No. ________

In The

Supreme Court of the United States

BROWN V. BOARD OF EDUCATION OF TOPEKA,

IN RE NATHANIEL BRIGGS,
BEATRICE BROWN RIVERS AND
ETHEL BROWN MARSHALL

On Petition For Writ Of Mandamus
To The Supreme Court
Of The United States

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

When the case that ultimately became known as *Brown v. Board of Education*, 347 U.S. 483 (1954) was originally brought before this Court on a writ of certiorari it was to consolidate cases relating to unconstitutional racial segregation of public education. These cases emerged from several states and Washington, D.C.

The naming of the consolidated cases failed to recognize the first case filed; the South Carolina case *Briggs v. Elliott*. The plaintiffs in *Briggs* filed first in United States District Court, filed first in the United States Supreme Court, and brought the case that was argued by the Honorable Thurgood Marshall based upon the dissent in the South Carolina case. After its original filing, the *Briggs* case was remanded to the District Court for an additional examination. When the petitioners returned to this Court, the Clerk inadvertently docketed the *Briggs* case after *Brown* instead of placing it back as the first case filed. This inadvertent clerical misstep deprived the petitioners their rightful place in history in spite of the great physical, emotional, and financial risks taken by each petitioner. The petitioners request that their place in history be restored by the simple act of reordering the petitioners to the just and accurate place.

The question presented is whether a writ of mandamus should direct the Clerk of the United States Supreme Court to reissue the *Brown v. Board* with the proper case listed first: *Briggs v. Elliott*.

PARTIES TO THE PROCEEDING

Petitioner Nathaniel Briggs was the son of Harry Briggs who signed the petition for himself and five children; Beatrice Brown Rivers and Ethel Brown Marshall signed the original petition.

RELATED CASES

Briggs v. Elliott, 98 F. Supp. 529 (E.D.S.C.1951)

Briggs v. Elliott, 342 U.S. 350, 72 S.Ct. 327 (1952)

Briggs v. Elliott, 103 F. Supp. 920 (E.D.S.C. 1952)

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BRIEF FOR PETITIONERS

OPINIONS BELOW

This Court's decision in *Brown v. Board of Education of Topeka*, 347 U.S. 483, consolidating the cases of *Harry Briggs, Jr., et al., Appellants v. R. W. Elliott, et al.* on Appeal from the United States District Court for the Eastern District of South Carolina;

Oliver Brown, et al., Appellants v. Board of Education of Topeka, Shawnee County Kansas, et al. on Appeal from the United States District Court for the District of Kansas;

Dorothy E. Davis, et al., Appellants 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; and,

Francis B. Gebhart, et al., Petitioners v. Ethel Louise Belton, et al. on Writ of Certiorari to the Supreme Court of Delaware.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1651 and 2241.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT OF THE CASE & PROCEDURAL HISTORY

This case presents an important question and recognition of the courageous acts of the *Briggs* petitioners in the first case filed in the consolidated cases that would become *Brown v. Board of Education*. In

the sweltering heat of segregation in the South, families assembled to sign a petition challenging the egregiously unfair education system. For some, signing was tantamount to a death sentence. This valiant act would strike a match that would lead the civil rights movement across the country and cost these heroic families their physical, emotional, and economic security.

The petitioners in *Briggs* faced unimaginable physical and financial terror as a result of their participation in the case. Petitioners and supporters faced horrible deaths, others faced economic terror, and still others confronted unspeakable emotional and physical threats. In the suffocating adversity and legitimate discontent for their children's education, the *Briggs* petitioners stood for righteous relief in the presence of bitter hatred that cost many of them their lives and small economic fortunes.

History is calling upon the nation to recognize the great sacrifice these families made in the face of great danger. They stood bravely for a fundamental principle and insisted upon the change in the right and proper forum. To fail to recognize these courageous acts is not just to misappropriate their rightful place in history but to also fail to raise awareness that our government was established and provides the means to address meaningful issues in proper forums through rightful processes. To subordinate these courageous Americans is to deny the very significance of our jurisprudence as the fair and blind system that provides a path for meaningful redress of inequities rather than through less legitimate means. Being first sometimes matters;

in this case it mattered in the face of life and death. Now more than ever we need a clear signal that those who attempt to redress inequities through the judicial process can expect to receive thoughtful and fair consideration.

As the record reflects, several facts along with an apparent bureaucratic misnumbering of the appeal – rather than reviving the initial *Briggs* appeal – diminished the rightful place in history of these courageous families. *Briggs v. Elliott* was the first case filed in federal district court; *Briggs* was the first case appealed to this court; *Briggs* was argued by Thurgood Marshall; and the dissenting opinion written by U.S. District Court Justice Waties Waring became the basis of the ultimate decision of the court.

In 1951, the case of *Briggs v. Elliott* was brought before a three-judge-panel in the Eastern District Court of South Carolina.

A. First Proceedings in the District Court

Briggs v. Elliott was brought before the U.S. District Court in 1951. There the plaintiffs challenged (1) that the schools and educational facilities for black children in school district No. 22 in Clarendon County were inferior to those provided for the white children which amounted to the denial of equal protection of the laws guaranteed to them by the fourteenth amendment and (2) that Article 11 § 7 of the Constitution of South Carolina and § 5377 of the Code of Laws of South Carolina, which required the

segregation of black and white children in public schools, were themselves violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution. Ultimately, the three-judge-panel, which included Judge Waties Waring, granted the injunction to equalize the educational facilities for black children in Clarendon County but denied the plaintiff's request for an injunction abolishing segregation since there was no legal precedent for such a decision. In granting the injunction for equalization, the court ordered the county to create a report within six months describing the action taken to equalize the schools.

B. First Proceedings in the Supreme Court

The Plaintiffs appealed the district court's decision regarding the denial of the injunction that would abolish segregation. However, in the seven months the appeal was pending in this Court, two things happened: (1) the six-month period given to the Clarendon County School District expired, and they sent their report to the District Court; and (2) *Brown v. Board of Education* was decided by the District Court of Kansas. As such, the defendants filed their report on the status of equalization of the schools, and on January 28th, 1952, this Court remanded the case – without hearing arguments or ruling on the constitutional issues – back to the district court and vacated the district court's original decree so the district court could make a new ruling based on the report from the defendants. However, Justice Black and Justice Douglas dissented to

the remand on the grounds that the additional facts in the report were "wholly irrelevant to the constitutional questions presented by the appeal to this Court." 342 U.S. 350. The plaintiffs maintained their argument that the law requiring segregation must be abolished. The outcome remained the same. Again, the court granted the injunction directing the equalization of educational facilities, and the injunction abolishing segregation was denied.

Meanwhile, in 1952 this Court announced it would hear oral arguments for another education discrimination case on appeal: *Brown v. Board of Education*. Unlike *Briggs*, which arose in the deep south, *Brown* was a case out of Topeka, Kansas.

C. Second Proceedings on remand to the District Court

Thus, the plaintiffs of *Briggs* were back in District Court, where on March 13th, 1952, the judges again ruled that segregated schools were not inherently unequal, and the plaintiffs, again, appealed their case to this Court. When the petitioners appealed the case back to this Court, the Clerk docketed the case after the *Brown* appeal instead of placing it back as the first case to be filed. The final decision appears to involve the mis-docketed appeal number with *Brown* listed first, *Briggs* next, and new docket numbers for the other consolidated cases added.

D. Second Proceedings in the Supreme Court

On October 8th, 1952, while *Briggs* was on appeal, this Court consolidated four school desegregation cases from across the country – some of which had yet to be heard by district courts – and caused all four cases to be held up for almost two years.

E. Third Proceedings in the Supreme Court

Finally on May 17th, 1954, after two years on appeal, the plaintiffs of *Briggs v. Elliott* had their day in court, and this Court held racial discrimination in public education is unconstitutional. But the seminal case was ultimately titled *Brown v. Board of Education*.

F. Third Proceedings on remand to the District Court

Finally, in the decision by the District of South Carolina on July 15th, 1955, the District Court set aside its 1952 decision in *Briggs v. Elliott* in favor of one that reflected the ruling in *Brown*. Further, the case was ordered to remain open on the docket in case officials determined that school districts did not sufficiently comply with the ruling, and after an extensive search, it does not appear to have closed.

G. Overlap of *Brown v. Board of Education* with *Briggs v. Elliott*

a) Summary of *Brown v. Board of Education*

On February 28, 1951, a group of African American parents filed a lawsuit against the Board of Education of Topeka, Kansas, alleging that the segregation of public schools on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The plaintiffs brought their case to enjoin the enforcement of a Kansas statute that permitted, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan. Gen. Stat. § 72-1724 (1949).

The case was heard by a three-judge-panel of the U.S. District Court for the District of Kansas, which held a hearing on March 13-14, 1952. On June 3, 1952, the district court issued an opinion and order denying the plaintiffs' claims and holding that segregated schools were not inherently unequal, and the plaintiffs had failed to show that they had suffered any harm because of segregation.

The plaintiffs appealed the district court's decision to the U.S. Court of Appeals for the Tenth Circuit. On March 26, 1953, the Tenth Circuit heard oral arguments in the case. On May 18, 1953, the Tenth Circuit issued an opinion affirming the district court's decision and holding segregation in public schools did not

violate the Equal Protection Clause of the Fourteenth Amendment.

The plaintiffs petitioned this Court for certiorari on June 8, 1953. On September 28, 1953, this Court granted certiorari in the case. The case was argued before this Court on December 9-11, 1952. On December 12, 1952, the Court ordered re-argument of the case to consider the question of whether segregation in public education could be constitutionally permissible if the separate facilities were equal. The case was re-argued before this Court on December 7-8, 1953.

On May 17, 1954, this Court issued its landmark decision in *Brown v. Board of Education*, holding that segregation in public schools was inherently unequal and violated the Equal Protection Clause of the Fourteenth Amendment. This Court remanded the case to the lower courts to implement its decision.

On May 31, 1955, this Court issued a second opinion in the case, known as *Brown II*, which directed the lower courts to implement the desegregation of public schools with "all deliberate speed."

b) Impact of *Brown v. Board of Education* on *Briggs v. Elliott*

However, for plaintiffs in the southeast United States, *Brown v. Board of Education* was not the final ruling. In fact, as mentioned above, *Brown v. Board of Education* was reopened a year later (*Brown II*) to determine relief for the plaintiffs in *Briggs v. Elliott* and

Davis v. Co. School Board. This Court held that each case should be remanded to its original district court because of the proximity to local conditions and the possible need for further hearings.

In the final *Briggs* case, Judge Timmerman, delivered the opinion of the District Court which reiterated the holding of *Brown v. Board* but emphasized that the Constitution merely forbade the use of governmental power to enforce segregation and did not require integration if individuals chose not to do so. Thus, if natural segregation occurred, this was not a legal issue.

Ultimately, this Court's decision to combine multiple desegregation cases with *Brown v. Board of Education* caused *Briggs v. Elliott* to be enshrined as a "companion case." Although the landmark decision successfully overturned *Plessy v. Ferguson* and the doctrine of "separate but equal," the plaintiffs of each of the companion cases faded into relative anonymity. Plaintiffs of the companion cases fought equally as hard for desegregation, and in some cases paid a much higher price, but they received none of the national attention or support that came along with the decision in *Brown v. Board*.

REASONS FOR GRANTING THIS PETITION

I. PETITIONER'S RIGHT TO ISSUANCE OF A WRIT IS CLEAR

The Court may "issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). A writ of mandamus is warranted where "(1) no other adequate means exist to attain the relief [the party] desires, (2) the party's right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (quoting *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380-81 (2004)) (internal quotation marks and alterations omitted).

A. Issue of First Impression

Often, Federal courts issue writs of mandamus where issues of exceptional importance and first impression arise. *See Colonial Times, Inc. v. Gasch*, 509 F.2d 517 (D.C. Cir. 1975) (mandamus was appropriate because the case presented an issue of first impression); *United States v. United States District Court*, 444 F.2d 651 (6th Cir. 1971) (recognizing its discretion to issue a writ of mandamus when exceptional circumstances exist); *CBS, Inc. v. Young*, 522 F.2d 234 (6th Cir. 1975).

Notably, the position of this Court is that writ of mandamus is appropriate not only in cases of usurpation of judicial power or clear abuses of discretion but

also when an issue of first impression was manifest. This Court held a writ may be used, "where there is clear abuse of discretion or 'usurpation of judicial power.'" *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953) (internal citation omitted). Citing to *Holland*, this Court expanded on the applicability of its mandamus power to review an "issue of first impression" in order to "settle new and important problems." *Schlagenhauf v. Holder*, 379 U.S. 104, 111 (1964). The issue of first impression here regards the judicial process of naming a consolidated case. Specifically, where cases of national significance are heard to harmonize conflicting decisions from federal circuit and district courts, under what circumstances can the Court decline to use the first case filed before the court as the leading case such that the first case provides the foundational legal analysis for its opinion that will subsequently have tremendous precedential value?

While it is true that *Brown v. Board of Education* is the landmark decision that is widely recognized as the key legal victory in the fight against school segregation, there are several reasons why *Briggs v. Elliott* should have been the lead case and why this Court should grant our petition to remedy the error and change the case caption. While there is no publicly known legal basis for choosing the lead case in a group of consolidated cases, scholars have postulated the case that is first in time is often the lead. Thus, since there is no specific public rule, Petitioners believe *Briggs v. Elliott* should have been the lead case based on the doctrine of "First in Time is First in Right"; the

judicial errancy which caused its delay; the sound legal argument that formed not only much of the plaintiffs' final argument but this Court's opinion; and public policy.

B. "First in Time is First in Right"

First, *Briggs v. Elliott* was the first of the five cases to be filed, and it was the only case that originated in a federal district court rather than a state court. Generally, many legal precedents follow the rule of "first in time, first in right." For example, the principle of prior appropriation for water or the principle of race recording acts for property; even the principle of perfection in secured transactions follows the same basic principle. Lawrence Berger, *An Analysis of the Doctrine That "First in Time Is First in Right*," 64 Neb. L. Rev. 388 (1985). While, as stated above, there is no specific precedent for "first in time is first in right" in regard to case names in this Court, it is a legal principle that is often followed for showing ownership and notice to the world. The principle allows the person who made the claim first to take ownership of the property as a reward for being first. In this context, the name of a case identifies to the world who has brought the claim and against whom, essentially, the name allows the plaintiffs and defendants to take ownership over their legal matter. Thus, it follows that the case which came first should have the privilege of taking ownership over the legal matter. In this case, the Briggs were offered no such reward for being first, and as a result, have been deprived of their opportunity to proudly own the legal

argument they brought before this Court first. The petitioners in *Briggs* filed their case knowing that the matter would be received in the local community with great hostility – and it was. The petitioners were met with severe economic and physical threats and terror. Many were victims of tremendous economic hardship; houses were burned and at least one died under mysterious circumstances. These petitioners stood courageously for a matter of great importance only to find themselves in harm's way and their place in history discarded.

C. Judicial Errancy Caused the Delay

As stated in the facts, *Briggs v. Elliott* was the first school desegregation case to file an appeal with this Court. However, instead of making a ruling on the constitutionality of the issues, this Court remanded the *Briggs* case back to the District Court so it could make a new ruling using new evidence. When the *Briggs* matter returned to this Court, the Court treated the filing as a new case rather than rightfully as a revival of the first filing. This Court should honor the first appeal as the first filed and allow the name *Briggs v. Elliott* to take its place in history.

D. Basis of legal argument for *Brown*

Finally, it is important to note that the lead case in a legal challenge is not always the case that ultimately results in the most favorable outcome. In fact, it is common for multiple cases to be consolidated into

a single lawsuit, and for the outcome to be based on a combination of legal arguments and factual circumstances from all of the cases involved. In the case of *Brown*, it is said that Judge Waties Waring's dissent in the original *Briggs v. Elliott* District Court case – "segregation is per se inequality" – formed the legal foundation upon which this Court ultimately decided *Brown v. Board of Education*. Richard Gergel, UNEXAMPLED COURAGE: THE BLINDING OF SGT. ISAAC WOODARD AND THE AWAKENING OF AMERICA, 246 (2019). Indeed, according to Justices Jackson's and Burton's notes from the 1952 Judicial Conference, Justice Black had reiterated Waring's dissent – "segregation per se violated the 14th amendment of the Constitution" – in his bid to convince his fellow Justices to overturn *Plessy v. Ferguson*. Richard Kluger, SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF ED. AND BLACK AMERICA'S STRUGGLE FOR EQUALITY, 303-4 (2004). Thus, it is clear that Judge Waring's opinion resonated with the Justices, even if he was not mentioned by name.

As a result, it could be argued that the ultimate outcome in *Brown v. Board of Education* was based on the strengths of all the cases involved but especially *Briggs v. Elliott*.

E. Public Policy

Finally, *Briggs v. Elliott* involved a particularly egregious example of segregation, in which black students in Clarendon County, South Carolina, were forced to attend dilapidated, overcrowded, and underfunded

schools while white students enjoyed far superior educational facilities. The fact that the segregation policies in *Briggs v. Elliott* were particularly egregious may have made it a more compelling case to use as the lead case in the litigation. In fact, in Topeka, Kansas the law only permitted segregated schools "below the high school level." Further, Topeka junior high schools had been integrated since 1941 and Topeka High School since 1871, at its inception.

Also, in August of 1953, before *Brown v. Board* was heard by this Court, the Board of Education of Topeka began to end segregation in Topeka elementary schools. Zelma Henderson, a plaintiff in *Brown v. Board*, recalled in a 2004 interview that no demonstrations or commotion followed the desegregation of Topeka schools: "They accepted it . . . It wasn't too long until they integrated the teachers and the principals." Erin Adamson, "Breaking barriers: Topekans reflect on role in desegregating nation's schools" Archived April 27, 2004, at the Wayback Machine, The Topeka Capital-Journal (May 11, 2003).

Briggs v. Elliott had a broader legal argument – a more comprehensive factual record – the plaintiffs had more to lose. Naming the case *Brown v. Board of Education* fails to adequately recognize the plaintiffs' role in the fight for civil rights and equality in education.

II. A WRIT OF MANDAMUS IS WARRANTED GIVEN THE URGENT CIRCUMSTANCES OF THIS CASE

In order to properly understand the exigent circumstances that warrant such relief, Petitioners offer a brief snapshot of the impact *Briggs v. Elliott* has had on the community of Clarendon County, South Carolina. Further, Petitioners emphasize the increasing age of those plaintiffs involved in *Briggs v. Elliott*.

A. Resistance to Desegregation Efforts Prior to *Briggs v. Elliott*

The first families affected by retaliation because of *Briggs v. Elliott* occurred before the case was even filed. In 1947 Levi and Hammett Pearson and Reverend Joseph A. DeLaine initiated a lawsuit, *Levi Pearson v. Clarendon County and School District 26*, against the school district. Levi Pearson sought equal transportation for his children, who walked nine miles both ways to attend school. *Pearson v. Clarendon County* and *Briggs v. Elliott*, 2023 South Carolina African American History Calendar, https://scafricanamerican.com/honorees/pearson-v-clarendon-county-and-briggs-v-elliott/. Families in the area had gathered enough funds to pay for an old school bus but could not afford the maintenance, and the county provided 30 school buses to white children but none for black children. *Id*. The lawsuit failed because Levi Pearson did not pay taxes in District 26 and, therefore, did not have standing to bring a case against the school district. *Id*. However, the case caused a stir in the community. Levi Pearson

had his credit cut off at every white-owned store and bank in the county. Ophelia De Laine Gona, *Dawn of Desegregation: J. A. De Laine and Briggs v. Elliott* 27 (2011).

The lawsuit made the school board nervous, and they subsequently fired Principal Maceo Anderson from the Scott's Branch School after 11 years as the principal. Letter, 1948 Feb. 16, (Columbia, S.C.), Harold R. Boulware, to Joseph A. De Laine, Sr. (Summerton, S.C.). Further, because of the case, the district announced that out-of-district children would have to make a formal application to "rezone" to Scott's Branch, despite many of those districts lacking a functional high school. Gona, *supra* at 40. Filing an application to rezone would have been a problem for many of the parents who could not read or write, but Reverend DeLaine stepped in and created the forms for those parents to turn in to their respective districts.

Reverend DeLaine continued the fight for justice in Clarendon County despite these setbacks. In 1949, Thurgood Marshall told Reverend DeLaine that he would only consider taking Clarendon County's case if the Reverend could get at least 20 families to join the lawsuit. *Id.* at 45. It took almost six months, but Reverend DeLaine finally had his plaintiffs in the 1949 Scotts Branch School senior class, who had been stolen from and threatened by the new school principal on many occasions throughout the year. *Id.* at 50. In June of 1949, Reverend DeLaine set into motion the lawsuit that would become *Briggs v. Elliott* when he and two other parents went to the school board with their

complaints about the current principal. *Id.* at 61. Two days later, Reverend DeLaine was fired from his position as principal of Silver School, another school in the district. *Id.* Reverend DeLaine was only the first to be let go – any other teacher at Scott's Branch assumed to be a sympathizer of Reverend DeLaine's cause was also fired. *Id*. at 65.

In the winter of 1949, when Reverend DeLaine finally received petition papers from the NAACP, more than 24 families had signed them – 107 adults and children. *Id*. at 86.[1] The strong progress towards a legitimate case meant the white men in town started to feel threatened. Many white businesses and landowners began to retaliate, seeking to collect old grocery debts, hardware bills that did not exist, and balances on wagons and plows. *Id.* at 89. "Notifications were given for unpaid doctor bills and back taxes. Outstanding fertilizer bills multiplied overnight." *Id*.

Many black families began to fear for their lives – and for good cause – as one of their own had already been killed since signing the petition. James McKnight, who signed the petition, was brutally beaten to death for "indecency" after he stopped to urinate on the side of the road, behind a tree, in the middle of the night. *Id.* at 90. The man who murdered him was exonerated by an all-white, male jury. *Id*. The school superintendent threatened another local pastor, Reverend Seals, that if he didn't stop holding meetings at his church,

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[1] Harry and Eliza Briggs were the first to sign the petition because the meeting occurred at their home.

he would strip him of his teaching position at a local school. Reverend DeLaine started hearing of threats to his life with claims that the KKK were planning to lynch him. *Id.* at 93.

Another plaintiff, James Brown, lost his job with the Esso Company, a place he worked for 19 years which was owned by a man Mr. Brown considered a friend. *Id.* at 103. Reverend DeLaine learned about his dismissal when Mr. Brown saved the Reverend's life after unintentionally intervening in a fight between Reverend DeLaine and another man in town. *Id.* at 102. Further, Mr. Brown's son, Thomas, was fired from his job at the drugstore. *Id.* at 107. Willie "Bo" Stukes lost his job, where he was highly regarded as an expert mechanic, the same day as Mr. Brown. Mr. Briggs himself lost his job on Christmas Eve of 1949. *Id.* at 108.

Unfortunately, signing the petition was not a prerequisite for being harassed by the community. Mazie Solomon, who did not sign the petition, quit her job after her employer heard she signed the petition and threatened to fire her if she did not remove her name from the petition. *Id.* at 109. Her co-worker, Annie Martin Gibson, who did sign the petition, quit that day as well. *Id.* Later that same day, Ms. Solomon's landlord threatened to evict her if she did not remove her name from the petition, he gave her a month to move out. *Id.*

Mr. Briggs and Mr. Stukes, both unemployed, could receive a monthly stipend of $92 each if they were enrolled as students. *Id.* at 115. As such, they went to enroll in the agriculture classes at Scott's Branch and

were subsequently turned down and told they had to go the next town over if they wanted to enroll anywhere.

Reverend DeLaine successfully gathered enough petitioners, and Mr. Henry Boulware filed a new case called *Briggs v. County*, which sued Clarendon County on the premise that black children did not have adequate or equal educational facilities to the white children. At the pretrial hearing, Judge J. Waties Waring convinced Thurgood Marshall and Henry Boulware to directly challenge the holding in *Plessy v. Ferguson* and claim that separate could not be equal and segregation was a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment.

In 1950, the former principal of Scotts Branch School sued Reverend DeLaine for slander and asked for $20,000 in damages. *Benson v. DeLaine*. As Reverend DeLaine did not have the monetary funds to cover such a judgment, if he lost, his property would be confiscated.

B. Post-*Brown v. Board of Education* Recognition of *Briggs v. Elliot*

On June 5, 2003, the South Carolina General Assembly adopted a resolution to commend the Clarendon County Fiftieth Anniversary of *Brown v. Board*, to include the case *Briggs v. Elliott*. H. 4394 June 5, 2003. Also, in 2003, the United States Congress posthumously awarded Congressional Gold Medals to four people involved in *Briggs v. Elliott*: Reverend DeLaine,

Harry and Eliza Briggs, and Levi Pearson. Public Law 108-180. CONGRESSIONAL RECORD, Vol. 149 (2003). Unfortunately, the four had already passed away. While living they were not honored and after the decision of *Brown v. Board,* they all fled Summerton never to return.

In 2006 both the South Carolina House and Senate adopted a concurrent resolution:

> "TO COMMEMORATE THOSE INVOLVED IN THE LANDMARK SOUTH CAROLINA CASE, *BRIGGS V. ELLIOTT*, FOR THEIR COURAGE AND COMMITMENT TO JUSTICE IN CHALLENGING THE CONSTITUTIONALITY OF "SEPARATE BUT EQUAL" EDUCATION AND TO RECOGNIZE THEM FOR THEIR HEROIC CONTRIBUTIONS TO EDUCATIONAL EQUALITY AND OPPORTUNITY FOR ALL SOUTH CAROLINIANS." H. 4819 March 15, 2006. The families of the petitioners each received a copy of this petition. *Id*.

In 2015, a play called "The Seat of Justice" debuted in Clarendon based on the events surrounding *Briggs v. Elliott*. *'Seat of Justice' Looks at Court Case Briggs v. Elliott Part of Segregation Lawsuit*, Parker (2016). In April 2022, Congress passed the Coons-Clyburn Act to "honor the civil rights stories of struggle, perseverance, and activism in the pursuit of education equity." IN THE SENATE OF THE UNITED STATES – 117th Cong., 2d Sess. S. 270. The Act provided for the inclusion of additional historic sites related to *Brown v.*

Board, including the sites of the four other cases combined into *Brown v. Board*. "*Brown v. Board of Education National Historical Park Expansion and Redesignation Act*," S.270 (2022). This allowed the Scott's Branch School in Summerton, South Carolina to be listed on the National Register of Historic Places.

While these symbolic honors serve as a beacon for public remembrance, unfortunately, none of them have truly rectified or recompensed the injustices suffered by the citizens of Clarendon County.

C. Clarendon County Today

Today, Clarendon County is home to approximately 31,000 people.[2] The racial demographic is almost split evenly with 51% of the population being white and 46.4% being black. *Id*. The median household income is $45,500 and approximately 20% of the population lives in poverty. *Id*. Only 15.6% of the population has a bachelor's degree or higher. *Id*. Moreover, in 2014 almost 100% of the schools in the county were de Facto segregated.[3] Most of the white students attend private schools while black students attend

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[2] https://www.census.gov/quickfacts/fact/table/clarendoncounty southcarolina/RTN130217#RTN130217.

[3] *Joseph Albert DeLaine, Judge J. Waties Waring, and one of the Civil Rights Movement's most overlooked cases*, Moredock, June 25, 2014.

public schools, which are still notoriously underfunded.[4]

Scott's Branch High School – the subject of *Briggs v. Elliot* – still has a 95.7% minority enrollment and 100% of the students are economically disadvantaged.

It is clear that while *Briggs v. Elliott* paved the way for desegregation and equal rights in the classroom across the nation, Clarendon County remains much the same as it did in 1947. *Briggs v. Elliott* was the first case among those filed before this Court that would be issued under the consolidated name of *Brown v. Board of Education*. The scars of filing *Briggs v. Elliott* are still apparent in Clarendon County, South Carolina. Petitioners' lives were forever negatively impacted because of their heroic actions and have continued to be deprived of the economic gain associated with being the named leader in the national struggle.

This case presents a question of exceptional importance: Where cases of national significance are heard to harmonize conflicting decisions from federal circuit and district courts, under what circumstances can the Court decline to use the first case filed before the court as the leading case where the first case provides the foundational legal analysis for its opinion that will subsequently have tremendous precedential value?

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[4] https://www.usnews.com/education/best-high-schools/south-carolina/districts/clarendon-04/scott-s-branch-high-school-17589#.

III. NO OTHER ADEQUATE MEANS TO OBTAIN RELIEF EXIST

The basis for this petition is that the plaintiffs in *Briggs v. Elliott*, are requesting relief from the judgment in *Brown v. Board of Education*, specifically the naming of the case as *Brown v. Board of Education*. The *Briggs v. Elliott* case challenged the constitutionality of the "separate but equal" doctrine in public education in Clarendon County, South Carolina. The case was filed in 1947, six years before *Brown* was decided by this Court. Further, the shadow of segregation lives on in Clarendon County and there is no viable private right of action that could render monetary relief.

Therefore, we respectfully request that this Court grant our motion for a writ of mandamus to change the name of *Brown v. Board of Education* to *Briggs v. Elliott* to recognize the importance of the *Briggs* case in the fight for civil rights and equality in education, and to do so in a timely manner to honor the aging plaintiffs.

The plaintiffs in *Briggs* filed first in United States District Court, filed first in the United States Supreme Court, and brought the case that was argued by the Honorable Thurgood Marshall based upon the dissent in the South Carolina case. After its original filing the *Briggs* case was remanded to the District Court for an additional examination. When the petitioners returned to this Court, the Clerk inadvertently docketed the *Briggs* case after *Brown* instead of placing it back as the first case filed. This bureaucratic handling

inadvertently stole from the petitioners their rightful place in history in spite of the great physical, emotional, and financial harm that befell each petitioner upon the filing of the same.

Now nearly 70 years later, the petitioners prayerfully request that their place in history be restored by the simple act of reordering the petitioners to the just and accurate place.

We understand that the granting of relief from judgment is a rare occurrence and that a high standard must be met for such relief to be granted. However, we believe that the importance of this issue and the urgency of the situation warrant such relief.

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

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