

SUPREME COURT OF THE UNITED STATES

No. 93-1823

MISSOURI, ET AL., PETITIONERS v. KALIMA JENKINS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
[June 12, 1995]

JUSTICE GINSBURG, dissenting.

I join Justice Souter's illuminating dissent and emphasize a consideration key to this controversy.

The Court stresses that the present remedial programs have been in place for seven years. *Ante*, at 31-32. But compared to more than two centuries of firmly entrenched official discrimination, the experience with the desegregation remedies ordered by the District Court has been evanescent.

In 1724, Louis XV of France issued the Code Noir, the first slave code for the Colony of Louisiana, an area that included Missouri. Violette, *The Black Code in Missouri*, in 6 Proceedings of the Mississippi Valley Historical Association 287, 288 (B. Shambaugh ed. 1913). When Missouri entered the Union in 1821, it entered as a slave State. *Id.*, at 303.

Before the Civil War, Missouri law prohibited the creation or maintenance of schools for educating blacks: "No person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, §1, 1847 Mo. Laws 103.

Beginning in 1865, Missouri passed a series of laws requiring separate public schools for blacks. See, e.g., Act of March 29, 1866, §20, 1865 Mo. Laws 177. The Missouri Constitution first permitted, then required, separate schools. See Mo. Const. 1865, Art. IX, §2; Mo. Const. 1875, Art. XI, §3.

MISSOURI v. JENKINS

After this Court announced its decision in *Brown v. Board of Education*, 347 U. S. 483 (1954), Missouri's Attorney General declared these provisions mandating segregated schools unenforceable. See *Jenkins v. Missouri*, 593 F. Supp. 1485, 1490 (WD Mo. 1984). The statutes were repealed in 1957 and the constitutional provision was rescinded in 1976. *Ibid.* Nonetheless, thirty years after *Brown*, the District Court found that “the inferior education indigenous of the state-compelled dual school system has lingering effects in the Kansas City, Missouri School District.” 593 F. Supp., at 1492. The District Court concluded that “the State . . . cannot defend its failure to affirmatively act to eliminate the structure and effects of its past dual system on the basis of restrictive state law.” *Id.*, at 1505. Just ten years ago, in June 1985, the District Court issued its first remedial order. *Jenkins v. Missouri*, 639 F. Supp. 19 (WD Mo. 1985).

Today, the Court declares illegitimate the goal of attracting nonminority students to the Kansas City, Missouri, School District, *ante*, at 23, and thus stops the District Court's efforts to integrate a school district that was, in the 1984/1985 school year, sorely in need and 68.3% black. 639 F. Supp., at 36; see also *Jenkins v. Missouri*, 672 F. Supp. 400, 411 (WD Mo. 1987) (reporting that physical facilities in the School District had “literally rotted”). Given the deep, inglorious history of segregation in Missouri, to curtail desegregation at this time and in this manner is an action at once too swift and too soon. Cf. App. to Pet. for Cert. A-13 (Court of Appeals noted with approval that the District Court had ordered the School District to submit plans projecting termination of court-ordered funding at alternative intervals, running from April 1993, of three, five, seven, or, at most, ten years).