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such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument. . . .

It is so ordered.

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349 U.S. 294 (1955)

*Brown v. Board of
Education II (1955)*

Following *Brown I*, the Court asked the parties to the original suits to reargue what methods the Court should use to implement the decision. It also invited amicus briefs from the federal government and from all states that had segregated schools. The NAACP pushed for full integration in the shortest possible time; Southern states, on the other hand, urged the Court to face “reality” and to go slowly—very slowly. The federal government urged a middle position between “integration now” and “segregation forever.”

The Court pretty much followed the federal government’s proposal that integration had to begin with states submitting timetables, but it left oversight to federal district courts, which, exercising their traditional powers of equity, could make adjustments, when necessary. Desegregation, however, had to begin and proceed “with all deliberate speed.”

See sources listed for previous document, as well as Daniel M. Berman, *It Is So Ordered* (1966); and Numan V. Bartley, *The Rise of Massive Resistance* (1969).

Chief Justice Warren delivered the opinion of the Court:

These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded. Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. In view of the nationwide importance of the decision, we invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public

Source: 349 U.S. 294 (1955)

education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument. . . .

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may 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. 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. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases. The . . . lower courts are to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.

Initial Southern reaction to *Brown* was moderate, but within a short time critics mounted a full-scale assault against the decision. Legal scholars attacked the reasoning, claiming the Fourteenth Amendment had never intended blacks to be equal to whites; sociologists denounced the studies the Court had utilized to justify its assertion that segregation harmed black children. White Citizens Councils spread across the South, claiming 500,000 members in eleven states, and Southern political leaders began to resurrect theories of states' rights. Harry Byrd of Virginia called for "massive resistance," the Alabama legislature declared it had the power of "interposition" to protect its citizens from unlawful federal activity, and although South Carolina avoided using the word "nullification," it too passed a resolution that in effect tried to nullify *Brown*.

One of the most powerful protests against the desegregation decisions came when 101 members of Congress, including all but three of the senators from the former Confederate states, signed the belligerent Southern Manifesto. In it they set out the main constitutional objections to *Brown*, including matters of original intent, historic tradition, states' rights, and the limited nature of the federal government, especially the judiciary.

See Neil R. McMillen, *The Citizens Council* (1971); James F. Byrnes, "The Supreme Court Must Be Curbed," *U.S. News* (May 18, 1956); Numan V. Bartley, *The Rise of Massive Resistance* (1969); and Benjamin Muse, *Ten Years of Prelude* (1964).

We regard the decision of the Supreme Court in the school cases as clear abuse of judicial power. It climaxes a trend in the Federal judiciary undertaking to legislate, in derogation of the authority of Congress, and to encroach upon the reserved rights of the states and the people.

The original Constitution does not mention education. Neither does the Fourteenth Amendment nor any other amendment. The debates preceding the submission of the Fourteenth Amendment clearly show that there was no intent that it should affect the systems of education maintained by the states.

The very Congress which proposed the amendment subsequently provided for segregated schools in the District of Columbia.

When the amendment was adopted in 1868, there were thirty-seven states of the Union. Every one of the twenty-six states that had any substantial racial differences among its people either approved the operation of segregated schools already in existence or subsequently established such schools by action of the same law-making body which considered the Fourteenth Amendment.

As admitted by the Supreme Court in the public school case (*Brown v. Board of Education*), the doctrine of separate but equal schools "apparently originated in *Roberts v. City of Boston* (1849), upholding school segregation against attack as being violative of a state constitutional guarantee of equality." This constitutional doctrine began in the North—not in the South—and it was followed not only in Massachusetts but in Connecticut, New York, Illinois, Indiana, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania and other northern states until they, exercising their rights as states through the constitutional processes of local self-government, changed their school systems.

In the case of *Plessy v. Ferguson* in 1896 the Supreme Court expressly declared that under the Fourteenth Amendment no person was denied any of his rights if the states provided separate but equal public facilities. This decision has been followed in many other cases. It is notable that the Supreme Court, speaking through Chief Justice Taft, a former President of the United States, unanimously declared in 1927 in *Lum v. Rice* that the "separate but equal" principle is ". . . within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment."

This interpretation, restated time and again, became a part of the life of the people of many of the states and confirmed their habits, customs, traditions and way of life. It is founded on elemental humanity and common sense, for parents should not be deprived by Government of the right to direct the lives and education of their own children.

Though there has been no constitutional amendment or act of Congress changing this established legal principle almost a century old, the Supreme Court of the United States, with no legal basis for such action, undertook to exercise their naked judicial power and substituted their personal political and social ideas for the established law of the land.

This unwarranted exercise of power by the court, contrary to the Constitution, is creating chaos and confusion in the states principally affected. It is destroying the amicable relations between the white and Negro races that have been created through ninety years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding.

Without regard to the consent of the governed, outside agitators are threatening immediate and revolutionary changes in our public school systems. If done, this is certain to destroy the system of public education in some of the states.

With the gravest concern for the explosive and dangerous condition created by this decision and inflamed by outside meddlers:

We reaffirm our reliance on the Constitution as the fundamental law of the land.

We decry the Supreme Court's encroachments on rights reserved to the states and to the people, contrary to established law and to the Constitution.

We commend the motives of those states which have declared the intention to resist forced integration by any lawful means.

We appeal to the states and people who are not directly affected by these decisions to consider the constitutional principles involved against the time when they too, on issues vital to them, may be the victims of judicial encroachment.

Even though we constitute a minority in the present Congress, we have full faith that a majority of the American people believe in the dual system of government which has enabled us to achieve our greatness and will in time demand that the reserved rights of the states and of the people be made secure against judicial usurpation.

We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

In this trying period, as we all seek to right this wrong, we appeal to our people not to be provoked by the agitators and troublemakers invading our states and to scrupulously refrain from disorder and lawless acts.

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Cooper v. Aaron (1958)

In the fall of 1957, the Little Rock, Arkansas, school board agreed to abide by a court order to admit nine black students to Central High School. Governor Orville Faubus, who had previously acted moderately in regard to desegregation, decided to cast his lot with the hard-line opposition and called out the National Guard to prevent integration. Faubus withdrew the troops following another court order, but when black students attempted to enroll in Central High, a mob attacked the school and drove them off. President Dwight Eisenhower, who had tried to keep his administration out of the desegregation controversy, was forced to act in the light of open defiance of a federal court order. He federalized the Arkansas National Guard and ordered in a thousand paratroopers to Little Rock to maintain order.

The Supreme Court had been silent since *Brown II*, preferring to let the Southern states attempt to work out peaceful desegregation under the oversight of the lower federal courts. It now decided that it should once again reassert the unconstitutionality of segregation, and as it did throughout the Warren years, it spoke in one voice. In an opinion signed by all nine justices, the Court not only reaffirmed the *Brown* ruling, but reasserted its own role as ultimate arbiter of the Constitution.

See Tony Freyer, *The Little Rock Crisis: A Constitutional Interpretation* (1984); and Benjamin Muse, *Ten Years of Prelude* (1964).
