitution and laws of the United States to admit said minor plaintiffs to Sousa Junior High School and to refrain from any distinction with respect to them because of their race or color.

The action further sought an interlocutory and a permanent injunction restraining defendants, and each of them, their successors in office, and their agents, and employees from precluding the admission of minor plaintiffs and other Negro children similarly situated to the Sousa Junior High School for no other reason than because of their race and color, upon the grounds that said refusal of

admission as applied to minor plaintiffs or other Negroes similarly situated, in whose behalf they sue, denies them their privileges and immunities as citizens of the United States, and is in violation of their rights as enunciated under the due process of law clause of the Fifth Amendment to the Constitution of the United States, Title 8, United States Code, Sections 41 and 43, Article I, Section 9, clause 3, of the Constitution of the United States, and the Charter of the United Nations, Chapter I, Article I, Section 3, Article IX, Sections 55 and 56.

The action also sought an interlocutory and a permanent injunction requiring defendants, and each of them, their successors in office, and their agents and employees to admit the minor plaintiffs to attendance to the Sousa Junior High School in conformity with the rights as secured to them by the due process of law clause of the Fifth Amendment to the Constitution of the United States, Title 8, United States Code, Sections 41 and 43, and Article I, Section 9, clause 3, of the Constitution of the United States, and the Charter of the United Nations, Chapter I, Article I, Section 3, Article IX, Section 55 and 56.

Subsequently, the respondents, through their attorneys, filed a motion to dismiss the complaint on the ground that the complaint failed to state a claim upon which relief could be granted (R. p. 17). On April 9, 1951, the Honorable Walter M. Bastian granted the motion to dismiss (R. p. 18). The District Judge was of the opinion that he was bound by the holdings of the United States Court of Appeals for the District of Columbia in *Carr, et al. v. Corning*, 86 App. D.C. 173, 182 F. (2d) 14 (1950), and *Browne, et al. v. Magdeburger, et al.*, 86 App. D. C. 173, 182 F. (2d) 14 (1950).

An appeal was taken to the United States Court of Appeals for the District of Columbia Circuit (R. p. 19), and briefs were filed therein. This case has not been set down for oral argument, nor has it been submitted for judgment

on the briefs, and no orders with respect thereto have been entered by that Court.

BASIS OF JURISDICTION

1. The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254 (1) and 2101 (e).

2. The jurisdiction for the United States Circuit Court of Appeals for the District of Columbia was invoked under Title 28, United States Code, Section 1291.

3(a). The jurisdiction of the District Court for the District of Columbia was invoked under Title 28, United States Code, Section 1331. This action arises under the due process of law clause of the Fifth Amendment to the Constitution of the United States; Article I, section 9, clause 3, of the Constitution of the United States, relating to the Bill of Attainder; and the Charter of the United Nations, Chapter I, Article I, section 3 and Chapter IX, Articles 55 and 56, relating to the promotion, encouragement and observance of human rights without racial distinctions, as hereinafter more fully appears. The matter in controversy exceeds the sum or value of Three Thousand (\$3,000) Dollars, exclusive of interests and costs.

3(b). The jurisdiction of the District Court for the District of Columbia was also invoked under Title 28, United States Code, section 1343, which provides for the original jurisdiction of this Court in suits involving civil rights. This action is authorized by Title 8, United States Code, section 43, to be commenced by any citizen of the United States, or other persons within the jurisdiction thereof, to redress the deprivation of the rights, privileges and immunities secured by the Constitution and laws of the United States, and Title 8, United States Code, section 41, provides for the equal rights of citizens and of all other persons within the jurisdiction of the United States, as hereinafter more fully appears.

3(c). The jurisdiction of the District Court for the District of Columbia was also invoked under the general jurisdiction provision of the District of Columbia Code (1940), Title 11, section 301, and the jurisdiction of this Court as a Court of the United States under District of Columbia Code (1940), Title 11, section 305.

ASSIGNMENT OF ERROR

The District Court of the District of Columbia erred in granting respondents' motion to dismiss minor petitioners' complaint on the ground that it failed to state a complaint on which relief could be granted.

QUESTIONS PRESENTED

The questions presented here are:

1. Whether or not the Board of Education of the District of Columbia, in interpreting and enforcing certain Acts of Congress so as to require white and colored pupils to attend separate schools, deprives Negro minor petitioners of rights secured to them by the Constitution of the United States.

2. Whether or not the respondents in denying minor petitioners admission to Sousa Junior High School solely on the basis of race or color, deprived them of liberty and property in violation of the Fifth Amendment of the Constitution of the United States.

3. Whether or not the respondents in denying minor petitioners admission to Sousa Junior High School solely on the basis of race or color, deprived them of their civil rights in violation of Title 8, United States Code, Sections 41 and 43.

4. Whether or not the respondents in denying minor petitioners admission to Sousa Junior High School solely on the basis of race or color, deprived them of educational opportunities in violation of the Charter of the United Na-

tions, Chapter 1, Article 1, Section 3, and Chapter IX, Article 55, and Chapter IX, Article 56.

5. Whether or not segregation of the races for educational purposes in the District of Columbia is constitutionally permissible.

CONSTITUTIONAL PROVISIONS, TREATY AND STATUTES INVOLVED

Constitutional Provisions:

Fifth Amendment of the Constitution of the United States, Article 1, Section 9, Clause 3, of the Constitution of the United States.

Treaty:

Article 1(3), 2(2), 55(c) and 56 of The United Nations Charter, 59 Stat. 1035 et seq.

Statutes:

- (A) Title 8, United States Code, Sections 41 and 43.
- (B) Act of June 11, 1878, 20 Stat. 107, Chap. 180, Sec. 6, as amended June 20, 1906, 34 Stat. 316, Chap. 3446, Sec. 2 (D. C. Code 1951 Ed., Title 31, Secs. 1110, 1111, 1112, 1113).
- (C) Act of June 20, 1906, 34 Stat. 316, Chap. 3446, Sec. 2 (D. C. Code 1951 Edition, Title 31, Sec. 1109).
- (D) Act of June 20, 1906, 34 Stat. 316, Chap. 3446, Sec. 7, as amended by Act of June 4, 1924, 43 Stat. 370, Chap. 250, Art. 3 (D. C. Code 1951 Edition, Title 31, Sec. 115).
- (E) Act of July 7, 1947, Public No. 163, 80th Congress, 1st Session, as amended by Act of Oct. 6, 1949, Public No. 353, 81st Congress, 1st Session.
- (F) Act of February 4, 1925, 43 Stat. 806, 807, Chap. 140, Art. I, Secs. 1 and 7 (D. C. Code 1951 Edition, Title 31, Sec. 201, 207).

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- (C) Act of June 20, 1906, 34 Stat. 316, Chap. 3446, Sec. 2 (D. C. Code 1951 Edition, Title 31, Sec. 1109).
- (D) Act of June 20, 1906, 34 Stat. 316, Chap. 3446, Sec. 7, as amended by Act of June 4, 1924, 43 Stat. 370, Chap. 250, Art. 3 (D. C. Code 1951 Edition, Title 31, Sec. 115).
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- (F) Act of February 4, 1925, 43 Stat. 806, 807, Chap. 140, Art. I, Secs. 1 and 7 (D. C. Code 1951 Edition, Title 31, Sec. 201, 207).

REASONS RELIED UPON FOR ALLOWANCE OF A WRIT

First, the questions involved are of grave public concern. The petitioners here allege that respondents refused to admit certain Negro children to a public school in the District of Columbia solely because of their race or color, and that such action on the part of the respondents deprived them of their rights under the Federal Constitution. The constitutional issues thus raised are recognized by the government of the United States to be of national and international concern and interest. See: The Report of the President's Committee on Civil Rights, "To Secure These Rights" (1947); The President's Commission of Higher Education, 1 Higher Education for American Democracy (1947); Government's Briefs in *Henderson v. United States*, 339 U. S. 816 (1949), *Sweatt v. Painter*, 339 U. S. 629 (1949), and *McLaurin v. Oklahoma State Regents*, 339 U. S. 636 (1949).

Secondly, since the issues here are so related to those posed in three cases now pending before this Court and consolidated for oral argument, it would appear to be within the public interest to consider simultaneously the petitioners' cause as well. *Brown, et al. v. Board of Education of Topeka, et al.*; *Briggs, et al. v. Elliott, et al.*; *Davis, et al. v. County School Board, et al.*, Nos. 8, 101, and 191, October 8, 1952, Per Curiam.

Thirdly, although the questions raised have been considered in whole or in part by the United States Court of Appeals for the District of Columbia Circuit, and decided adversely to the contentions of the petitioners, *Wall v. Oyster*, 36 App. D.C. 50 (1910); *Carr, et al. v. Corning*, 86 App. D.C. 173, 182 F. (2d) 14 (1950), the important Federal questions which are involved have never been submitted to this Court for consideration and judgment. Rules of the Supreme Court of the United States, Rules 38 and 39.

Fourthly, the facts of this case would appear to require

an early interposition by this Court in order to avoid further delay and further irreparable damage by a continuation of the denial to the minor petitioners of the educational instruction and opportunities to which they are entitled. *The Conqueror*, 166 U.S. 110, 113-114 (1897).

CONCLUSION

The petitioners respectfully request that for the foregoing reasons this Court grant this writ of certiorari and such other and further relief in the premises as may be just and proper.

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