

1 NATIONAL LAWYERS GUILD
2 LOS ANGELES CHAPTER

3 By CHARLES F. CHRISTOPHER
4 8463 1/2 South Vermont Avenue
5 Los Angeles 44, California.

6 AMERICAN CIVIL LIBERTIES UNION
7 SOUTHERN CALIFORNIA BRANCH

8 By A. L. WIRIN
9 257 South Spring Street
10 Los Angeles 12, California

11 Attorneys Amici Curiae

12 IN THE DISTRICT COURT OF THE UNITED STATES

13 SOUTHERN DISTRICT OF CALIFORNIA

14 CENTRAL DIVISION

15 GONZOLO MENDEZ, et al,

16 Plaintiff,

17 vs.

18 WESTMINSTER SCHOOL DISTRICT
19 OF ORANGE COUNTY, et al.,

20 Defendants.

21 No. 4292 M

22 REPLY BRIEF OF

23 NATIONAL LAWYERS GUILD, AND

24 AMERICAN CIVIL LIBERTIES UNION,

25 AMICI CURIAE

26 I

27 THE QUESTION OF JURISDICTION OF THE FEDERAL COURT IS
28 A DISTINCT ISSUE FROM THE QUESTION OF FACT RAISED BY THE PLEADINGS
29 AND EVIDENCE.

30 A. Defendants reply brief has raised both questions in
31 their discussion and citations, whereas the two should
32 be discussed separately.

1. The question of jurisdiction is primarily dependent
upon the pleadings. The pleadings in this case
are sufficient to support the jurisdiction, and no-
where do the defendants show wherein the pleadings
are specifically deficient.

2. The question of the sufficiency of the pleadings
was raised prior to the trial, and was decided

HILLED

OCT 25 1945

EDMUND L. SMITH, Clerk
By *John A. Childress*
Deputy Clerk

1 adversely to the defendants.

2 3. Whether the evidence supports the pleadings is a
3 question of fact to be decided by the Court.
4 Petitioners' opening brief and the evidence cited
5 therein, as well as the other evidence adequately
6 portrays petitioners position, and supports the
7 granting of the full relief prayed for by plaintiffs.

8 4. The case of Cummings v. Richmond Board of Education,
9 175 U.S. 528, cited by defendants, did not turn
10 on the question of jurisdiction. In the quotation
11 cited by defendants the following is stated"...
12 and any interference on the part of Federal Author-
13 ity with the management of such schools cannot be
14 justified except in the case of a clear and unmis-
15 takable disregard of rights secured by the supreme
16 law of the land." (emphasis added)

17 In the same case Justice Harlan stated at page
18 545 as follows: "If, in some appropriate proceeding
19 instituted directly for that purpose, the plaintiff
20 had sought to compel the Board of Education, out
21 of the funds in its hands or under its control, to
22 establish and maintain a high school for colored
23 children, and if it appeared that the Board's
24 refusal to maintain such a school was in fact an
25 abuse of its discretion, and in hostility to the
26 colored population because of their race, different
27 questions might have arisen in the State Court."

28 5. Defendants are relying upon the cases based upon
29 the racial issue to show that the Supreme Court
30 has permitted segregation in the public schools.
31 All the cases cited by defendants which permit
32 segregation are based on the reasonableness of the

1 segregation because separate races were involved,
2 principally the Negro race. The unfortunate case
3 of Plessy v. Ferguson, 163 U.S. 537, is relied
4 upon strongly by defendants. The basis of that
5 decision is stated at page 544 that the amendment
6 "...could not have been intended to arbitrate
7 distinctions based upon color, or to enforce
8 social as distinguished from political equality,
9 or a commingling of the two races upon terms
10 unsatisfactory to either". The strong dissent
11 of Justice Harlan is prophetic in viewing the
12 harm which would result from that decision.
13 The following quotation from Justice Harlan's
14 opinion at page 554 is appropriate; "...But I
15 deny that any Legislative body or judicial tri-
16 bunal may have regard to the race of citizens
17 when the civil rights of those citizens are
18 involved. Indeed such legislation as that herein
19 questioned is inconsistent not only with
20 that equality of rights which pertains to citizen-
21 ship, National and State, but with the personal
22 liberty enjoyed by everyone within the United
23 States."

24 6. Defendants cite People v. Gallagher, 93 N.Y.
25 438, in support of their position on the question
26 of jurisdiction. However, this case seems to
27 follow the theory of the Plessy case that there
28 should be no interference or regulation of the
29 social standing of the citizens, and is based
30 upon segregation of the negro race. In the
31 last part of the quotation cited by defendants
32 on page 5 of their brief the following is included;

1 "..how can it be argued that they have not the
2 power, in the best interests of education, to
3 cause different races and nationalities, whose
4 requirements are manifestly different, to be
5 educated at separate places?" Here the defendants
6 are citing a case which can be used to support the
7 plaintiffs' position in that the best interests of
8 education must be served by the School Boards.
9 ~~If~~ the defendants are relying upon the rule that
10 they may segregate upon the basis of national
11 backgrounds or race they have failed to use that
12 as a defense, but have relied upon the theory
13 that the separation of citizens in the various
14 schools was based upon the language handicap of
15 the pupils. Since the evidence failed to support
16 their position they now seem to be falling upon the
17 defense that the school boards ^{may}/make any segregation
18 based upon race or national backgrounds.

19 In Cory v. Carter, 48 Ind. 327, cited by the defen-
20 dants the Court again states "convenience and
21 good policy" are the grounds upon which classifi-
22 cation will be permitted. The plaintiffs' evidence
23 and especially that testimony given by the expert
24 witnesses is clear that from the social, educa-
25 tional and democratic viewpoints segregation of
26 children based upon their Mexican ancestry, and
27 even their alleged language handicap is bad both
28 for the pupils and for the community.

29 7. General jurisdiction in this case is amply
30 supported by the citations in the opening brief
31 of the petitioner and amici curiae.
32

1 The case of Hague v. C.I.O. 307 U.S. 496,
2 cited on page 5 of said brief discusses the question
3 of general jurisdiction, and the attention of the
4 Court is again directed to that case.

5 B. The action of the defendants is state action under
6 the Fourteenth Amendment.

7 1. Defendants attempt to avoid jurisdiction by relying
8 upon a rule that defendants' acts were acts of indivi-
9 duals, and not acts of the state. Snowden v. Hughes
10 132 Federal 2nd 476, is cited to the effect that the
11 Fourteenth Amendment protects only against/^{acts}of States.
12 This doctrine is not being questioned herein. The
13 recent case of Screws v. United States 89 L. Ed.
14 (Adv. Op) 1029, 1945, cited in the brief of amici
15 curiae on page 9 is the most recent discussion of this
16 question. Therein the words "under color of any law"
17 were interpreted to include acts of officers of the
18 State, a Sheriff, a policeman, and a special deputy in
19 flogging a negro prisoner to death while taking him
20 to jail. In that case the defense was raised that
21 the defendants had violated the State law, and there-
22 fore their actions were not acts of the State.
23 Justice Rutledge at page 1043 answered this contention
24 as follows: "...The Amendment and the legislation
25 were not aimed at rightful state action. Abuse of state
26 power was the target. Limits were put to state author-
27 ity, and states were forbidden to pass them, by what-
28 ever agency."
29 The other cases cited in the case of amici curiae
30 show that any actions by creatures of the state such
31 as municipal officers, County officers and Boards of
32 Education are included under the protection of the

1 Fourteenth Amendment.

2 C. The acts of the school districts are acts of the
3 state within the meaning of the Fourteenth Amendment.

4 1. Defendants claim that the school districts involved
5 herein are mere administrative agencies, and their
6 acts are not actions which can be considered State
7 actions. However, at other points in their brief
8 they maintain that the various school districts had
9 discretion to set up the various school districts,
10 to transfer pupils, and in other matters concerning
11 the local school districts. The authority of the
12 school boards is derived from the State Code of
13 Education, and therefore the acts of the school
14 districts are acts of the state under the case of
15 Screws v. United States, 89 L. Ed. (Adv. Op.) 1029
16 (1945).

17 II.

18 JURISDICTION ONCE HAVING BEEN ESTABLISHED, THE
19 ISSUE WOULD THEN BE ONE OF FACT WHETHER THE SEGREGATION
20 AS PRACTICED IN THE VARIOUS SCHOOL DISTRICTS WAS THE
21 RESULT OF CLASS PREJUDICE, OR WHETHER IT WAS BASED
22 UPON SOME REASONABLE GROUNDS.

23 A. The classification was arbitrary and based upon
24 prejudice.

25 1 The evidence and the testimony of the experts produced
26 by plaintiffs establish the validity of this assertion.
27 The claim of defendants that the petitioners received
28 exactly the same privileges as other children was
29 proved false at the trial. The testimony of the
30 defendants' experts was to the effect that the children
31 of Mexican descent were handicapped from the social and
32 democratic viewpoint as well as the educational standpoint

1 by the mere fact of segregation, and therefore the
2 education they received was not of the same quality
3 as that of the other children. The testimony of the
4 defendants themselves was to the effect that the
5 children of Mexican descent were retarded throughout
6 their school career which is further proof of the
7 contention of the plaintiffs.

8 III.

9 THE FEDERAL COURT HAVING JURISDICTION MAY DECIDE
10 THE CASE UPON THE BASIS OF THE STATE LAW.

- 11 1. The defendants did not dispute the rule that juris-
12 diction having been acquired the Federal Court may
13 proceed to a complete adjudication, although only
14 matters of State or general law may be involved.
15 (See the citations on page 12 of ^{brief of} Amici Curiae)

16 In fact, the Court need not determine the Federal
17 issues, but may base the decision upon State law.
18 Thus, if as contended by defendants, the acts of the
19 school districts are not acts of the State, then
20 said acts may be in violation of State law as ad-
21 mitted in defendants' brief. See page 10 thereof,
22 lines 18-26. If the acts are in violation of State
23 law the Court can give full relief. Greene v. Louis
24 and Interurban R.R. Co., U.S. 499 at page 508.

25 Under the State education code Section 8003, there
26 is set out the type of schools that may be set up
27 as separate schools, and defendants do not attempt
28 to claim that they are authorized by any State law
29 to set up a separate school for children of Mexican
30 descent, or a separate school based upon a supposed
31 language handicap of children of Mexican descent.

32

1 If the proposition were asked boldly whether the
2 school boards can permit separate schools to be
3 set up based upon national descent the answer would
4 be self evident to be No.

5 IV.

6 Defendants admit in their brief that good faith in
7 the classification as well as the requirement that the classifi-
8 cation be reasonable is required, however, petitioners' opening
9 brief points out the great weight of the testimony which is
10 to the effect that there was no good faith, and that the classi-
11 fication was not reasonable. The defendants in the pleadings
12 attempt to place classification upon a supposed language handicap,
13 whereas the true motive was expressed by several witnesses for
14 the defendants to be a social policy of separating other children
15 from those of Mexican descent, on some supposed theory of infer-
16 iority of children of Mexican descent.

17 CONCLUSION

18 The pleadings and evidence are ample to support juris-
19 diction based upon a violation of petitioners' rights under the
20 Fourteenth Amendment. Once having acquired jurisdiction the
21 Court may determine the case upon State law alone, upon Federal
22 law alone, or upon both. From the recent rulings of the Supreme
23 Court of the United States it is clear that the acts of the school
24 boards are acts of the State under the Fourteenth Amendment. Class
25 suits have been permitted in the past in situations similar to
26 that herein, and adequate relief can be granted, and should be
27 granted to petitioners.

28 NATIONAL LAWYERS GUILD,
29 LOS ANGELES CHAPTER
30 AMERICAN CIVIL LIBERTIES UNION
31 SOUTHERN CALIFORNIA BRANCH

32 BY

Charles F. Christopher

Amici Curiae.

IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

(NATURE OF PLEADING)

REPLY BRIEF OF NATIONAL
LAWYERS GUILD, and
AMERICAN CIVIL LIBERTIES
UNION, AMICI CURIAE

In the Matter of

NO. 4292 M

(FOR CLERK'S FILING STAMP)

GONZOLO MENDEZ, et al,

vs.

WESTMINSTER SCHOOL DISTRICT

OF ORANGE COUNTY, et al,

NATIONAL LAWYERS GUILD
LOS ANGELES CHAPTER
By CHARLES F. CHRISTOPHER
AMERICAN CIVIL LIBERTIES UNION
SOUTHERN CALIFORNIA BRANCH
By A. L. WIRIN

Attorneys Amici Curiae

RECEIVED COPY OF THE WITHIN _____ THIS _____ DAY OF _____ 19____

ATTORNEY FOR _____

RECEIVED COPY OF THE WITHIN _____ THIS _____ DAY OF _____ 19____

ATTORNEY FOR _____

AFFIDAVIT OF SERVICE BY MAIL—(1013a, C. C. P.)

STATE OF CALIFORNIA,
COUNTY OF Los Angeles } ss.

Mabel Myer

, being first duly sworn, says: That affiant, whose address is

8463 1/2 South Vermont Ave., is a citizen of the United States, a resident of the county where the herein described mailing took place; over the age of 18 years and not a party to the above entitled action;

That affiant served the attached REPLY BRIEF OF NATIONAL LAWYERS GUILD, AND AMERICAN CIVIL LIBERTIES UNION: AMICI CURIAE

(copy title of paper served)

both on the attorneys for plaintiff and defendants in said action, by placing a true copy thereof in an envelope addressed as follows:

David C. Marcus (name of party served) 415 Spring & Second Bldg. Los Angeles, Calif.
JOEL E. OGLE and George F. Holden 318 Hall of Records Santa Ana, California.
(Name and address as shown on the envelope)

sealed and deposited on the 24th day of October, 1945, in the United States Mail at

Los Angeles, Los Angeles County (place of mailing, name of county)

with postage fully prepaid thereon, and that there is regular communication by mail between the place of mailing and the place so addressed.

Subscribed and sworn to before me this 24th

day of October, 1945

Charles F. Christopher

Mabel Myer

Notary Public in and for the County of Los Angeles, State of Calif. (SEAL)