

Opinion of the Court.

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

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS.

No. 8. November 24, 1952.

This is an appeal from a decision of the District Court sustaining the constitutionality of a state statute which authorized racial segregation in the public schools of Kansas. In the District Court the State intervened and defended the constitutionality of the statute; but neither the State, nor any of the other appellees, has entered an appearance or filed a brief here. Because of the importance of the issue, this Court requests that the State present its views at the oral argument. If the State does not desire to appear, the Attorney General of the State is requested to advise this Court whether the State's default shall be construed as a concession of the invalidity of the statute. Pp. 141-142.

The decision below is reported in 98 F. Supp. 797.

Robert L. Carter, Thurgood Marshall, Spottswood W. Robinson, III, George E. C. Hayes, George M. Johnson, William R. Ming, Jr., James M. Nabrit, Jr. and Frank D. Reeves for appellants.

PER CURIAM.

This action was instituted by the appellants attacking a Kansas statute which authorized segregation in the schools of that State. It was urged that the State of Kansas was without power to enact such legislation, claimed by appellants to be in contravention of the Fourteenth Amendment.

In the District Court, the State, by its Governor and Attorney General, intervened and defended the constitutionality of the statute. The court upheld its validity.

In this Court, the appellants continue their constitutional attack. No appearance has been entered here by

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the State of Kansas, the Board of Education of Topeka, and the other appellees; nor have they presented any brief in support of the statute's validity. The Court has been advised by counsel for the Board of Education that it does not propose to appear in oral argument or present a brief.

Because of the national importance of the issue presented and because of its importance to the State of Kansas, we request that the State present its views at oral argument. If the State does not desire to appear, we request the Attorney General to advise whether the State's default shall be construed as a concession of invalidity.