

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

DEC 22 1950

ERNEST L. ALLEN  
C.D. U.S.E.D.S.C.

HARRY BRIGGS, Jr., THOMAS LEE BRIGGS and  
KATHERINE BRIGGS, infants, by HARRY  
BRIGGS, their father and next friend  
and THOMAS GAMBLE, an infant by  
HARRY BRIGGS, his guardian and next  
friend,

WILLIAM GIBSON, Jr., MAXINE GIBSON,  
HAROLD GIBSON and JULIA ANN GIBSON,  
infants, by ANNE GIBSON, their  
mother and next friend,

MITCHEL OLIVER and RICHARD ALLEN OLIVER,  
infants, by MOSE OLIVER, their  
father and next friend,

CELESTINE PARSON, an infant by  
BENNIE PARSON, her father and  
next friend,

SHIRLEY RAGIN and DELORES RAGIN,  
infants, by EDWARD RAGIN, their  
father and next friend,

GLEN RAGIN, an infant, by  
WILLIAM RAGIN, his father and  
next friend,

ELANE RICHARDSON and EMANUEL  
RICHARDSON, infants, by LUCHRISHER  
RICHARDSON, their father and  
next friend,

JAMES RICHARDSON, CHARLES RICHARDSON,  
DOROTHY RICHARDSON and JACKSON  
RICHARDSON, infants, by LEE  
RICHARDSON, their father and  
next friend,

DANIEL BENNETT, JOHN BENNETT and  
CLIFTON BENNETT, infants, by  
JAMES H. BENNETT, their father  
and next friend,

LOUIS OLIVER, Jr., an infant, by  
MARY OLIVER, his mother and next  
friend,

GARDENEIA STUKES, WILLIE M. STUKES,  
Jr., and LOUIS W. STUKES, infants  
by WILLIE M. STUKES, their father  
and next friend,

JOE NATHAN HENRY, CHARLES R. HENRY,  
EDDIE LEE HENRY and PHYLLIS A.  
HENRY, infants, by G.H. HENRY,  
their father and next friend,

CARRIE GEORGIA and JERVINE  
GEORGIA, infants, by ROBERT  
GEORGIA, their father and  
next friend,

REBECCA I. RICHBURG, an  
infant, by REBECCA RICHBURG,  
her mother and next friend,

MARY L. BENNETT, LILLIAN  
BENNETT and JOHN MCKENZIE,  
infants, by GABRIAL TYNDAL,  
their father and next friend,

EDDIE LEE LAWSON and SUSAN ANN  
LAWSON, infants, by SUSAN  
LAWSON, their mother and next  
friend,

WILLIE OLIVER and MARY OLIVER,  
infants, by FREDERICK OLIVER,  
their father and next friend,

HERCULES BENNETT and HILTON  
BENNETT, infants, by ONETHA  
BENNETT, their mother and next  
friend,

ZELIA RAGIN and SARAH ELLEN  
RAGIN, infants, by HAZEL  
RAGIN, their mother and next  
friend,

IRENE SCOTT, an infant, by  
HENRY SCOTT, her father and  
next friend.

Plaintiffs

-vs-

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R. W. ELLIOTT, Chairman, J. D. CARSON and  
GEORGE KENNEDY, Members of Board of Trustees  
of School District #22, Clarendon County,  
S. C.; SUMMERTON HIGH SCHOOL DISTRICT, a  
body corporate; L. B. McCORD, Superintendent  
of Education for Clarendon County and  
Chairman A. J. Plowden, W.E. Baker,  
Members of the COUNTY BOARD OF EDUCATION  
for CLARENDON COUNTY: AND H. B. BETCHMAN,  
Superintendent of School District #22.

Defendants

## COMPLAINT

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1331. This action arises under the Fourteenth Amendment of the Constitution of the United States, section 1, and the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 1343. This action is authorized by the Act of April 20, 1871, Chapter 22, section 1, 17 Stat. 13 (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, under color of a state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, section 1, and by the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), providing for the equal rights of citizens and of all other persons within the jurisdiction of the United States, as hereinafter more fully appears.

(c) The jurisdiction of this Court is further invoked under Title 28, United States Code, section 2281. This is an action for a permanent injunction restraining the enforcement, operation and execution of provisions of the Constitution and statutes of the State of South Carolina by restraining action of defendants, officers of such state,

in the enforcement and execution of such constitutional provisions and statutes as will appear more fully hereinafter.

2. This is a proceeding for a declaratory judgment under Title 28, United States Code, section 2201, for the purpose of determining questions in actual controversy between the parties, to wit:

(a) The question whether Article II, section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942 which prohibit infant plaintiffs from attending the only public schools of Clarendon County, South Carolina affording an education equal to that afforded all other qualified students who are not Negroes and which force said plaintiffs to attend segregated public elementary and secondary schools set apart for Negroes in said Clarendon County, South Carolina are unconstitutional and void as a violation of the Fourteenth Amendment to the Constitution of the United States.

(b) The question whether the policy, custom, practice and usage of defendants, and each of them, in denying on account of race and color, the infant plaintiffs and other Negro children of public school age residing in Clarendon County, South Carolina, educational opportunities, advantages and facilities in the public elementary and secondary schools of Clarendon County, South Carolina, including those hereinafter specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age, similarly situated, is unconstitutional and void, as being a denial of the equal protection of the laws guaranteed under the Fourteenth Amendment to the Constitution of the United States.

(c) The question whether the policy, custom, practice and usage of defendants, and each of them, in denying on

account of race and color, the adult plaintiffs and other parents and guardians of Negro children of public school age, similarly situated, residing in Clarendon County, South Carolina, rights and privileges of sending their children to public schools in Clarendon County, South Carolina, with educational opportunities, advantages and facilities, including those hereinafter specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age is unconstitutional and void, as being a denial of the equal protection of the laws guaranteed under the Fourteenth Amendment to the Constitution of the United States.

3. (a) Infant plaintiffs Harry Briggs, Jr., Thomas Lee Briggs, Katherine Briggs, Thomas Gamble, William Gibson, Jr., Maxine Gibson, Harold Gibson, Julia Ann Gibson, Mitchel Oliver, Richard Allen Oliver, Celestine Parson, Shirley Ragin, Delores Ragin, Glen Ragin, Elane Richardson, Emanuel Richardson, James Richardson, Charles Richardson, Dorothy Richardson, Jackson Richardson, Daniel Bennett, John Bennett, Clifton Bennett, Louis Oliver, Jr., Gardeneia Stukes, Willie M. Stukes, Jr., Louis W. Stukes, Joe Nathan Henry, Charles R. Henry, Eddie Lee Henry, Phyllis A. Henry, Carrie Georgia, Jervine Georgia, Rebecca I. Richburg, Mary L. Bennett, Lillian Bennett, John McKenzie, Eddie Lee Lawson, Susan Ann Lawson, Willie Oliver, Mary Oliver, Hercules Bennett, Hilton Bennett, Zelia Ragin, Sarah Ellen Ragin, and Irene Scott are among those generally classified as Negroes; are citizens of the United States and of the State of South Carolina. They are within the statutory age limits of eligibility to attend the public schools of Clarendon County, South Carolina. They satisfy all

all the requirements for admission to such schools and are in fact attending public schools under the supervision, operation and control of the defendants. These plaintiffs comprise two general categories, viz., those who are eligible to attend and are attending public elementary schools and those who are eligible to attend and are attending public secondary schools in Clarendon County, South Carolina, both types of schools being under the direct supervision, operation and control of defendants.

(b) Adult plaintiffs Harry Briggs, Anne Gibson, Mose Oliver, Bennie Parson, Edward Ragin, William Ragin, Luchrisher Richardson, Lee Richardson, James H. Bennett, Mary Oliver, Willie M. Stukes, G. H. Henry, Robert Georgia, Rebecca Richburg, Gabriel Tyndal, Susan Lawson, Frederick Oliver, Onetha Bennett, Hazel Ragin and Henry Scott are among those classified as Negroes; are citizens of the United States and of the State of South Carolina; are residents of and domiciled in Clarendon County, South Carolina. They are taxpayers of Clarendon County, of the State of South Carolina, and of the United States. They are guardians and parents of the infant plaintiffs referred to in the paragraph above and designated in the caption of this bill, and are required by the laws of the State of South Carolina to send their children under their charge and control to public or private schools.

4. Plaintiffs bring this action in their own behalf and in behalf of all other Negro children attending the public schools in the State of South Carolina, and their parents and guardians, similarly situated and affected with reference to the matters here involved. They are so numerous as to make it impracticable to bring them all before the Court. There being common questions of law and fact, a common relief being sought, as will hereafter more fully appear, plaintiffs present this action as a class action, pursuant to Rule 23 (a) of the Federal

Rules of Civil Procedure.

5. (a) Defendant, County Board of Education of Clarendon County, South Carolina, exists pursuant to the laws of the State of South Carolina as an administrative department of the State discharging governmental functions. (Code of Laws of South Carolina of 1942, section 5316) Defendants A.J. Plowden and W. E. Baker are members of the aforesaid Board and are being sued in their official capacity.

(b) Defendant, L.B. McCord is chairman of the County Board of Education of Clarendon County and County Superintendent of Schools. He holds office pursuant to the laws of South Carolina as an administrative officer of the State, charged with overall supervision and government of the public schools maintained and operated within the County of Clarendon. (Code of Laws of South Carolina of 1942, sections 5301, 5303, 5306, 5316) He is being sued in his official capacity.

(c) Defendant, the Board of Trustees of School District #22 of Clarendon County, South Carolina exists pursuant to the laws of South Carolina as an administrative department of the State, discharging governmental functions specifically the maintenance and operation of the public schools in District #22. (Code of Laws of South Carolina of 1942, section 5238)

(d) Defendant, R.W. Elliott, is chairman of the Board of District #22 and of Board of Trustees of Summerton High School District; defendant J. D. Carson is a member of the Board of Trustees of School District #22 and Secretary of the Board of Trustees of Summerton High School District; and defendant George Kennedy is a member of Board of Trustees of District #22 and of the Board of Trustees of Summerton High School District: all three defendants hold office pursuant

to sections 5328, 5343 and 5405 of the Code of Laws of South Carolina of 1942. All are being sued in their official capacity.

(e) Defendant, J.B. Betchman is the Superintendent of Schools of School District #22. He is the executive officer of the Board of Trustees of School District #22, charged with the responsibility of maintaining, managing and governing the public schools in the aforesaid District in accordance with the rules, regulations and policy laid down by the Board of Trustees. He is being sued in his official capacity.

(f) Defendant, the Summerton High School District is a body corporate pursuant to sections 5404, 5405, 5409 and 5412 of the Code of Laws of South Carolina of 1942 and is being sued as such.

6. (a) The State of South Carolina has declared public education a state function. The Constitution of South Carolina, Article II, section 5, provides:

"Free Public Schools -- The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years..."

Pursuant to this mandate the General Assembly of South Carolina has established a system of free public schools in the State of South Carolina according to a plan set out in Title 31, Chapter 122 of the South Carolina Code of 1942. The Constitution of South Carolina, Article XI, section 6 provides for the levying of taxes by the counties of South Carolina for the purpose of financing public education in the respective counties. Provision is also made for the distribution of other state funds for this purpose.

7. The Constitution of South Carolina, Article II, section 7, provides:



"Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina of 1942 provides:

"It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

8. The establishment, maintenance and administration of public schools in Clarendon County, South Carolina is vested in the County Board of Education, County Superintendent of Education, Board of Trustees and a Superintendent of Schools of each school district of the County. (Constitution of South Carolina of 1895, Article II, sections 1 and 2, Code of Laws of South Carolina of 1942, sections 5301, 5316, 5328, 5404 and 5405)

9. The public schools of the County of Clarendon, South Carolina, are under the direct control and supervision of defendants acting as administrative departments or divisions of the State of South Carolina. (Code of Laws of South Carolina 1942, sections 5301, 5328, 5404, 5405) Defendants are under a duty to maintain an efficient system of Public Schools in Clarendon County, South Carolina (Code of Laws of South Carolina 1942, sections 5301, 5303 and 5328)

10. The defendants and each of them have at all times enforced and unless restrained as the result of this action, will continue to enforce the provisions of the Constitution and laws of the State of South Carolina set out in paragraph "7", of this complaint. In enforcement of these provisions the defendants have set up and are maintaining one group of elementary

and high schools for all eligible students of Clarendon County other than Negroes and another group of schools for students considered to be of Negro descent. This separation, segregation and exclusion is based solely upon the race and/or color of the plaintiffs and those on whose behalf this action is brought and is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. No group of students save those of Negro descent are excluded from the public schools of Clarendon County set apart for "white" students.

11. The public schools of Clarendon County set apart for white students and from which all Negro students are excluded are superior in plant, equipment, curricula, and in all other material respects to the schools set apart for Negro students. The defendants by enforcing the provisions of the Constitution and laws of South Carolina as set out above exclude all Negro students from the "white" public schools and thereby deprive plaintiffs and others on whose behalf this action is brought solely because of race and color, of the opportunity of attending the only public schools in Clarendon County where they can obtain an education equal to that offered all qualified students who are not of Negro descent.

12. The public school system in School District #22, and in the Summerton High School District, Clarendon County, South Carolina, is maintained on a segregated basis. White children attend the Summerton Elementary School and Summerton High School, Negro children are compelled to attend the Scotts Branch High School, the Liberty Hill Elementary School and the Rambay Elementary School solely because of their race and color. The Scotts Branch High School, Liberty Hill

Elementary School and the Rambay Elementary School are unequal and inferior to the Summerton High School and the Summerton Elementary School maintained for white children of public school age. In short, plaintiffs and other Negro children of public school age in Clarendon County, South Carolina are being denied equal educational advantages in violation of the Constitution of the United States.

13. Plaintiffs have filed petitions with defendants, County Board of Education of Clarendon County, County superintendent of Schools and the Board of Trustees for School District #22, requesting that defendants cease discriminating against Negro children of public school age attending public schools in Clarendon County, South Carolina and defendants have failed and refused to cease discriminating against plaintiffs and the class they represent solely because of their race and color in violation of their rights to equal protection of the laws provided by the Fourteenth Amendment of the Constitution of the United States.

14. Plaintiffs and others similarly situated are suffering irreparable injury and are threatened by irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of. other than this suit for declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable

injury and occasion damage, vexation and inconvenience not only to the plaintiff and those similarly situated, but to defendants as governmental agencies.

15. WHEREFORE, plaintiffs respectfully pray that upon the filing of this complaint, as may appear proper and convenient, the Court convene a three-judge court as required by Article 28, United States Code, Section 2281, 2284, advance this cause on the docket and order a speedy hearing on this action according to law, and that upon such hearing:

1. This Court adjudge, decree and declare the rights and legal relations of the parties to the subject matter here in controversy in order that such declaration shall have the force and effect of a final judgment or decree.
2. This Court enter a judgment or decree declaring that the policy, custom, practice and usage of defendants, and each of them, in denying on account of their race and color, to infant plaintiffs and other Negro children of public school age in Clarendon County, South Carolina, elementary and secondary educational opportunities, advantages and facilities equal to those afforded to white children is a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.
3. This Court enter a judgment or decree declaring that the policy, custom, practice and usage of defendants, and each of them, in refusing to allow infant plaintiffs, and other Negro children, to attend elementary and secondary public schools in Clarendon County, South Carolina which are maintained and operated exclusively for white children is a violation of the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

4. This Court enter a judgment or decree declaring that Article II section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942 which require that infant plaintiffs be forced to attend separate and segregated schools solely because of their race and color is a denial of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are therefore unconstitutional and void.
5. That the Court issue a permanent injunction forever restraining and enjoining the defendants, and each of them, from denying, failing or refusing to provide to infant plaintiffs and other Negro school children in Clarendon County, South Carolina, on account of their race and color, rights and privileges of attending public schools where they may receive educational opportunities, advantages and facilities equal to those afforded to white children.
6. That the Court issue a permanent injunction forever restraining and enjoining the defendants, and each of them, from making any distinction based upon race or color in making available to the plaintiffs whatever opportunities, advantages and facilities are provided by the defendants for the public education of school children in Clarendon County, South Carolina.
7. That the Court issue a temporary and permanent injunction restraining and enjoining the defendants and each of them from operating, executing or enforcing Article II, section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942.

JHP  
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8. Plaintiffs further pray that the Court will allow them their costs herein and such further, other or additional relief as may appear to the Court to be equitable and just.

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Attorneys for Plaintiffs.

DATED: December 19, 1950

*JW*  
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FILED

JUN 23 1951

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

ERNEST L. ALLEN  
C. D. C. U. S. E. D. C.

CHARLESTON DIVISION

Civil Action No. 2657.

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Harry Briggs, Jr., et al., Plaintiffs,

versus

R. W. Elliott, Chairman, J. D. Carson and George Kennedy, Members of the Board of Trustees of School District No. 22, Clarendon County, S. C.; Summerton High School District, a body corporate; L. B. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. N. Betcham, Superintendent of School District No. 22, Defendants.

DECREE

In the above entitled case the Court finds the facts to be as set forth in its written opinion filed herewith and on the basis thereof it is adjudged by the Court:

(1) That neither Article II section 7 of the Constitution of South Carolina nor section 5377 of the Code are of themselves violative of the provisions of the Fourteenth Amendment to the Constitution of the United States and plaintiffs are not entitled to an injunction forbidding segregation in the public schools of School District No. 22.

(2) That the educational facilities, equipment, curricula and opportunities afforded in School District No. 22 for colored pupils are not substantially equal to those afforded for white pupils; that this inequality is violative of the equal protection clause of the

Fourteenth Amendment; and that plaintiffs are entitled to an injunction requiring the defendants to make available to them and to other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those afforded white pupils.

And it is accordingly ordered, adjudged and decreed that the defendants proceed at once to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils;

And it is further ordered that the defendants make report to this Court within six months of this date as to the action taken by them to carry out this order.

And this cause is retained for further orders.

This the 21 day of June 1951.

John J. Parker  
Chief Judge, Fourth Circuit.

[Signature]  
U. S. District Judge, Eastern District  
of South Carolina.

[Signature]  
U. S. District Judge, Eastern and Western  
Districts of South Carolina.

*I do not join in this  
decree for the reasons  
set forth in a separate  
dissenting opinion.*  
*J. Hayes W. [Signature]*  
U. S. District Judge  
Eastern District of South Carolina