
Supreme Court of the United States

October Term, 1952

No. 191

DOROTHY E. DAVIS, BERTHA M. DAVIS AND
INEZ D. DAVIS, INFANTS, BY JOHN DAVIS, THEIR
FATHER AND NEXT FRIEND, ET AL.,

Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD
COUNTY, VIRGINIA, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF VIRGINIA, RICHMOND DIVISION

MOTION TO ADVANCE

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Appellees respectfully represent unto the Court as follows :

1. The above styled case is pending in this Court on appeal from a final decree of the United States District Court for the Eastern District of Virginia, Richmond Division, in which the District Court held that segregation of white and negro students in the public high schools of Prince Edward County, Virginia, pursuant to Section 140 of the Virginia Constitution, and Section 22-221 of the Code of Virginia, 1950, is not discrimination *per se* prohibited by the Fourteenth Amendment of the Constitution of the United States. Upon a separate issue of fact under a charge of inequality of facilities, opportunities and advantages, the

District Court found that inequalities existed in physical facilities, curricula and bus transportation and ordered correction of the inequalities.

2. Final decree was rendered in the case on March 7, 1952, and the order allowing appeal was entered on May 5, 1952, but the record in the case was not transmitted to this Court until July 11, 1952, after adjournment of the June term, and Appellees are advised that this Court will not act on the pending Statement of Appellees Opposing Jurisdiction and Motion to Dismiss or Affirm until the October term, 1952.

3. Cases entitled *Brown, et al. v. Board of Education of Topeka, etc., et al.* (No. 8) and *Briggs, et al. v. Elliott, etc., et al.* (No. 101) are now pending in this Court, and this Court noted probable jurisdiction in those cases on June 9, 1952, and recognized the similarity of issues in the two cases in its order noting probable jurisdiction in the *Briggs* case which provides that "the case is assigned for argument immediately following No. 436, *Brown et al. vs. Board of Education of Topeka, etc., et al.*"

4. Appellees are advised that the *Brown* and *Briggs* cases are tentatively set for argument on October 14-15, 1952, and are further advised that the present case cannot be heard with those cases on those days, even if the Court should note probable jurisdiction in the instant case early in the October term.

5. All three cases are grounded upon the same major issue, namely, Appellants' theory that segregation is discrimination *per se*, but the instant case is the only one of the three cases where Appellants' theory of discrimination *per se* is contradicted by facts which invalidate the theory.

WHEREFORE, in view of the vital public interest involved, and the importance of the issues presented in all three cases,

Appellees respectfully move this Court, if probable jurisdiction be noted:

- (a) That this case be advanced for argument with the *Brown* and *Briggs* cases;
- (b) That the date of argument of all three cases be deferred until the record and briefs in this case have been printed in accordance with the applicable rules of this Court; and
- (c) That this case be assigned for argument immediately following No. 101, *Briggs, et al. v. Elliott, etc., et al.*

Respectfully submitted,

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NOTICE OF MOTION

You are hereby notified that the foregoing Motion will be filed in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., on August 8, 1952, and will be presented to the Court when the Court convenes on Monday, October 6, 1952, or as soon thereafter as said Motion may be presented.

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CERTIFICATE OF SERVICE

This is to certify that printed copies of the foregoing Motion and Notice of Motion were served by mail upon the following on the 7th day of August, 1952:

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