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The following districts are likely to come under court order in the near future:

Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Youngstown, Ohio
Kansas City, Kansas

F

SUMMARY OF SCHOOL DESEGREGATION DECISIONS

A. Brown v. Board of Education (1954)

The landmark Supreme Court decision in the school desegregation area in this century was Brown v. Board of Education (of Topeka), decided in 1954. In Brown, the Supreme Court held that segregation in public schools on the basis of race, even though the physical facilities and other "tangible" factors may be equal, denies children of the minority group the equal protection of the laws in violation of the Fourteenth Amendment. In the Brown decision, the Supreme Court did not prescribe any specific method for accomplishing desegregation.

B. Brown II (1955)

In a follow-up to its 1954 Brown decision, the Supreme Court in 1955 directed that desegregation proceed with "all deliberate speed."

C. "Freedom of Choice"

In the years immediately following Brown, from 1954 to 1964, the courts wrestled with the issue of appropriate remedies in cases of de jure segregation, finally concluding in a number of cases that the "freedom of choice" method of dismantling dual school systems was an acceptable approach. Under freedom of choice, school districts merely gave students -- black and white -- the choice of the schools they wished to attend. The result was a modest degree of desegregation, as some blacks elected to attend formerly white schools. However, rarely did whites choose to attend formerly black schools. The result was that only 1.2 percent of black students in the 11 southern states attended schools with whites in 1963-64.

D. Civil Rights Act of 1964 and Bradley Case

Shortly after passage of the Civil Rights Act of 1964, the Supreme Court stated in Bradley v. School Board of Richmond (1965) that "delays in desegregating school systems are no longer tolerable." The

Civil Rights Act of 1964 provided additional support for the desegregation process through Titles IV and VI. Under Title IV, technical assistance may be given to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools. If efforts to secure a school district's voluntary desegregation failed, administrative enforcement proceedings under Title VI would be initiated.

E. Green Decision (1968)

In April 1968, HEW's Office for Civil Rights directed that, where freedom of choice plans had not effectively eliminated dual school systems, the systems should adopt plans that would accomplish this task. During that year, the Supreme Court strengthened the HEW position in deciding Green v. New Kent County School Board (Virginia). In Green, after noting that in many areas desegregation was not yet a reality, the Court said that the time for mere "deliberate speed" had run out. The Court held that where a freedom of choice assignment plan failed to effectively desegregate a school system, the system had to adopt a student assignment plan which "promised realistically to work now." This was the death knell since rarely, if ever, did freedom of choice result in effective school desegregation.

F. Alexander v. Holmes (1969)

In the summer of 1969, the Court decided Alexander v. Holmes County Board of Education (Mississippi), holding that school districts had a constitutional obligation to dismantle dual school systems "at once" and to operate now and hereafter as unitary systems. The Court, quoting from Green, reiterated its determination that school systems must develop desegregation plans that "promise realistically to work now." Thus, Alexander clearly reaffirmed the Court's position on the issue of timing in desegregation cases.

G. Busing - Swann v. Charlotte-Mecklenburg Board of Education (1971)

In the spring of 1971, the Supreme Court handed down the first "busing" decision in the case of Swann v.

Charlotte-Mecklenburg Board of Education (North Carolina). In Swann, the Court held that:

1. desegregation plans could not be limited to the walk-in neighborhood school;

2. busing was a permissible tool for desegregation purposes; and,

3. busing would not be required if it "endangers the health or safety of children or significantly impinges on the educational process."

The Court also held that, while racial balance is not required by the Constitution, a District Court has discretion to use racial ratios as a starting point in shaping a remedy.

H. HEW Responsibilities to Enforce (1973)

The immediate desegregation mandate of Alexander and the insistence in Swann that schools having disproportionately minority enrollment were presumptively in violation were not acted upon by HEW, which permitted these districts to remain "under review." HEW attempted to secure compliance through persuasion and negotiation, and the Title VI enforcement mechanism fell into disuse. These conditions led to the initiation of Adams v. Richardson, in which HEW was charged with delinquency in desegregating public educational institutions that were receiving Federal funds.

This suit alleged that HEW had defaulted in the administration of its responsibilities under Title VI of the Civil Rights Act of 1964. The district court (District of Columbia) stated on February 16, 1973, that, where efforts to secure voluntary compliance with Title VI failed, the limited discretion of HEW officials was exhausted. Where negotiation and conciliation did not secure compliance, HEW officials were obliged to implement the provisions of the Title VI regulations: provide for a hearing; determine compliance or noncompliance; and, following a determination of noncompliance, terminate Federal financial assistance.

The district court's decision was modified and affirmed by the Court of Appeals (D.C. Circuit, 1973). Essentially, the district court order requires that HEW properly recognize its statutory obligations, ensuring that the policies it adopts and implements are consistent with those duties and not a negation of them.

I. Keyes - "Segregative Intent" (1973)

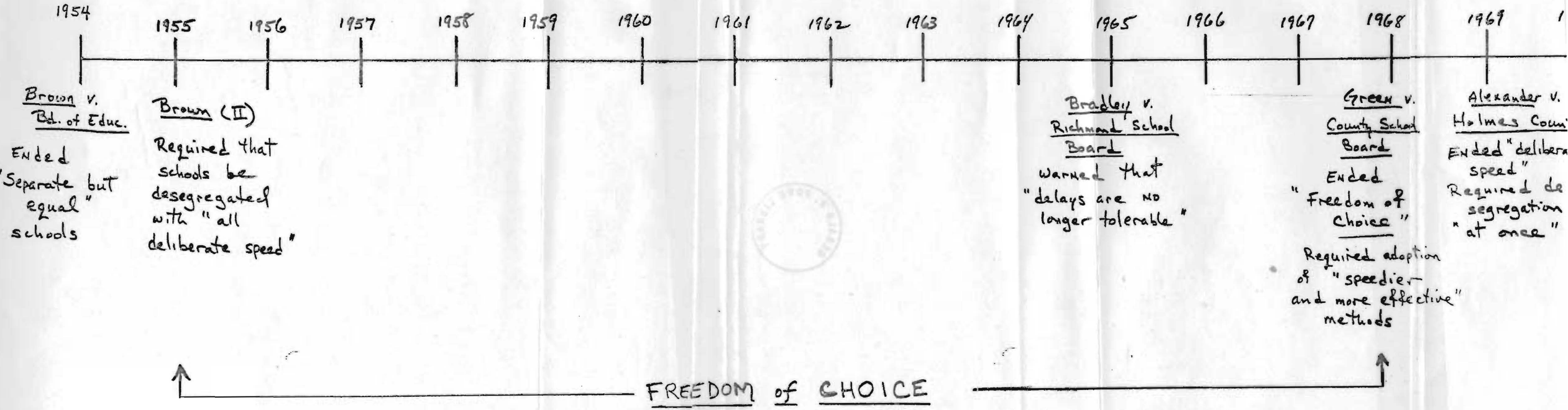
In June 1973, the Supreme Court rendered its decision in Keyes v. School District No. 1 (Denver, Colorado). This was the Court's first decision on the merits in a school desegregation case arising in a State which did not have an official policy of racial dualism in 1954. In Keyes, the Court held that where it could be demonstrated that a school board had acted with "segregative intent" to maintain or perpetuate a "dual school system" this was tantamount to de jure segregation in violation of the Constitution. A finding of de jure segregation as to one part of the system creates a presumption that segregative intent existed in the entire system and in such cases, the school board had "an affirmative duty to desegregate the entire system 'root and branch'".

J. Milliken - Cross District Busing (1974)

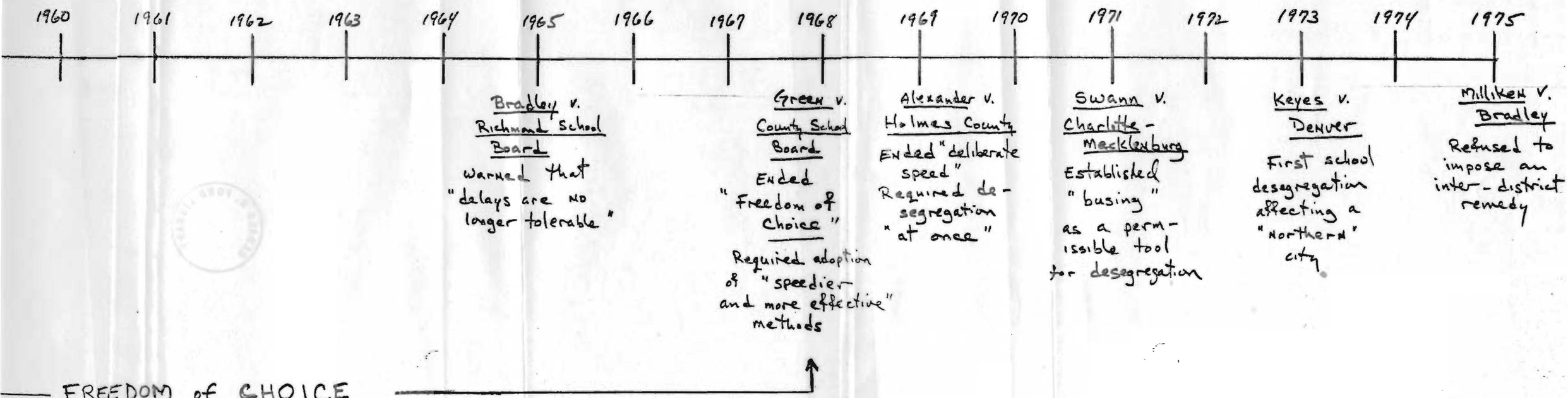
In its most recent ruling respecting school desegregation, Milliken v. Bradley (Detroit, Michigan), the Supreme Court refused to require busing between school districts absent a showing that there has been a constitutional violation within one district that produced a significant segregative effect in another district.

Following 2 pages are originally part of a single document

MAJOR SCHOOL DESEGREGATION CASES (1954 - 1975)



MAJOR SCHOOL DESEGREGATION CASES (1954 - 1975)



G

D E C I S I O N S

BROWN et al. v. BOARD OF EDUCATION OF TOPEKA et al

BROWN et al. v. BOARD OF EDUCATION OF TOPEKA et al (II)

GRIFFIN et al v. COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY et al

GREEN et al v. COUNTY SCHOOL BOARD OF NEW KENT COUNTY et al

RANEY et al v. BOARD OF EDUCATION OF THE GOULD SCHOOL DISTRICT et al

MONROE et al v. BOARD OF COMMISSIONERS OF THE CITY OF JACKSON et al

ALEXANDER et al v. HOLMES COUNTY BOARD OF EDUCATION et al

SWANN et al v. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION et al

KEYES et al v. SCHOOL DISTRICT NO. 1, DENVER, COLORADO et al

MILLIKEN et al v. BRADLEY et al

BROWN ET AL. *v.* BOARD OF EDUCATION OF TOPEKA ET AL.

NO 1. APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.*

Reargued on the question of relief April 11–14, 1955.—Opinion and judgments announced May 31, 1955.

1. Racial discrimination in public education is unconstitutional, 347 U. S. 483, 497, and all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle. P. 298.
2. The judgments below (except that in the Delaware case) are reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis with all deliberate speed. P. 301.

   (a) School authorities have the primary responsibility for elucidating, assessing and solving the varied local school problems which may require solution in fully implementing the governing constitutional principles. P. 299.

   (b) Courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. P. 299.

   (c) 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. P. 299.

   (d) In fashioning and effectuating the decrees, the courts will be guided by equitable principles—characterized by a practical flexibility in shaping remedies and a facility for adjusting and reconciling public and private needs. P. 300.

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*Together with No. 2, *Briggs et al.* v. *Elliott et al.*, on appeal from the United States District Court for the Eastern District of South Carolina; No. 3, *Davis et al.* v. *County School Board of Prince Edward County, Virginia, et al.*, on appeal from the United States District Court for the Eastern District of Virginia; No. 4, *Bolling et al.* v. *Sharpe et al.*, on certiorari to the United States Court of Appeals for the District of Columbia Circuit; and No. 5, *Gebhart et al.* v. *Belton et al.*, on certiorari to the Supreme Court of Delaware.

(e) At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. P. 300.

(f) Courts of equity may properly take into account the public interest in the elimination in a systematic and effective manner of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles enunciated in 347 U. S. 483, 497; but the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. P. 300.

(g) 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 the ruling of this Court. P. 300.

(h) 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. P. 300.

(i) The burden rests on the defendants to establish that additional time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. P. 300.

(j) 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. Pp. 300–301.

(k) The courts 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. P. 301.

(l) During the period of transition, the courts will retain jurisdiction of these cases. P. 301.

3. The judgment in the Delaware case, ordering the immediate admission of the plaintiffs to schools previously attended only by white children, is affirmed on the basis of the principles stated by this Court in its opinion, 347 U. S. 483; but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in the light of this opinion. P. 301.

98 F. Supp. 797, 103 F. Supp. 920, 103 F. Supp. 337 and judgment in No. 4, reversed and remanded.

91 A. 2d 137, affirmed and remanded.

Robert L. Carter argued the cause for appellants in No. 1. *Spottswood W. Robinson, III,* argued the causes for appellants in Nos. 2 and 3. *George E. C. Hayes* and *James M. Nabrit, Jr.* argued the cause for petitioners in No. 4. *Louis L. Redding* argued the cause for respondents in No. 5. *Thurgood Marshall* argued the causes for appellants in Nos. 1, 2 and 3, petitioners in No. 4 and respondents in No. 5.

On the briefs were *Harold Boulware, Robert L. Carter, Jack Greenberg, Oliver W. Hill, Thurgood Marshall, Louis L. Redding, Spottswood W. Robinson, III, Charles S. Scott, William T. Coleman, Jr., Charles T. Duncan, George E. C. Hayes, Loren Miller, William R. Ming, Jr., Constance Baker Motley, James M. Nabrit, Jr., Louis H. Pollak* and *Frank D. Reeves* for appellants in Nos. 1, 2 and 3, and respondents in No: 5; and *George E. C. Hayes, James M. Nabrit, Jr., George M. Johnson, Charles W. Quick, Herbert O. Reid, Thurgood Marshall* and *Robert L. Carter* for petitioners in No. 4.

Harold R. Fatzer, Attorney General of Kansas, argued the cause for appellees in No. 1. With him on the brief was *Paul E. Wilson,* Assistant Attorney General. *Peter F. Caldwell* filed a brief for the Board of Education of Topeka, Kansas, appellee.

S. E. Rogers and *Robert McC. Figg, Jr.* argued the cause and filed a brief for appellees in No. 2.

J. Lindsay Almond, Jr., Attorney General of Virginia, and *Archibald G. Robertson* argued the cause for appellees in No. 3. With them on the brief were *Henry T. Wickham,* Special Assistant to the Attorney General, *T. Justin Moore, John W. Riely* and *T. Justin Moore, Jr.*

Milton D. Korman argued the cause for respondents in No. 4. With him on the brief were *Vernon E. West, Chester H. Gray* and *Lyman J. Umstead.*

Joseph Donald Craven, Attorney General of Delaware, argued the cause for petitioners in No. 5. On the brief were *H. Albert Young,* then Attorney General, *Clarence W. Taylor,* Deputy Attorney General, and *Andrew D. Christie,* Special Deputy to the Attorney General.

In response to the Court's invitation, 347 U. S. 483, 495–496, *Solicitor General Sobeloff* participated in the oral argument for the United States. With him on the brief were *Attorney General Brownell, Assistant Attorney General Rankin, Philip Elman, Ralph S. Spritzer* and *Alan S. Rosenthal.*

By invitation of the Court, 347 U. S. 483, 496, the following State officials presented their views orally as *amici curiae: Thomas J. Gentry,* Attorney General of Arkansas, with whom on the brief were *James L. Sloan,* Assistant Attorney General, and *Richard B. McCulloch,* Special Assistant Attorney General. *Richard W. Ervin,* Attorney General of Florida, and *Ralph E. Odum,* Assistant Attorney General, both of whom were also on a brief. *C. Ferdinand Sybert,* Attorney General of Maryland, with whom on the brief were *Edward D. E. Rollins,* then Attorney General, *W. Giles Parker,* Assistant Attorney General, and *James H. Norris, Jr.,* Special Assistant Attorney General. *I. Beverly Lake,* Assistant Attorney General of North Carolina, with whom on the brief were *Harry McMullan,* Attorney General, and *T. Wade Bruton, Ralph Moody* and *Claude L. Love,* Assistant Attorneys General. *Mac Q. Williamson,* Attorney General of Oklahoma, who also filed a brief. *John Ben Shepperd,* Attorney General of Texas, and *Burnell Waldrep,* Assistant Attorney General, with whom on the brief were *Billy E. Lee, J. A. Amis, Jr., L. P. Lollar, J. Fred Jones, John Davenport, John Reeves* and *Will Davis.*

Phineas Indritz filed a brief for the American Veterans Committee, Inc., as *amicus curiae.*

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases were decided on May 17, 1954. The opinions of that date,[1] 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.[2] In view of the nationwide importance of the decision, we invited the Attorney General of the United

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[1] 347 U. S. 483; 347 U. S. 497.

[2] Further argument was requested on the following questions, 347 U. S. 483, 495–496, n. 13, previously propounded by the Court:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(*a*) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(*b*) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (*a*) and (*b*) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (*b*),

"(*a*) should this Court formulate detailed decrees in these cases;

"(*b*) if so, what specific issues should the decrees reach;

"(*c*) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(*d*) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

States and the Attorneys General of all states requiring or permitting racial discrimination in public 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.

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae,* and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

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.[3]

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[3] The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U. S. C. §§ 2281 and 2284. These cases will accordingly be remanded to those three-judge courts. See *Briggs* v. *Elliott,* 342 U. S. 350.

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 [4] and by a facility for adjusting and reconciling public and private needs.[5] 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

[4] See *Alexander* v. *Hillman*, 296 U. S. 222, 239.

[5] See *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329–330.

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 judgments below, except that in the Delaware case, are accordingly reversed and the cases are remanded to the District Courts 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. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in light of this opinion.

It is so ordered.

GRIFFIN ET AL. *v.* COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 592. Argued March 30, 1964.—
Decided May 25, 1964.

This litigation began in 1951 and resulted in this Court's holding in *Brown* v. *Board of Education*, 347 U. S. 483 (1954), that Virginia school segregation laws denied the equal protection of the laws and, after reargument on the question of relief, the remand to the District Court a year later for entry of an order that the Negro complainants in Prince Edward County be admitted to public schools on a racially nondiscriminatory basis "with all deliberate speed." Faced with an order to desegregate, the County Board of Supervisors in 1959 refused to appropriate funds for the operation of public schools although a private foundation operated schools for white children only, who in 1960 became eligible for county and state tuition grants. Public schools continued to operate elsewhere in Virginia. After protracted litigation in the federal and state courts, the District Court in 1961 enjoined the County from paying tuition grants or giving tax credits as long as the public schools remained closed and thereafter, refusing to abstain pending proceedings in the state courts, held that the public schools could not remain closed to avoid this Court's decision while other public schools in the State remained open. The Court of Appeals reversed, holding that the District Court should have awaited state court determination of these issues. *Held:*

1. Though the amended supplemental complaint added new parties and relied on developments occurring after the action had begun, it did not present a new cause of action but constituted a proper amendment under Rule 15 (d) of the Federal Rules of Civil Procedure, since the new transactions were alleged to be part of persistent and continuing efforts to circumvent this Court's holdings. Pp. 226–227.

2. Since the supplemental complaint alleged a discriminatory system unique to one county, although involving some actions of the State, adjudication by a three-judge court was not required under 28 U. S. C. § 2281. Pp. 227–228.

3. This action is not forbidden by the Eleventh Amendment to the Constitution since it charges that state and county officials deprived petitioners of their constitutional rights. *Ex parte Young*, 209 U. S. 123 (1908), followed. P. 228.

4. Because of the long delay resulting from state and county resistance to enforcing the constitutional rights here involved and because the highest state court has now passed on all the state law issues here, federal court abstention pending state judicial resolution of the legality of respondents' conduct under the constitution and laws of Virginia is not required or appropriate in this case. Pp. 228–229.

5. Under the circumstances of this case, closing of the Prince Edward County public schools while at the same time giving tuition grants and tax concessions to assist white children in private segregated schools denied petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment. Pp. 229–232.

(a) Prince Edward County school children are treated differently from those of other counties since they must go to private schools or none at all. P. 230.

(b) The public schools of Prince Edward County were closed and the private schools operated in their place only for constitutionally impermissible reasons of race. Pp. 231–232.

6. Quick and effective injunctive relief should be granted against the respondents, all of whom have duties relating to financing, supervising, or operating the Prince Edward County schools. Pp. 232–234.

(a) The injunction against county officials paying tuition grants and giving tax credits while public schools remained closed is appropriate and necessary where the grants and credits have been part of the county program to deprive petitioners of a public education enjoyed by children in other counties. P. 233.

(b) The District Court may require the County Supervisors to levy taxes to raise funds for the nonracial operation of the county school system as is the case with other counties. P. 233.

(c) The District Court may if necessary issue an order to carry out its ruling that the Prince Edward County public schools may not be closed to avoid the law of the land while the State permits other public schools to remain open at the expense of the taxpayers. Pp. 233–234.

(d) New parties may be added if necessary to effectuate the District Court's decree. P. 234.

322 F. 2d 332, reversed.

Robert L. Carter argued the cause for petitioners. With him on the brief were *S. W. Tucker* and *Frank D. Reeves.*

R. D. McIlwaine III, Assistant Attorney General of Virginia, and *J. Segar Gravatt* argued the cause for respondents. With *Mr. McIlwaine* on the brief for the State Board of Education of Virginia et al. were *Robert Y. Button,* Attorney General of Virginia, and *Frederick T. Gray.* With *Mr. Gravatt* on the brief for the Board of Supervisors of Prince Edward County was *William F. Watkins, Jr. John F. Kay, Jr.* and *C. F. Hicks* filed a brief for respondents County School Board of Prince Edward County et al.

Solicitor General Cox, by special leave of Court, argued the cause for the United States, as *amicus curiae,* urging reversal. With him on the brief were *Assistant Attorney General Marshall, William J. Vanden Heuvel, Louis F. Claiborne* and *Harold H. Greene.*

Briefs of *amici curiae,* urging reversal, were filed by *William B. Beebe* and *Hershel Shanks* for the National Education Association, and by *Landon Gerald Dowdey, T. Raber Taylor* and *C. Joseph Danahy* for Citizens for Educational Freedom.

Brief of *amicus curiae,* urging affirmance, was filed by *Geo. Stephen Leonard, Paul D. Summers, Jr., D. B. Marshall* and *Richard L. Hirshberg* for the City of Charlottesville.

MR. JUSTICE BLACK delivered the opinion of the Court.

This litigation began in 1951 when a group of Negro school children living in Prince Edward County, Virginia, filed a complaint in the United States District Court for the Eastern District of Virginia alleging that they had been denied admission to public schools attended by white children and charging that Virginia laws requiring such school segregation denied complainants the equal protec-

tion of the laws in violation of the Fourteenth Amendment. On May 17, 1954, ten years ago, we held that the Virginia segregation laws did deny equal protection. *Brown* v. *Board of Education,* 347 U. S. 483 (1954). On May 31, 1955, after reargument on the nature of relief, we remanded this case, along with others heard with it, to the District Courts to enter such orders as "necessary and proper to admit [complainants] to public schools on a racially nondiscriminatory basis with all deliberate speed . . . ." *Brown* v. *Board of Education,* 349 U. S. 294, 301 (1955).

Efforts to desegregate Prince Edward County's schools met with resistance. In 1956 Section 141 of the Virginia Constitution was amended to authorize the General Assembly and local governing bodies to appropriate funds to assist students to go to public or to nonsectarian private schools, in addition to those owned by the State or by the locality.[1] The General Assembly met in special session and enacted legislation to close any public schools where white and colored children were enrolled together, to cut off state funds to such schools, to pay tuition grants to children in nonsectarian private schools, and to extend state retirement benefits to teachers in newly created private schools.[2] The legislation closing mixed schools and cutting off state funds was later invalidated by the Supreme Court of Appeals of Virginia, which held that these laws violated the Virginia Constitution. *Harrison* v. *Day*, 200 Va. 439, 106 S. E. 2d 636 (1959). In April 1959 the General Assembly abandoned "massive resistance" to desegregation and turned instead to what was

[1] Virginia tuition grants originated in 1930 as aid to children who had lost their fathers in World War I. The program was expanded until the Supreme Court of Appeals of Virginia held that giving grants to children attending private schools violated the Virginia Constitution. *Almond* v. *Day*, 197 Va. 419, 89 S. E. 2d 851 (1955). It was then that Section 141 was amended.

[2] Va. Code, § 22-188.3 *et seq.*; § 51-111.38:1.

called a "freedom of choice" program. The Assembly repealed the rest of the 1956 legislation, as well as a tuition grant law of January 1959, and enacted a new tuition grant program.[3] At the same time the Assembly repealed Virginia's compulsory attendance laws[4] and instead made school attendance a matter of local option.[5]

In June 1959, the United States Court of Appeals for the Fourth Circuit directed the Federal District Court (1) to enjoin discriminatory practices in Prince Edward County schools, (2) to require the County School Board to take "immediate steps" toward admitting students without regard to race to the white high school "in the school term beginning September 1959," and (3) to require the Board to make plans for admissions to elementary schools without regard to race. *Allen* v. *County School Board of Prince Edward County*, 266 F. 2d 507, 511 (C. A. 4th Cir. 1959). Having as early as 1956 resolved that they would not operate public schools "wherein white and colored children are taught together," the Supervisors of Prince Edward County refused to levy any school taxes for the 1959–1960 school year, explaining that they were "confronted with a court decree which requires the admission of white and colored children to all the schools of the county without regard to race or color."[6] As a result, the county's public schools did not

[3] Acts, 1959 Ex. Sess., c. 53.

[4] Va. Code, §§ 22–251 to 22–275.

[5] Va. Code, §§ 22–275.1 to 22–275.25.

[6] The Board's public explanation of its June 3, 1959, refusal to appropriate money or levy taxes to carry on the county's public school system was:

"The School Board of this county is confronted with a court decree which requires the admission of white and colored children to all the schools of the county without regard to race or color. Knowing the people of this county as we do, we know that it is not possible to operate the schools of this county within the terms of that principle and, at the same time, maintain an atmosphere conducive to the educational benefit of our people."

reopen in the fall of 1959 and have remained closed ever since, although the public schools of every other county in Virginia have continued to operate under laws governing the State's public school system and to draw funds provided by the State for that purpose. A private group, the Prince Edward School Foundation, was formed to operate private schools for white children in Prince Edward County and, having built its own school plant, has been in operation ever since the closing of the public schools. An offer to set up private schools for colored children in the county was rejected, the Negroes of Prince Edward preferring to continue the legal battle for desegregated public schools, and colored children were without formal education from 1959 to 1963, when federal, state, and county authorities cooperated to have classes conducted for Negroes and whites in school buildings owned by the county. During the 1959–1960 school year the Foundation's schools for white children were supported entirely by private contributions, but in 1960 the General Assembly adopted a new tuition grant program making every child, regardless of race, eligible for tuition grants of $125 or $150 to attend a nonsectarian private school or a public school outside his locality, and also authorizing localities to provide their own grants.[7] The Prince Edward Board of Supervisors then passed an ordinance providing tuition grants of $100, so that each child attending the Prince Edward School Foundation's schools received a total of $225 if in elementary school or $250 if in high school. In the 1960–1961 session the major source of financial support for the Foundation was in the indirect form of these state and county tuition grants, paid to children attending Foundation schools. At the same time, the County Board of Supervisors passed an ordinance allowing property tax credits up to 25% for

[7] Va. Code, §§ 22–115.29 to 22–115.35.

contributions to any "nonprofit, nonsectarian private school" in the county.

In 1961 petitioners here filed a supplemental complaint, adding new parties and seeking to enjoin the respondents from refusing to operate an efficient system of public free schools in Prince Edward County and to enjoin payment of public funds to help support private schools which excluded students on account of race. The District Court, finding that "the end result of every action taken by that body [Board of Supervisors] was designed to preserve separation of the races in the schools of Prince Edward County," enjoined the county from paying tuition grants or giving tax credits so long as public schools remained closed.[8] *Allen* v. *County School Board of Prince Edward County*, 198 F. Supp. 497, 503 (D. C. E. D. Va. 1961). At this time the District Court did not pass on whether the public schools of the county could be closed but abstained pending determination by the Virginia courts of whether the constitution and laws of Virginia required the public schools to be kept open. Later, however, without waiting for the Virginia courts to decide the question,[9] the District Court held that "the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers." *Allen* v. *County School Board of Prince Ed-*

[8] On the question of the validity of state tuition grants, the court held that, as a matter of state law, such grants were not meant to be given in localities without public schools; therefore, the court enjoined the county from processing applications for state grants so long as public schools remained closed. 198 F. Supp., at 504.

[9] The Supreme Court of Appeals of Virginia had, in a mandamus proceeding instituted by petitioners, held that the State Constitution and statutes did not impose upon the County Board of Supervisors any mandatory duty to levy taxes and appropriate money to support free public schools. *Griffin* v. *Board of Supervisors of Prince Edward County*, 203 Va. 321, 124 S. E. 2d 227 (1962).

ward County, 207 F. Supp. 349, 355 (D. C. E. D. Va. 1962). Soon thereafter, a declaratory judgment suit was brought by the County Board of Supervisors and the County School Board in a Virginia Circuit Court. Having done this, these parties asked the Federal District Court to abstain from further proceedings until the suit in the state courts had run its course, but the District Court declined; it repeated its order that Prince Edward's public schools might not be closed to avoid desegregation while the other public schools in Virginia remained open. The Court of Appeals reversed, Judge Bell dissenting, holding that the District Court should have abstained to await state court determination of the validity of the tuition grants and the tax credits, as well as the validity of the closing of the public schools. *Griffin* v. *Board of Supervisors of Prince Edward County,* 322 F. 2d 332 (C. A. 4th Cir. 1963). We granted certiorari, stating: [10]

> "In view of the long delay in the case since our decision in the *Brown* case and the importance of the questions presented, we grant certiorari and put the case down for argument March 30, 1964, on the merits, as we have done in other comparable situations without waiting for final action by the Court of Appeals." 375 U. S. 391, 392.

For reasons to be stated, we agree with the District Court that, under the circumstances here, closing the Prince Edward County schools while public schools in all the other counties of Virginia were being maintained denied the petitioners and the class of Negro students they represent the equal protection of the laws guaranteed by the Fourteenth Amendment.

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[10] In the meantime, the Supreme Court of Appeals of Virginia had held that the Virginia Constitution did not compel the State to reopen public schools in Prince Edward County. *County School Board of Prince Edward County* v. *Griffin,* 204 Va. 650, 133 S. E. 2d 565 (1963).

I.

Before reaching the substantial questions presented, we shall note several procedural matters urged by respondents in a motion to dismiss the supplemental amended complaint filed July 7, 1961—ten years after this action was instituted. Had the motion to dismiss been granted on any of the grounds assigned, the result would have been one more of what Judge Bell, dissenting in the Court of Appeals, referred to as "the inordinate delays which have already occurred in this protracted litigation . . . ." 322 F. 2d, at 344. We shall take up separately the grounds assigned for dismissal.

(a) It is contended that the amended supplemental complaint presented a new and different cause of action from that presented in the original complaint. The supplemental pleading did add new parties and rely in good part on transactions, occurrences, and events which had happened since the action had begun. But these new transactions were alleged to have occurred as a part of continued, persistent efforts to circumvent our 1955 holding that Prince Edward County could not continue to operate, maintain, and support a system of schools in which students were segregated on a racial basis. The original complaint had challenged racial segregation in schools which were admittedly public. The new complaint charged that Prince Edward County was still using its funds, along with state funds, to assist private schools while at the same time closing down the county's public schools, all to avoid the desegregation ordered in the *Brown* cases. The amended complaint thus was not a new cause of action but merely part of the same old cause of action arising out of the continued desire of colored students in Prince Edward County to have the same opportunity for state-supported education afforded to white people, a desire thwarted before 1959 by segre-

gation in the public schools and after 1959 by a combination of closed public schools and state and county grants to white children at the Foundation's private schools. Rule 15 (d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit,[11] and it follows, of course, that persons participating in these new events may be added if necessary. Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice.

(b) When this action was originally brought in 1951, it broadly charged that the constitution and laws of Virginia provided a state system of public schools which unconstitutionally segregated school children on the basis of color. This challenge was heard by a District Court of three judges as required by 28 U. S. C. § 2281. When in *Brown* we held the school segregation laws invalid as a denial of equal protection of the laws under the Fourteenth Amendment and remanded for the District Court to fashion a decree requiring abandonment of segregation "with all deliberate speed," the three-judge court ceased to function, and a single district judge took over. Respondents contend that the single judge erroneously passed on the issues raised by the supplemental complaint and that we should now delay the case still further by vacating his judgment along with that of the Court of Appeals and remanding to the District Court for a completely new trial before three judges. We reject the contention. In *Rorick* v. *Board of Comm'rs of Everglades Drainage Dist.*, 307 U. S. 208, 212 (1939), we said, in interpreting the three-judge statute (then § 266 of the

[11] "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fed. Rules Civ. Proc. 15 (d).

Judicial Code of 1911, as amended, 28 U. S. C. (1934 ed.) § 380):

> " 'Despite the generality of the language' of that Section, it is now settled doctrine that only a suit involving 'a statute of general application' and not one affecting a 'particular municipality or district' can invoke § 266."

While a holding as to the constitutional duty of the Supervisors and other officials of Prince Edward County may have repercussions over the State and may require the District Court's orders to run to parties outside the county, it is nevertheless true that what is attacked in this suit is not something which the State has commanded Prince Edward to do—close its public schools and give grants to children in private schools—but rather something which the county with state acquiescence and cooperation has undertaken to do on its own volition, a decision not binding on any other county in Virginia. Even though actions of the State are involved, the case, as it comes to us, concerns not a state-wide system but rather a situation unique to Prince Edward County. We hold that the single district judge did not err in adjudicating this present controversy.

(c) It is contended that the case is an action against the State, is forbidden by the Eleventh Amendment, and therefore should be dismissed. The complaint, however, charged that state and county officials were depriving petitioners of rights guaranteed by the Fourteenth Amendment. It has been settled law since *Ex parte Young*, 209 U. S. 123 (1908), that suits against state and county officials to enjoin them from invading constitutional rights are not forbidden by the Eleventh Amendment.

(d) It is argued that the District Court should have abstained from passing on the issues raised here in order to await a determination by the Supreme Court of Appeals of Virginia as to whether the conduct complained

of violated the constitution or laws of Virginia. The Court of Appeals so held, 322 F. 2d 332, and this Court has, in cases deemed appropriate, directed that such a course be followed by a district court or approved its having been followed. *E. g., Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U. S. 496 (1941); *Louisiana Power & Light Co.* v. *City of Thibodaux*, 360 U. S. 25 (1959). But we agree with the dissenting judge in the Court of Appeals, 322 F. 2d, at 344–345, that this is not a case for abstention. In the first place, the Supreme Court of Appeals of Virginia has already passed upon the state law with respect to all the issues here. *County School Board of Prince Edward County* v. *Griffin*, 204 Va. 650, 133 S. E. 2d 565 (1963). But quite independently of this, we hold that the issues here imperatively call for decision now. The case has been delayed since 1951 by resistance at the state and county level, by legislation, and by lawsuits. The original plaintiffs have doubtless all passed high school age. There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in *Brown* v. *Board of Education*, *supra*, had been denied Prince Edward County Negro children. We accordingly reverse the Court of Appeals' judgment remanding the case to the District Court for abstention, and we proceed to the merits.

II.

In *County School Board of Prince Edward County* v. *Griffin*, 204 Va. 650, 133 S. E. 2d 565 (1963), the Supreme Court of Appeals of Virginia upheld as valid under state law the closing of the Prince Edward County public schools, the state and county tuition grants for children who attend private schools, and the county's tax concessions for those who make contributions to private schools. The same opinion also held that each county had "an option to operate or not to operate public

schools." 204 Va., at 671, 133 S. E. 2d, at 580. We accept this case as a definitive and authoritative holding of Virginia law, binding on us, but we cannot accept the Virginia court's further holding, based largely on the Court of Appeals' opinion in this case, 322 F. 2d 332, that closing the county's public schools under the circumstances of the case did not deny the colored school children of Prince Edward County equal protection of the laws guaranteed by the Federal Constitution.

Since 1959, all Virginia counties have had the benefits of public schools but one: Prince Edward. However, there is no rule that counties, as counties, must be treated alike; the Equal Protection Clause relates to equal protection of the laws "between persons as such rather than between areas." *Salsburg* v. *Maryland,* 346 U. S. 545, 551 (1954). Indeed, showing that different persons are treated differently is not enough, without more, to show a denial of equal protection. *Kotch* v. *Board of River Port Pilot Comm'rs,* 330 U. S. 552, 556 (1947). It is the circumstances of each case which govern. *Skinner* v. *Oklahoma ex rel. Williamson,* 316 U. S. 535, 539–540 (1942).

Virginia law, as here applied, unquestionably treats the school children of Prince Edward differently from the way it treats the school children of all other Virginia counties. Prince Edward children must go to a private school or none at all; all other Virginia children can go to public schools. Closing Prince Edward's schools bears more heavily on Negro children in Prince Edward County since white children there have accredited private schools which they can attend, while colored children until very recently have had no available private schools, and even the school they now attend is a temporary expedient. Apart from this expedient, the result is that Prince Edward County school children, if they go to school in their own county, must go to racially segregated schools which, although

designated as private, are beneficiaries of county and state support.

A State, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties, the legislature "having in mind the needs and desires of each." *Salsburg* v. *Maryland, supra,* 346 U. S., at 552. A State may wish to suggest, as Maryland did in *Salsburg,* that there are reasons why one county ought not to be treated like another. 346 U. S., at 553–554. But the record in the present case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with state and county assistance, for one reason, and one reason only: to ensure, through measures taken by the county and the State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional.[12]

In *Hall* v. *St. Helena Parish School Board,* 197 F. Supp. 649 (D. C. E. D. La. 1961), a three-judge District Court invalidated a Louisiana statute which provided "a means by which public schools under desegregation orders may be changed to 'private' schools operated in the same way, in the same buildings, with the same furnishings, with the same money, and under the same supervision as the public schools." *Id.,* at 651. In addition, that statute also provided that where the public schools were "closed," the school board was "charged with responsibility for furnishing free lunches, transportation, and grants-in-aid to the

[12] "But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Brown* v. *Board of Education,* 349 U. S. 294, 300 (1955).

children attending the 'private' schools." *Ibid.* We affirmed the District Court's judgment invalidating the Louisiana statute as a denial of equal protection. 368 U. S. 515 (1962). While the Louisiana plan and the Virginia plan worked in different ways, it is plain that both were created to accomplish the same thing: the perpetuation of racial segregation by closing public schools and operating only segregated schools supported directly or indirectly by state or county funds. See *Cooper* v. *Aaron*, 358 U. S. 1, 17 (1958). Either plan works to deny colored students equal protection of the laws. Accordingly, we agree with the District Court that closing the Prince Edward schools and meanwhile contributing to the support of the private segregated white schools that took their place denied petitioners the equal protection of the laws.

III.

We come now to the question of the kind of decree necessary and appropriate to put an end to the racial discrimination practiced against these petitioners under authority of the Virginia laws. That relief needs to be quick and effective. The parties defendant are the Board of Supervisors, School Board, Treasurer, and Division Superintendent of Schools of Prince Edward County, and the State Board of Education and the State Superintendent of Education. All of these have duties which relate directly or indirectly to the financing, supervision, or operation of the schools in Prince Edward County. The Board of Supervisors has the special responsibility to levy local taxes to operate public schools or to aid children attending the private schools now functioning there for white children. The District Court enjoined the county officials from paying county tuition grants or giving tax exemptions and from processing applications for state tuition grants so long as the county's public schools remained closed. We have no doubt of the power of the

court to give this relief to enforce the discontinuance of the county's racially discriminatory practices. It has long been established that actions against a county can be maintained in United States courts in order to vindicate federally guaranteed rights. *E. g., Lincoln County* v. *Luning,* 133 U. S. 529 (1890); *Kennecott Copper Corp.* v. *State Tax Comm'n,* 327 U. S. 573, 579 (1946). The injunction against paying tuition grants and giving tax credits while public schools remain closed is appropriate and necessary since those grants and tax credits [13] have been essential parts of the county's program, successful thus far, to deprive petitioners of the same advantages of a public school education enjoyed by children in every other part of Virginia. For the same reasons the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia.

The District Court held that "the public schools of Prince Edward County may not be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the Commonwealth of Virginia permits other public schools to remain open at the expense of the taxpayers." *Allen* v. *County School Board of Prince Edward County,* 207 F. Supp. 349, 355 (D. C. E. D. Va. 1962). At the same time the court gave notice that it would later consider an order to accomplish this purpose if the public schools were not reopened by September 7, 1962. That day has long passed, and the schools are still closed. On remand, therefore, the court may find it necessary to consider further such an order. An order of this kind is within the court's power if re-

[13] The county has, since the time of the District Court's decree, repealed its tax credit ordinance.

quired to assure these petitioners that their constitutional rights will no longer be denied them. The time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.

The judgment of the Court of Appeals is reversed, the judgment of the District Court is affirmed, and the cause is remanded to the District Court with directions to enter a decree which will guarantee that these petitioners will get the kind of education that is given in the State's public schools. And, if it becomes necessary to add new parties to accomplish this end, the District Court is free to do so.

It is so ordered.

MR. JUSTICE CLARK and MR. JUSTICE HARLAN disagree with the holding that the federal courts are empowered to order the reopening of the public schools in Prince Edward County, but otherwise join in the Court's opinion.

GREEN ET AL. *v.* COUNTY SCHOOL BOARD OF NEW KENT COUNTY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 695. Argued April 3, 1968.—Decided May 27, 1968.

Respondent School Board maintains two schools, one on the east side and one on the west side of New Kent County, Virginia. About one-half of the county's population are Negroes, who reside throughout the county since there is no residential segregation. Although this Court held in *Brown* v. *Board of Education*, 347 U. S. 483 (*Brown I*), that Virginia's constitutional and statutory provisions requiring racial segregation in schools were unconstitutional, the Board continued segregated operation of the schools, presumably pursuant to Virginia statutes enacted to resist that decision. In 1965, after this suit for injunctive relief against maintenance of allegedly segregated schools was filed, the Board, in order to remain eligible for federal financial aid, adopted a "freedom-of-choice" plan for desegregating the schools. The plan permits students, except those entering the first and eighth grades, to choose annually between the schools; those not choosing are assigned to the school previously attended; first and eighth graders must affirmatively choose a school. The District Court approved the plan, as amended, and the Court of Appeals approved the "freedom-of-choice" provisions although it remanded for a more specific and comprehensive order concerning teachers. During the plan's three years of operation no white student has chosen to attend the all-Negro school, and although 115 Negro pupils enrolled in the formerly all-white school, 85% of the Negro students in the system still attend the all-Negro school. *Held:*

1. In 1955 this Court, in *Brown* v. *Board of Education*, 349 U. S. 294 (*Brown II*), ordered school boards operating dual school systems, part "white" and part "Negro," to "effectuate a transition to a racially nondiscriminatory school system," and it is in light of that command that the effectiveness of the "freedom-of-choice" plan to achieve that end is to be measured. Pp. 435–438.

2. The burden is on a school board to provide a plan that promises realistically to work *now*, and a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is intolerable. Pp. 438–439.

3. A district court's obligation is to assess the effectiveness of the plan in light of the facts at hand and any alternatives which may be feasible and more promising, and to retain jurisdiction until it is clear that state-imposed segregation has been completely removed. P. 439.

4. Where a "freedom-of-choice" plan offers real promise of achieving a unitary, nonracial system there might be no objection to allowing it to prove itself in operation, but where there are reasonably available other ways, such as zoning, promising speedier and more effective conversion to a unitary school system, "freedom of choice" is not acceptable. Pp. 439–441.

5. The New Kent "freedom-of-choice" plan is not acceptable; it has not dismantled the dual system, but has operated simply to burden students and their parents with a responsibility which *Brown II* placed squarely on the School Board. Pp. 441–442.

382 F. 2d 338, vacated in part and remanded.

Samuel W. Tucker and *Jack Greenberg* argued the cause for petitioners. With them on the brief were *James M. Nabrit III*, *Henry L. Marsh III*, and *Michael Meltsner*.

Frederick T. Gray argued the cause for respondents. With him on the brief were *Robert Y. Button*, Attorney General of Virginia, *Robert D. McIlwaine III*, First Assistant Attorney General, and *Walter E. Rogers*.

Louis F. Claiborne argued the cause for the United States, as *amicus curiae*. With him on the brief were *Solicitor General Griswold*, *Assistant Attorney General Pollak*, *Lawrence G. Wallace*, and *Brian K. Landsberg*.

Joseph B. Robison filed a brief for the American Jewish Congress, as *amicus curiae*, urging reversal.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision is whether, under all the circumstances here, respondent School Board's adoption of a "freedom-of-choice" plan which allows a pupil to choose

his own public school constitutes adequate compliance with the Board's responsibility "to achieve a system of determining admission to the public schools on a nonracial basis . . . ." *Brown* v. *Board of Education,* 349 U. S. 294, 300–301 (*Brown II*).

Petitioners brought this action in March 1965 seeking injunctive relief against respondent's continued maintenance of an alleged racially segregated school system. New Kent County is a rural county in Eastern Virginia. About one-half of its population of some 4,500 are Negroes. There is no residential segregation in the county; persons of both races reside throughout. The school system has only two schools, the New Kent school on the east side of the county and the George W. Watkins school on the west side. In a memorandum filed May 17, 1966, the District Court found that the "school system serves approximately 1,300 pupils, of which 740 are Negro and 550 are White. The School Board operates one white combined elementary and high school [New Kent], and one Negro combined elementary and high school [George W. Watkins]. There are no attendance zones. Each school serves the entire county." The record indicates that 21 school buses—11 serving the Watkins school and 10 serving the New Kent school—travel overlapping routes throughout the county to transport pupils to and from the two schools.

The segregated system was initially established and maintained under the compulsion of Virginia constitutional and statutory provisions mandating racial segregation in public education, Va. Const., Art. IX, § 140 (1902); Va. Code § 22–221 (1950). These provisions were held to violate the Federal Constitution in *Davis* v. *County School Board of Prince Edward County,* decided with *Brown* v. *Board of Education,* 347 U. S. 483, 487 (*Brown I*). The respondent School Board continued the segregated operation of the system after the *Brown*

decisions, presumably on the authority of several statutes enacted by Virginia in resistance to those decisions. Some of these statutes were held to be unconstitutional on their face or as applied.[1] One statute, the Pupil Placement Act, Va. Code § 22–232.1 *et seq.* (1964), not repealed until 1966, divested local boards of authority to assign children to particular schools and placed that authority in a State Pupil Placement Board. Under that Act children were each year automatically reassigned to the school previously attended unless upon their application the State Board assigned them to another school; students seeking enrollment for the first time were also assigned at the discretion of the State Board. To September 1964, no Negro pupil had applied for admission to the New Kent school under this statute and no white pupil had applied for admission to the Watkins school.

The School Board initially sought dismissal of this suit on the ground that petitioners had failed to apply to the State Board for assignment to New Kent school. However on August 2, 1965, five months after the suit was brought, respondent School Board, in order to remain eligible for federal financial aid, adopted a "freedom-of-choice" plan for desegregating the schools.[2] Under that

[1] *E. g., Griffin* v. *County School Board of Prince Edward County,* 377 U. S. 218; *Green* v. *School Board of City of Roanoke,* 304 F. 2d 118 (C. A. 4th Cir. 1962); *Adkins* v. *School Board of City of Newport News,* 148 F. Supp. 430 (D. C. E. D. Va.), aff'd, 246 F. 2d 325 (C. A. 4th Cir. 1957); *James* v. *Almond,* 170 F. Supp. 331 (D. C. E. D. Va. 1959); *Harrison* v. *Day,* 200 Va. 439, 106 S. E. 2d 636 (1959).

[2] Congress, concerned with the lack of progress in school desegregation, included provisions in the Civil Rights Act of 1964 to deal with the problem through various agencies of the Federal Government. 78 Stat. 246, 252, 266, 42 U. S. C. §§ 2000c *et seq.,* 2000d *et seq.,* 2000h–2. In Title VI Congress declared that

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied

plan, each pupil, except those entering the first and eighth grades, may annually choose between the New Kent and Watkins schools and pupils not making a choice are assigned to the school previously attended; first and eighth grade pupils must affirmatively choose a school. After the plan was filed the District Court denied petitioners' prayer for an injunction and granted respondent leave to submit an amendment to the plan with respect to employment and assignment of teachers and staff on a racially nondiscriminatory basis. The amendment was duly filed and on June 28, 1966, the District Court approved the "freedom-of-choice" plan as so amended. The Court of Appeals for the Fourth Circuit, *en banc*, 382 F. 2d 338,[3] affirmed the District Court's approval of the "freedom-of-choice" provisions of the plan but remanded the case to the District Court for entry of an order regarding faculty

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the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U. S. C. § 2000d.

The Department of Health, Education, and Welfare issued regulations covering racial discrimination in federally aided school systems, as directed by 42 U. S. C. § 2000d–1, and in a statement of policies, or "guidelines," the Department's Office of Education established standards according to which school systems in the process of desegregation can remain qualified for federal funds. 45 CFR §§ 80.1–80.13, 181.1–181.76 (1967). "Freedom-of-choice" plans are among those considered acceptable, so long as in operation such a plan proves effective. 45 CFR § 181.54. The regulations provide that a school system "subject to a final order of a court of the United States for the desegregation of such school . . . system" with which the system agrees to comply is deemed to be in compliance with the statute and regulations. 45 CFR § 80.4 (c). See also 45 CFR § 181.6. See generally Dunn, Title VI, the Guidelines and School Desegregation in the South, 53 Va. L. Rev. 42 (1967); Note, 55 Geo. L. J. 325 (1966); Comment, 77 Yale L. J. 321 (1967).

[3] This case was decided *per curiam* on the basis of the opinion in *Bowman* v. *County School Board of Charles City County*, 382 F. 2d 326, decided the same day. Certiorari has not been sought for the *Bowman* case itself.

"which is much more specific and more comprehensive" and which would incorporate in addition to a "minimal, objective time table" some of the faculty provisions of the decree entered by the Court of Appeals for the Fifth Circuit in *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, aff'd *en banc*, 380 F. 2d 385 (1967). Judges Sobeloff and Winter concurred with the remand on the teacher issue but otherwise disagreed, expressing the view "that the District Court should be directed . . . also to set up procedures for periodically evaluating the effectiveness of the [Board's] 'freedom of choice' [plan] in the elimination of other features of a segregated school system." *Bowman* v. *County School Board of Charles City County*, 382 F. 2d 326, at 330. We granted certiorari, 389 U. S. 1003.

The pattern of separate "white" and "Negro" schools in the New Kent County school system established under compulsion of state laws is precisely the pattern of segregation to which *Brown I* and *Brown II* were particularly addressed, and which *Brown I* declared unconstitutionally denied Negro school children equal protection of the laws. Racial identification of the system's schools was complete, extending not just to the composition of student bodies at the two schools but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities. In short, the State, acting through the local school board and school officials, organized and operated a dual system, part "white" and part "Negro."

It was such dual systems that 14 years ago *Brown I* held unconstitutional and a year later *Brown II* held must be abolished; school boards operating such school systems were *required* by *Brown II* "to effectuate a transition to a racially nondiscriminatory school system." 349 U. S., at 301. It is of course true that for the time immediately after *Brown II* the concern was with making an initial break in a long-established pattern of excluding

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Negro children from schools attended by white children. The principal focus was on obtaining for those Negro children courageous enough to break with tradition a place in the "white" schools. See, *e. g., Cooper* v. *Aaron,* 358 U. S. 1. Under *Brown II* that immediate goal was only the first step, however. The transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about; it was because of the "complexities arising from the transition to a system of public education freed of racial discrimination" that we provided for "all deliberate speed" in the implementation of the principles of *Brown I.* 349 U. S., at 299–301. Thus we recognized the task would necessarily involve solution of "varied local school problems." *Id.,* at 299. In referring to the "personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis," we also noted that "[t]o effectuate this interest may call for elimination of a variety of obstacles in making the transition . . . ." *Id.,* at 300. Yet we emphasized that the constitutional rights of Negro children required school officials to bear the burden of establishing that additional time to carry out the ruling in an effective manner "is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." *Ibid.* We charged the district courts in their review of particular situations to

> "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." *Id.*, at 300–301.

It is against this background that 13 years after *Brown II* commanded the abolition of dual systems we must measure the effectiveness of respondent School Board's "freedom-of-choice" plan to achieve that end. The School Board contends that it has fully discharged its obligation by adopting a plan by which every student, regardless of race, may "freely" choose the school he will attend. The Board attempts to cast the issue in its broadest form by arguing that its "freedom-of-choice" plan may be faulted only by reading the Fourteenth Amendment as universally requiring "compulsory integration," a reading it insists the wording of the Amendment will not support. But that argument ignores the thrust of *Brown II*. In the light of the command of that case, what is involved here is the question whether the Board has achieved the "racially nondiscriminatory school system" *Brown II* held must be effectuated in order to remedy the established unconstitutional deficiencies of its segregated system. In the context of the state-imposed segregated pattern of long standing, the fact that in 1965 the Board opened the doors of the former "white" school to Negro children and of the "Negro" school to white children merely begins, not ends, our inquiry whether the Board has taken steps adequate to abolish its dual, segregated system. *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to

convert to a unitary system in which racial discrimination would be eliminated root and branch. See *Cooper* v. *Aaron, supra,* at 7; *Bradley* v. *School Board,* 382 U. S. 103; cf. *Watson* v. *City of Memphis,* 373 U. S. 526. The constitutional rights of Negro school children articulated in *Brown I* permit no less than this; and it was to this end that *Brown II* commanded school boards to bend their efforts.[4]

In determining whether respondent School Board met that command by adopting its "freedom-of-choice" plan, it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a "prompt and reasonable start." This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system. Such delays are no longer tolerable, for "the governing constitutional principles no longer bear the imprint of newly enunciated doctrine." *Watson* v. *City of Memphis, supra,* at 529; see *Bradley* v. *School Board, supra; Rogers* v. *Paul,* 382 U. S. 198. Moreover, a plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable. "The time for mere 'deliberate speed' has run out," *Griffin* v. *County School Board,* 377 U. S. 218, 234; "the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered."

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[4] "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States,* 380 U. S. 145, 154. Compare the remedies discussed in, *e. g., NLRB* v. *Newport News Shipbuilding & Dry Dock Co.,* 308 U. S. 241; *United States* v. *Crescent Amusement Co.,* 323 U. S. 173; *Standard Oil Co.* v. *United States,* 221 U. S. 1. See also *Griffin* v. *County School Board,* 377 U. S. 218, 232–234.

Goss v. *Board of Education,* 373 U. S. 683, 689. See *Calhoun* v. *Latimer,* 377 U. S. 263. The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now.*

The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. 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. Of course, the availability to the board of other more promising courses of action may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed. See No. 805, *Raney* v. *Board of Education, post,* at 449.

We do not hold that "freedom of choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather,

all we decide today is that in desegregating a dual system a plan utilizing "freedom of choice" is not an end in itself. As Judge Sobeloff has put it,

> "'Freedom of choice' is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end. The school officials have the continuing duty to take whatever action may be necessary to create a 'unitary, nonracial system.'" *Bowman* v. *County School Board,* 382 F. 2d 326, 333 (C. A. 4th Cir. 1967) (concurring opinion).

Accord, *Kemp* v. *Beasley,* 389 F. 2d 178 (C. A. 8th Cir. 1968); *United States* v. *Jefferson County Board of Education, supra.* Although the general experience under "freedom of choice" to date has been such as to indicate its ineffectiveness as a tool of desegregation,[5] there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a deseg-

[5] The views of the United States Commission on Civil Rights, which we neither adopt nor refuse to adopt, are as follows:

"Freedom of choice plans, which have tended to perpetuate racially identifiable schools in the Southern and border States, require affirmative action by both Negro and white parents and pupils before such disestablishment can be achieved. There are a number of factors which have prevented such affirmative action by substantial numbers of parents and pupils of both races:

"(a) Fear of retaliation and hostility from the white community continue to deter many Negro families from choosing formerly all-white schools;

"(b) During the past school year [1966–1967], as in the previous year, in some areas of the South, Negro families with children attending previously all-white schools under free choice plans were targets of violence, threats of violence and economic reprisal by white persons and Negro children were subjected to harassment by white

regation program to effectuate conversion of a state-imposed dual system to a unitary, nonracial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, "freedom of choice" must be held unacceptable.

The New Kent School Board's "freedom-of-choice" plan cannot be accepted as a sufficient step to "effectuate a transition" to a unitary system. In three years of operation not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent school in 1967 (up from 35 in 1965 and 111 in 1966) 85% of the Negro children in the system still attend the all-Negro Watkins school. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents

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classmates notwithstanding conscientious efforts by many teachers and principals to prevent such misconduct;

"(c) During the past school year, in some areas of the South public officials improperly influenced Negro families to keep their children in Negro schools and excluded Negro children attending formerly all-white schools from official functions;

"(d) Poverty deters many Negro families in the South from choosing formerly all-white schools. Some Negro parents are embarrassed to permit their children to attend such schools without suitable clothing. In some districts special fees are assessed for courses which are available only in the white schools;

"(e) Improvements in facilities and equipment . . . have been instituted in all-Negro schools in some school districts in a manner that tends to discourage Negroes from selecting white schools."

Southern School Desegregation, 1966–1967, at 88 (1967). See *id.*, at 45–69; Survey of School Desegregation in the Southern and Border States 1965–1966, at 30–44, 51–52 (U. S. Comm'n on Civil Rights 1966).

with a responsibility which *Brown II* placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning,[6] fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.

The judgment of the Court of Appeals is vacated insofar as it affirmed the District Court and the case is remanded to the District Court for further proceedings consistent with this opinion.

It is so ordered.

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[6] "In view of the situation found in New Kent County, where there is no residential segregation, the elimination of the dual school system and the establishment of a 'unitary, non-racial system' could be readily achieved with a minimum of administrative difficulty by means of geographic zoning—simply by assigning students living in the eastern half of the county to the New Kent School and those living in the western half of the county to the Watkins School. Although a geographical formula is not universally appropriate, it is evident that here the Board, by separately busing Negro children across the entire county to the 'Negro' school, and the white children to the 'white' school, is deliberately maintaining a segregated system which would vanish with non-racial geographic zoning. The conditions in this county present a classical case for this expedient." *Bowman* v. *County School Board, supra,* n. 3, at 332 (concurring opinion).

Petitioners have also suggested that the Board could consolidate the two schools, one site (*e. g.*, Watkins) serving grades 1–7 and the other (*e. g.*, New Kent) serving grades 8–12, this being the grade division respondent makes between elementary and secondary levels. Petitioners contend this would result in a more efficient system by eliminating costly duplication in this relatively small district while at the same time achieving immediate dismantling of the dual system.

These are two suggestions the District Court should take into account upon remand, along with any other proposed alternatives and in light of considerations respecting other aspects of the school system such as the matter of faculty and staff desegregation remanded to the court by the Court of Appeals.

Syllabus.

RANEY ET AL. *v.* BOARD OF EDUCATION OF THE GOULD SCHOOL DISTRICT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 805. Argued April 3, 1968.—Decided May 27, 1968.

The Gould (Arkansas) School District, which has a population of about 60% Negroes, with no residential segregation, maintains two combination elementary and high schools located about ten blocks apart in the district's only major town. In the 1964–1965 school year the schools were totally segregated. As in *Green* v. *County School Board, ante,* p. 430, the School Board in 1965 adopted a "freedom-of-choice" plan in order to remain eligible for federal financial aid. The plan applies to all school grades and pupils are required to choose annually between the schools; those not choosing are assigned to the school previously attended. No white student has sought to enroll in the all-Negro Field Schools in three years, and although about 85 Negro students were enrolled in the formerly all-white Gould Schools in 1967, over 85% of the Negro pupils still attend the all-Negro Field Schools. In the first year under the plan applications for certain grades at the Gould Schools exceeded available space and applications of 28 Negroes were refused. This action was brought on behalf of some of them for injunctive relief against their being required to attend the Field Schools, the provision of inferior school facilities for Negroes, and respondents' "otherwise operating a racially segregated school system." During the pendency of the case plans were made to replace the high school building at Field Schools. Petitioners sought to enjoin that construction, contending that it should be built at the Gould site to avoid continued segregation. The District Court denied all relief and dismissed the complaint, ruling that since the "freedom-of-choice" plan was adopted without court compulsion, the plan was approved by the Department of Health, Education, and Welfare, and some Negroes had enrolled in the Gould Schools, the plan was not a pretense or a sham. The Court of Appeals affirmed the dismissal, suggesting that the issue of the adequacy of the plan or its implementation was not raised in the District Court. Since construction of the high school at the Field site was nearing completion, petitioners modified their position and urged the Court of Appeals to require conversion of the Gould Schools to a desegregated high school and the Field site to a

desegregated primary school. The Court of Appeals rejected this proposal since it was not presented to the trial court for consideration. *Held:*

1. Since the issue of the adequacy of the "freedom-of-choice" plan was before the District Court in the prayer of the complaint to enjoin respondents' "otherwise operating a racially segregated school system," and the District Court and the Court of Appeals considered the merits of the plan, the question of the adequacy of "freedom of choice" is properly before this Court. P. 447.

2. As in *Green* v. *County School Board, supra,* the school system remains a dual system and the plan is inadequate to convert it to a unitary, nonracial system. P. 447.

3. On remand petitioners may present their proposal for converting one school to a desegregated high school and the other to a desegregated primary school. P. 448.

4. The District Court's dismissal of the complaint was an improper exercise of discretion, and inconsistent with that court's responsibility under *Brown* v. *Board of Education,* 349 U. S. 294, to retain jurisdiction "to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, nonracially operated school system is rapidly and finally achieved." *Kelley* v. *Altheimer,* 378 F. 2d 483, 489. P. 449.

381 F. 2d 252, reversed and remanded.

Jack Greenberg argued the cause for petitioners. With him on the brief were *James M. Nabrit III* and *Michael Meltsner.*

Robert V. Light argued the cause for respondents. With him on the brief was *Herschel H. Friday.*

Louis F. Claiborne argued the cause for the United States, as *amicus curiae.* With him on the brief were *Solicitor General Griswold, Assistant Attorney General Pollak, Lawrence G. Wallace,* and *Brian K. Landsberg.*

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case presents the question of the adequacy of a "freedom-of-choice" plan as compliance with *Brown* v.

Board of Education, 349 U. S. 294 (*Brown II*), a question also considered today in No. 695, *Green* v. *County School Board of New Kent County*, *ante*, p. 430. The factual setting is very similar to that in *Green*.

This action was brought in September 1965 in the District Court for the Eastern District of Arkansas. Injunctive relief was sought against the continued maintenance by respondent Board of Education of an alleged racially segregated school system. The school district has an area of 80 square miles and a population of some 3,000, of whom 1,800 are Negroes and 1,200 are whites. Persons of both races reside throughout the county; there is no residential segregation. The school system consists of two combination elementary and high schools located about 10 blocks apart in Gould, the district's only major town. One combination, the Gould Schools, is almost all white and the other, the Field Schools, is all-Negro. In the 1964–1965 school year the schools were totally segregated; 580 Negro children attended the Field Schools and 300 white children attended the Gould Schools. Faculties and staffs were and are segregated. There are no attendance zones, each school complex providing any necessary bus transportation for its respective pupils.

The state-imposed segregated system existed at the time of the decisions in *Brown* v. *Board of Education*, 347 U. S. 483, 349 U. S. 294. Thereafter racial separation was required by School Board policy. As in *Green*, respondent first took steps in 1965 to abandon that policy to remain eligible for federal financial aid. The Board adopted a "freedom-of-choice" plan embodying the essentials of the plan considered in *Green*. It was made immediately applicable to all grades. Pupils are required to choose annually between the Gould Schools and the Field Schools and those not exercising a choice are assigned to the school previously attended.

The experience after three years of operation with "freedom of choice" has mirrored that in *Green*. Not a single white child has sought to enroll in the all-Negro Field Schools, and although some 80 to 85 Negro children were enrolled in the Gould Schools in 1967, over 85% of the Negro children in the system still attend the all-Negro Field Schools.

This litigation resulted from a problem that arose in the operation of the plan in its first year. The number of children applying for enrollment in the fifth, tenth, and eleventh grades at Gould exceeded the number of places available and applications of 28 Negroes for those grades were refused. This action was thereupon filed on behalf of 16 of these children and others similarly situated. Their complaint sought injunctive relief, among other things, against their being required to attend the Field Schools, against the provision by respondent of public school facilities for Negro pupils inferior to those provided for white pupils, and against respondent's "otherwise operating a racially segregated school system." While the case was pending in the District Court, respondent made plans to replace the high school building at Field Schools. Petitioners sought unsuccessfully to enjoin construction at that site, contending that the new high school should be built at the Gould site to avoid perpetuation of the segregated system. Thereafter the District Court, in an unreported opinion, denied all relief and dismissed the complaint. In the District Court's view the fact that respondent had adopted "freedom of choice" without the compulsion of a court order, that the plan was approved by the Department of Health, Education, and Welfare, and that some Negro pupils had enrolled in the Gould Schools "seems to indicate that this plan is more than a pretense or sham to meet the minimum requirements of the law." In light of this conclusion the District Court held that petitioners were not entitled to the

other relief requested, including an injunction against building the new high school at the Field site. The Court of Appeals for the Eighth Circuit affirmed the dismissal. 381 F. 2d 252. We granted certiorari, 389 U. S. 1034, and set the case for argument following No. 740, *Monroe* v. *Board of Commissioners of the City of Jackson, post,* p. 450.

The Court of Appeals suggested that "no issue on the adequacy of the plan adopted by the Board or its implementation was raised in the District Court. Issues not fairly raised in the District Court cannot ordinarily be considered upon appeal." 381 F. 2d, at 257. Insofar as this refers to the "freedom-of-choice" plan the suggestion is refuted by the record. Not only was the issue embraced by the prayer in petitioners' complaint for an injunction against respondent "otherwise operating a racially segregated school system" but the adequacy of the plan was tried and argued by the parties and decided by the District Court. Moreover, the Court of Appeals went on to consider the merits, holding, in agreement with the District Court, that "we find no substantial evidence to support a finding that the Board was not proceeding to carry out the plan in good faith." *Ibid.*[1] In the circumstances the question of the adequacy of "freedom of choice" is properly before us. On the merits, our decision in *Green* v. *County School Board, supra,* establishes that the plan is inadequate to convert to a unitary, nonracial school system. As in *Green,* "the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with

[1] Compare the developing views of the feasibility of "freedom-of-choice" plans expressed by various panels of the Court of Appeals for the Eighth Circuit in *Kemp* v. *Beasley,* 352 F. 2d 14; *Clark* v. *Board of Education,* 374 F. 2d 569; *Kelley* v. *Altheimer,* 378 F. 2d 483; *Kemp* v. *Beasley,* 389 F. 2d 178; and *Jackson* v. *Marvell School District No. 22,* 389 F. 2d 740.

a responsibility which *Brown II* placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." *Id.*, at 441–442.

The petitioners did not press in the Court of Appeals their appeal from the denial of their prayer to have the new high school facilities constructed at the Gould Schools site rather than at the Field Schools site. Due to the illness of the court reporter there was delay in the filing of the transcript of the proceedings in the District Court and meanwhile the construction at the Field Schools site was substantially completed. Petitioners therefore modified their position and urged in the Court of Appeals that respondent be required to convert the Gould Schools to a completely desegregated high school and the Field site to a completely desegregated primary school. The Court of Appeals rejected the proposition on the ground that it "was not presented to the trial court and no opportunity was afforded the parties to offer evidence on the feasibility of such a plan, nor was the trial court given any opportunity to pass thereon." 381 F. 2d, at 254. Since there must be a remand, petitioners are not foreclosed from making their proposal an issue in the further proceedings.[2]

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[2] The Court of Appeals, while denying petitioners' request for relief on appeal, did observe that

"there is no showing that the Field facilities with the new construction added could not be converted at a reasonable cost into a completely integrated grade school or into a completely integrated high school when the appropriate time for such course arrives. We note that the building now occupied by the predominantly white Gould grade school had originally been built to house the Gould High School." 381 F. 2d, at 255.

Finally, we hold that in the circumstances of this case, the District Court's dismissal of the complaint was an improper exercise of discretion. Dismissal will ordinarily be inconsistent with the responsibility imposed on the district courts by *Brown II*. 349 U. S., at 299–301. In light of the complexities inhering in the disestablishment of state-established segregated school systems, *Brown II* contemplated that the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved. We agree with the observation of another panel of judges of the Court of Appeals for the Eighth Circuit in another case that the district courts "should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, non-racially operated school system is rapidly and finally achieved." *Kelley* v. *Altheimer,* 378 F. 2d 483, 489. See also *Kemp* v. *Beasley,* 389 F. 2d 178.

The judgment of the Court of Appeals is reversed and the case is remanded to the District Court for further proceedings consistent with this opinion and with our opinion in *Green* v. *County School Board, supra.*

It is so ordered.