No. 72-1377

In the Supreme Court of the United States

OCTOBER TERM, 1972

THE METROPOLITAN SCHOOL DISTRICT OF LAWRENCE TOWNSHIP, MARION COUNTY, INDIANA, ET AL., PETITIONERS

v.

THE HONORABLE S. HUGH DILLIN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. A-4) and of the district court (Pet. App. A-1) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 2, 1973. The petition for a writ of certiorari was filed on April 12, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a three-judge district court has jurisdiction over a suit to enjoin a state statute which applies only to one city in the State.

STATUTES INVOLVED

The federal jurisdictional statute, 28 U.S.C. 2281, is set forth at Pet. App. A-47. The pertinent portions of the relevant state statutes, Burns Indiana Stat. §§28-3612 to 28-3618 (1970 Replacement), 48-1201 (1963 Replacement), and 48-9213 (1972 Cum. Supp.), are set forth in the Appendix, *infra*.

STATEMENT

The Indianapolis school desegregation suit out of which this petition arises was instituted by the United States in 1968, pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6.[1] After lengthy trial proceedings, the single-judge district court (332 F. Supp. 655; Pet. App. A-5 to A-30) found discrimination in assignment of students by the defendants,[2] enjoined further racial discrimination in the operation of

[1] Review in this Court has also been sought with respect to several other aspects of this litigation. See *School Town of Speedway* v. *Dillin*, certiorari denied, 407 U.S. 920; *Citizens of Indianapolis for Quality Schools* v. *United States*, No. 72-710, certiorari denied, January 22, 1973; *Sendak* v. *Dillin*, No. 72-1418, petition for a writ of certiorari pending; *Board of School Commissioners of City of Indianapolis* v. *United States*, No. 72-1450, petition for a writ of certiorari pending.

[2] The defendants in the original litigation were the Board of School Commissioners of Indianapolis, Indiana, the members of that Board, and its appointed Superintendent of Schools. On the basis of stipulations made by the defendants prior to trial, the district court had earlier also found discrimination in the assignment of faculty.

the Indianapolis school system, and ordered the defendants to take specified interim steps "to fulfill their affirmative duty to achieve a nondiscriminatory school system" (Pet. App. A-29).[3] In its opinion, the district court stated that certain further legal questions should be resolved prior to entry of a final desegregation order, and the court directed the United States to prepare and file pleadings to secure the joinder of additional municipal and school corporations as parties defendant (Pet. App. A-28 to A-29). The new defendants, including several of the petitioners, were added by an order entered on September 7, 1971. Subsequently, two black students in the Indianapolis public schools filed a motion to intervene as plaintiffs together with a class action complaint in intervention. The complaint in intervention, as amended on October 21, 1971 (Pet. App. A-31 to A-39), was directed against all of the petitioners herein as well as the original defendants and several additional state and local school authorities.

The amended complaint in intervention alleged that certain Indiana statutes providing for the governmental organization of the City of Indianapolis withheld public school administration from the control of the consolidated metropolitan government in order to perpetuate unlawful racial segregation (Pet. App. A-35 to A-36). The intervenors requested declaratory and injunctive relief, asking the court to declare the statutes unconstitutional "insofar as they effect racially separate public schools and school systems in Marion County and the Indianapolis metropolitan area" (Pet. App. A-37) and to order the defendants "to take forthwith all steps reasonably

[3] The court of appeals affirmed. 474 F. 2d 81. See the petition for a writ of certiorari in No. 72-1450, referred to in note 1, *supra*.

necessary to secure to plaintiff-intervenors their right to attend racially nonsegregated and nondiscriminatory schools and school systems" (Pet. App. A-37 to A-38). The intervenors further requested that the defendants be ordered to prepare and submit a plan providing generally for the nondiscriminatory operation of the local public schools.

Petitioners thereupon requested the district court to certify the intervenors' amended complaint as appropriate for determination by a three-judge district court pursuant to 28 U.S.C. 2281. Petitioners' motions were denied by the respondent district judge on January 3, 1973, on the ground that the state statutes challenged by the intervenors were of purely local application (Pet. App. A-1 to A-3). An application to the court of appeals for a writ of mandamus or prohibition to compel the convening of a three-judge court was denied on April 2, 1973 (Pet. App. A-4).[4]

ARGUMENT

1. The state statutes challenged by the intervenors (see Pet. App. A-35 to A-36; App., *infra,* pp. 7-8) apply by their terms only to "cities of the first class," *i.e.* cities with populations of 250,000 or more as determined by the most recent United States census. Burns Indiana Stat. §48-1201 (1963 Replacement) (App., *infra,* p. 8). Indianapolis is the only such city in Indiana. See U.S. Bureau of the Census, *Census of Population: 1970, General Social and Economic Characteristics,* Final Report PC(1)-C16 Indiana, Table 40,

[4] The issues raised by the amended complaint remain to be litigated below in proceedings scheduled to commence on June 11, 1973.

p. 16-225. Thus these statutes apply only to the City of Indianapolis and therefore are of purely local operation and effect. See *Chavis* v. *Whitcomb,* 305 F. Supp. 1359, 1361-1362 (S.D. Ind.). Cf. *Bradley* v. *Milliken,* 433 F. 2d 897, 900 n. 2 (C.A. 6).

It is well established that a three-judge district court has no jurisdiction over suits to enjoin state statutes of purely local operation and effect: "a single judge, not a three-judge court, must hear the case where the statute or regulation is of only local import." *Board of Regents* v. *New Left Education Project,* 404 U.S. 541, 542. See, also, *Moody* v. *Flowers,* 387 U.S. 97; *Griffin* v. *County School Board,* 377 U.S. 218; *Rorick* v. *Board of Commissioners,* 307 U.S. 208. Thus the district court correctly denied petitioners' request for a three-judge court.

2. Petitioners, however, contend that the amended complaint, by implication, also challenges the constitutionality of statutes having statewide application. But as the district court correctly observed, "no such allegations, explicit or implicit, are contained in the complaint" (Pet. App. A-3). Jurisdictional determinations under 28 U.S.C. 2281 are made on the basis of the stated allegations of the complaint; the district court was not required to investigate "the niceties of the relationship between the provisions" (*Moody* v. *Flowers, supra,* 387 U.S. at 104) of Indiana school law. See, also, *Calloway* v. *Briggs,* 443 F. 2d 296, 298 (C.A. 6); *Tyler* v. *Russel,* 410 F. 2d 490 (C.A. 10); *Parker* v. *Tangipahoa Parish School Board,* 299 F. Supp. 421, 422 (E.D. La.).

Relief against unlawful state-imposed segregation often may impinge incidentally upon the operation of general state statutes in the locality involved, but this does not

warrant the convening of a three-judge court. Here, the relief prayed for by the amended complaint is limited to the Indianapolis metropolitan area. There will be adequate opportunity to convene a three-judge court in the future should subsequent pleadings explicitly attack the validity of state statutes of general application.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1973.

APPENDIX

Section 9a of ch. 186 of the Acts of 1961, as added by Section 3 of ch. 52 of the Acts of 1969 (Burns Indiana Stat. §28-3618 (1970 Replacement)) provides in pertinent part:

> Notwithstanding any act which provides in substance that the boundaries of [the jurisdiction of] any school [corporation] * * * are coterminous or coextensive with the boundaries of any civil city or civil town, the boundaries of [the jurisdiction of a school corporation located in a county containing a civil city of the first class] * * * shall be changed * * * solely by an annexation in accordance with the terms of this act * * *.

Sections 3, 4 and 8 of ch. 186 of the Acts of 1961 (Burns Indiana Stat. §§28-3612, 28-3613, and 28-3617 (1970 Replacement)) provide in pertinent part:

> An annexation may be effected by any school corporation as follows:
>
> (a) Both the acquiring and the losing school corporations shall each adopt a substantially identical annexation resolution. * * *
>
> * * * * *
>
> An annexation may also be effected by any school [corporation] as follows:
>
> (a) The acquiring school corporation shall adopt an annexation resolution * * *. * * *
>
> (b) * * * The annexation shall take effect * * * unless [a] * * * remonstrance * * * is filed in the circuit or superior court * * *.
>
> * * * * *

> In the event any remonstrance is filed * * * annexation shall not become effective until final judgment in the remonstrance suit.

Section 1, ch. 233, of the Acts of 1933, as amended (Burns Indiana Stat. §48-1201 (1963 Replacement)) provides in pertinent part:

> * * * Cities having a population of two hundred fifty thousand or over, according to the last preceding United States census, shall be denominated cities of the first class.

Section 314, ch. 173, of the Acts of 1969 (Burns Indiana Stat. §48-9213 (1972 Cum. Supp.)) provides in pertinent part:

> At the time all or substantially all of the power and duties of any agency, board or commission of a first class city are transferred under the terms of this act to any departments, special taxing districts or special service districts of the consolidated city, such agency, board or commission of the first class city shall be abolished. * * *
>
> All other municipal corporations, boards, agencies and commissions * * * shall not be affected by this act * * *. * * * [S]uch municipal corporations * * * shall include * * * any school corporation * * *.