

[fol. a]

**IN UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS**

[Caption omitted]

OLIVER BROWN, MRS. RICHARD LAWTON, MRS. SADIE EMMANUEL, Mrs. Lucinda Todd, Mrs. Iona Richardson, Mrs. Lena Carper, Mrs. Shirley Hodison, Mrs. Alma Lewis, Mrs. Darlene Brown, Mrs. Shirla Fleming, Mrs. Andrew Henderson, Mrs. Vivian Scales, Mrs. Marguerite Emerson, and

LINDA CAROL BROWN, an infant, by Oliver Brown, her father and next friend,

VICTORIA JEAN LAWTON and CAROL KAY LAWTON, infants, by Mrs. Richard Lawton, their mother and next friend,

JAMES MELDON EMMANUEL, an infant, by Mrs. Sadie Emmanuel, his mother and next friend,

NANCY JANE TODD, an infant, by Mrs. Lucinda Todd, her mother and next friend,

RONALD DOUGLAS RICHARDSON, an infant, by Mrs. Iona Richardson, his mother and next friend,

KATHERINE LOUISE CARPER, an infant, by Mrs. Lena Carper, her mother and next friend,

CHARLES HODISON, an infant, by Mrs. Shirley Hodison, his mother and next friend,

[fol. b] THERON LEWIS, MARTHA JEAN LEWIS, ARTHUR LEWIS and Frances Lewis, infants, by Mrs. Alma Lewis, their mother and next friend,

SAUNDRIA DORSTELLA BROWN, an infant, by Mrs. Darlene Brown, her mother and next friend,

DUANE DEAN FLEMING and SILAS HARDRICK FLEMING, infants, by Mrs. Shirla Fleming, their mother and next friend,

DONALD ANDREW HENDERSON and VICKI ANN HENDERSON, infants, by Mrs. Andrew Henderson, their mother and next friend,

RUTH ANN SCALES, an infant, by Mrs. Vivian Scales, her mother and next friend,

CLAUDE ARTHUR EMMERSON and GEORGE ROBERT EMMERSON, infants, by Mrs. Marguerite Emmerson, their mother and next friend, Plaintiffs,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS; Kenneth McFarland, Superintendent of Schools of Topeka, Kansas; and Frank Wilson, Principal of Sumner Elementary School, Defendants,

and

THE STATE OF KANSAS, Intervening Defendant

No. T-316 Civil

[fol. 1] AMENDED COMPLAINT—Filed March 22, 1951

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 (\$3000.00).

(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, or 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 also invoked under Title 28, United States Code, section 2281. This is an action for an interlocutory injunction and a permanent injunction restraining the enforcement, operation and execution of statutes of the State of Kansas by restraining the action of defendants, officers of such state, in the enforcement and execution of such statutes.

2. This is a proceeding for a declaratory judgment and injunction under Title 28, United States Code, section 2201, for the purpose of determining questions in actual contro-[fol. 2] versy between the parties to wit:

(a) The question of whether the state statute, ch. 72-1724 of the General Statutes of Kansas 1935, is unconstitutional in that it gives to defendants the power to organize and maintain separate schools for the education of white and colored children in the City of Topeka, Kansas.

(b) The question of whether the customs and practices of the defendants operating under Ch. 72-1724 of the General Statutes of Kansas, 1935, are unconstitutional in that they deny infant plaintiffs the rights and privileges of enrolling in, attending and receiving instruction in public schools of the district within which they live while such rights and privileges are granted to white children similarly situated; where the basis of this refusal and grant is the race and color of the children, and that alone.

(c) The question of whether the denial to infant plaintiffs, solely because of race, of educational opportunities equal to those afforded white children is in contravention of the Fourteenth Amendment to the United States Constitution as being a denial of the equal protection of the laws.

3. (a) Infant plaintiffs are citizens of the United States, the State of Kansas, and Shawnee County, the City of Topeka, Kansas. They are among those classified as Negroes. They reside within various school districts in the City of Topeka, satisfy all requirements for admission to schools within the districts within which they live, have presented themselves for enrollment and registration at the proper times and places, and were denied the right to enroll therein, on account of their race and color. Instead, they

are required, solely because of race, to attend schools where they do not and cannot receive educational advantages, opportunities and facilities equal to those furnished white [fol. 3] children.

(b) Adult plaintiffs are citizens of the United States and the State of Kansas, are residents of and domiciled in Topeka, Shawnee County, Kansas, are taxpayers of said county, of the State of Kansas, and of the United States. They are the parents and natural guardians of infant plaintiffs named herein. By being compelled to send their children to schools outside the districts wherein they live rather than to schools within said districts, they must bear certain burdens and forego certain advantages, neither of which is suffered by parents of white children situated similarly to children of plaintiffs.

(c) Plaintiffs bring this action on their own behalf and also on behalf of all citizens similarly situated and affected, pursuant to Rule 23A of the Federal Rules of Civil Procedure, there being common questions of law and fact affecting the rights of all Negro citizens of the United States similarly situated who reside in cities in the State of Kansas in which separate public schools are maintained for white and Negro children of public school age, and who are so numerous as to make it impracticable to bring them all before the Court.

4. The State of Kansas has declared public education a state function in the Constitution of the State of Kansas, Article 6, Sections 1 and 2. Pursuant to this mandate, the Legislature of Kansas has established a system of free public schools in the State of Kansas, according to a plan set out in Chapter 72 of the General Statutes of Kansas, 1935, and supplements thereto. The establishment, maintenance, and administration of the public school system of Kansas is vested in a Superintendent of Public Instruction, County Superintendent of Schools, and City School Boards. (Constitution of Kansas, Article 6, section 1.)

[fol. 4] 5. The public schools of Topeka, Shawnee County, Kansas are under the control and supervision of the defendants.

(a) Defendant, Board of Education, is under a duty to enforce the school laws of the State of Kansas

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 Pre-Trial
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 (General Statutes of Kansas, 1935, [and supplements thereto,] * section 72-1809); to maintain an efficient system of public schools in Topeka, Shawnee County, Kansas; to determine the studies pursued, the methods of teaching, and to establish such schools as may be necessary to the completeness and efficiency of the school system. It is an administrative department of the State of Kansas, which discharges governmental functions pursuant to the Constitution and the laws of the State of Kansas. (Constitution of Kansas, Article 6, sections 1 and 2, General Statutes, 1935, and supplements thereto of Kansas, section 72-1601). It is declared by law to be a body corporate and is sued in its governmental capacity.

(b) Defendant Kenneth McFarland is Superintendent of Schools, and holds office pursuant to the Constitution and the laws of the State of Kansas, as an administrative officer of the free public school system of the State of Kansas. He has immediate control of the operation of public schools in Topeka, Shawnee County, Kansas. He is sued in his official capacity.

6. Defendant, Board of Education of Topeka, Shawnee County, Kansas, has established and at the present time maintains in the City of Topeka, State of Kansas, elementary schools for the education of the school children of the City of Topeka. They are located within different districts of the City of Topeka, whose boundaries are designated by the defendant, Board of Education.

7. White Children of elementary school age go to the school within the designated boundaries of the district in which they live.

[fol. 5] Infant plaintiffs live within the boundaries of these districts, but they are required to leave the districts within which they live and travel from one and one-half miles to

* Struck out in copy.

two miles to separate all-Negro schools, solely because of their race and color and in violation of their rights under the Fourteenth Amendment to the Constitution of the United States.

8. The educational opportunities provided by defendants for infant plaintiffs in the separate all-Negro schools are inferior to those provided for white school children similarly situated in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

9. Adult plaintiffs are required to send their children outside the school districts in which they reside to separate all-Negro schools, whereas parents of white children are permitted to send their children to schools close at hand within the district in which they live, solely because of race and color. Thus adult plaintiffs are being denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

10. Infant plaintiffs and adult plaintiffs are thereby being wilfully and unlawfully discriminated against by the defendants on account of their race and color, in that infant plaintiffs are compelled to attend schools outside the school districts in which they live, while white children similarly situated are not so compelled; infant plaintiffs and adult plaintiffs are being deprived of their rights guaranteed by the Constitution and laws of the United States.

11. Plaintiffs are suffering irreparable injury and face 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 a declaration of rights [fol. 6] and an injunction. Any other remedy to which plaintiffs might be remitted would be attended by such uncertainties and delays as to deny substantial relief; would involve a multiplicity of suits; and would cause further irreparable injury not only to plaintiffs, but to defendants as governmental agencies.

Wherefore, plaintiffs respectfully pray that:

1. The Honorable Court, upon filing of this complaint, notify the Chief Judge of this Circuit as required by 28 U. S. C. A., section 2284, so that the Chief Judge may desig-

nate two other judges to serve as members of a three-judge court as required by Title 28, U. S. C. A., section 2281, to hear and determine this action.

2. The Honorable Court enter a judgment or decree declaring that the General Statutes of Kansas, 1935, 72-1724, is unconstitutional insofar as it empowers defendants to set up separate schools for Negro and white school children.

3. The Honorable Court enter a judgment or decree declaring that the policy, custom, usage and practice of defendants in operating under Ch. 72-1724, General Statutes of Kansas, 1935, in denying plaintiffs and other Negro children residing in Topeka, Shawnee County, Kansas, solely because of race or color, the right and privilege of enrolling in, attending and receiving instruction in schools within the district within which they reside as is provided for white children of like qualifications, are denials of the equal protection clause of the United States Constitution and are therefore unconstitutional and void.

4. The Honorable Court issue a permanent injunction forever restraining and enjoining the defendants from executing so much of Ch. 72-1724, General Statutes of Kansas, 1935, as empowers them to set up separate schools for Negro and white school children.

[fol. 7] 5. The Honorable Court issue a permanent injunction forever restraining defendants from denying the Negro school children of Topeka, Shawnee County, Kansas, on account of their race or color, the right and privilege of attending public schools within the district wherein they live, and from making any distinction based upon race or color in the opportunities which the defendants provide for public education.

6. The Honorable Court will allow plaintiffs their costs herein, reasonable fees for attorneys, and such other and further relief as may appear to the Court to be equitable and just.

7. The Honorable Court retain jurisdiction of this cause after judgment to render such relief as may become necessary in the future.

Bledsoe, Scott, Scott & Scott, by Chas. E. Bledsoe,
Charles S. Scott, John J. Scott, Attorneys for
Plaintiffs.

Duly sworn to by Charles E. Bledsoe. Jurat omitted in printing.
