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FEDERAL STATUTE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 281

JAMES E. SWANN ET AL.,
Petitioners,

vs.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION ET AL.,
Respondents.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CONSENT TO FILE BRIEF AMICUS CURIAE

With consent of all counsel "CONCERNED CITIZENS ASSOCIATION, INC.", a non-profit Georgia corporation; its officers, Board of Directors and members respectfully file a brief *amicus curiae* in support of the respondents.

The written consent of counsel for the respondents and for petitioners to file a brief *amicus curiae* in behalf of the respondents is filed herewith.

STATUS OF AMICUS CURIAE

"CONCERNED CITIZENS ASSOCIATION, INC.", is a non-profit corporation organized and existing under the laws of the State of Georgia. It is a voluntary organization comprised primarily of laymen who are concerned with education in the public school system of the city of Savannah and the county of Chatham. To this end the organization is committed to preserving the effectiveness of the public schools by reducing discord and turmoil through the admission of pupils into neighborhood schools. As a corollary to this principle, it opposes the transportation of pupils past neighborhood schools to remote areas for the purpose of achieving racial balance.

ARGUMENT

"As soon as possible, however, we ought to resolve some of the basic practical problems . . . including whether as a constitutional matter, *any particular racial balance must be achieved in the schools; to what extent school districts and zones may or must be altered as a constitutional matter; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of this Court.*" (Emphasis added)

So admonished Mr. Chief Justice Burger in *Northcross* v. *Board of Education of Memphis,* 25 L. Ed. 2d 246 (1970). In doing so he voiced the unknown about the unitary rule established in *Alexander* v. *Holmes County Board of Education,* 396 U. S. 19 (1969).

The orders in this case by the lower courts challenge this Court to remove the gnawing doubt which pervades the minds of the public school administrators.

Is a person effectively excluded from a school because a school by location is remote from that person's

neighborhood? Does geography create a normal limitation upon access to a school because of the pragmatic problems of transportation? Reason dictated by practicality negates the former question but affirms the latter question.

A concomitant is the neighborhood school concept. Its proximity to home, its community of friends, and its identity with the neighborhood have created a milieu conducive to the best educational environment. Oblivious to this are those who urge this Court to callously cast aside this acknowledged cornerstone of the elementary school system. With characteristic disregard, they assert, "integration is education". It is not and never shall be.

Education begins at school but finds its stimulus at home where homework is done under the application of the pupil and the supervision of the parent. The home environment is what assures the highest academic achievement of the pupil.

"Freedom of choice" has been assailed as constitutionally objectionable. In support of this attack are listed: intimidation, harassment, fear, distance, and inconvenience. These very objections can be listed against pairing and bussing—particularly harassment, distance and inconvenience. As a result many pupils arrive at school demoralized and agitated. This emotional condition is their school day companion.

This Court is now confronted with the monumental question: What is the paramount duty that this Nation through its school systems owes to the "citizen-parent" and the "student-child"? Is it racial balance at whatever the immediate and future costs, or is it the best education that can be provided in an environment conducive to the highest educational achievement? It is the conviction of the *amicus curiae* that the latter question must predominate

over the former if public education is to survive and the security of our Nation preserved.

The *amicus curiae* does not advocate turning back the clock. However, it does ask this Court to apply the rule of reason enunciated by the Circuit Court of Appeals but subsequently ignored in its affirmation of the ruling of the District Court. The *amicus curiae* suggests that the following propositions, which were held by the Circuit Court of Appeals, be utilized in support of the respondents. They are: first, that not every school in a unitary school system need be integrated; second, nevertheless, school boards must use all reasonable means to integrate the schools in their jurisdiction; and third, if black residential areas are so large that not all schools can be integrated by using reasonable means, school boards must take further steps to assure that pupils are not excluded from integrated programs on the basis of race.

The *amicus curiae* concurs in the in part dissent of Judge Bryan of the Circuit Court of Appeals. He properly concluded that the command of that Court to provide the bussing of pupils to achieve integration was a misnomer as it achieved racial balance. The Congress has expressed its disapproval of the principle of achieving racial balance by bussing. It categorically denounced this procedure with the enactment of the 1964 Civil Rights Act, 42 U. S. Code Section 2000 c-6(a) (2). The majority's dismissal of the impact of that statute as not applicable to schools with a *de jure* history of segregation collides with the clear intent of the Congress. Support for the passage of the act was not sectional but national. It was legislation which reflected the attitudes of the majority of the people of this Country. The Courts should not restrict what the people have willed through their elected representatives.

To apply the anti-bussing statute only in those states where *de facto* segregation exists is judicial hypocrisy. The thesis of dualism which this Court condemns in the southern school systems, and which this Court has declared must be dismantled, would receive this Court's imprimatur if it should find that the anti-bussing statute has exclusive application to those states which practice *de facto* segregation. This Court should emphatically reject the double standard embraced by the Circuit Court of Appeals in its refusal to apply the anti-bussing provision of the Civil Rights Act of 1964.

The *amicus curiae* anticipate that the petitioners in support of bussing will argue that the bussing of pupils in the public school system is common as apple pie and will emphasize that the present objection should be dismissed because it was the vehicle for the maintenance of the dual system. If the proscription of the Fourteenth Amendment condemns bussing to evade integration, the proscription should condemn with equal finality the bussing of students to achieve integration. One is just as discriminatory as the other; particularly, where as in this case, bussing is used to achieve a predetermined racial balance. Racial balance is not required by the Fourteenth Amendment or by any directive of this Court.

CONCLUSION

In *Green* v. *School Board of New Kent County,* 391 U. S. 430, 20 L. Ed. 2d 716, 724, Mr. Justice Brennan established this test:

> "Where the Court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief."

Does the plan of the respondent, school board, meet this test? It does. For example, school districts were gerrymandered to comply with the unitary rule. Staff, transportation, programs and other aspects of the school system have been integrated to dismantle the dual system. The respondents have met the test of good faith and have provided effective relief.

For these reasons, the Circuit Court of Appeals erred in rejecting the respondents' plan.

Respectfully submitted,

OWEN H. PAGE
Attorney for "Concerned Citizens Association, Inc.", Amicus Curiae

CERTIFICATE OF SERVICE

I, Owen H. Page, of counsel for the "Concerned Citizens Association, Inc.", hereby certify that I have served a copy of the foregoing ~~petition~~ matter by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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