

The United States; and Sections 41 and 43 of Title 8 of the United States Code. A precise understanding of the Maryland statutory scheme of public education is essential to a considered opinion on the question presented by the pleadings and testimony in this case. The statutory provisions were discussed at length in the former case, 26 F. S. 792 (to which reference is hereby made) and need not now be repeated. The opinion in the former case was filed on March 1, 1939. The only subsequent legislation upon the subject is the Maryland Act of 1939, Ch. 502, approved May 11, 1939, and effective September 1, 1939, which established a new State minimum salary schedule for white teachers, setting up therein a single salary schedule based on preparation and experience, to replace the former position-experience schedule. The general effect of the Act was to some extent to increase the minimum salary schedule for white teachers, but without any increase in the previously established minimum salary for teachers in colored schools. Attention should also be called to the Maryland Act of 1937, Ch. 552, effective September 1, 1939, which made the school term for colored children of equal duration to that for white children, there previously having been some disparity in the respective terms, those for colored children being generally a month or two shorter than those for white children. Hereafter for both it is required that the schools be kept open not less than 180 actual school days, or nine months in each year.

The historical development of Maryland legislation with respect to the comparative salaries for white and colored teachers is important in this case. The legislation is said to be unique in that while no maximum salary is prescribed for payment by the several County Boards of Education, there is a difference which has existed for many years in the minimum requirements with respect to white and colored teachers' salaries, by virtue of which the minimum for white teachers has always been very materially higher than the minimum for colored teachers. The rating of all teachers both white and colored is determined and certified to the County Boards by the State Board, and is based on uniform requirements. The salaries for white teachers (and to lesser extent for colored teachers) are graduated to professional qualifications and years of experience, so that the schedules are somewhat complex; but for simplicity of statement and for

deficiency that in most of the counties of the State (including Anne Arundel County) a very substantial difference between the pay schedules of white and colored teachers has always existed. Thus it is shown that the annual average salary for white and colored teachers in elementary schools in the Maryland Counties for the period of 1921 to 1939 is in the ratio of nearly two to one in favor of the white teachers. In 1921 the comparative figures were \$881 for white teachers and \$442 for colored; in 1930 the respective figures were \$1,199 and \$633; and in 1931, \$1,314 and \$848. It is, however, fairly to be noted that in recent years the disparity has gradually been reduced. The average increase in salary over the nineteen-year period has been \$33 for white teachers and \$406 for colored teachers, or a percentage of increase of 49% for the white teachers and 92% for the colored teachers.

The controlling question in the case, however, is not whether the statutes are unconstitutional on their face, but whether in their practical application they constitute an unconstitutional discrimination on account of race and color prejudicial to the plaintiff. We must therefore look to the testimony in this case to see how the statutes have been applied in Anne Arundel County. In the first place we find that for some years past at least the County Board of Education of Anne Arundel County, in fixing the salaries of white and colored teachers has paid to both classes more than the minima required by the general statutes. In 1937 the County Board of Education fixed the scale of salaries for white teachers, in the case of a teacher who has the qualifications and experience above mentioned, at \$1,250 (the comparable statutory minimum being then \$1,150); and for colored teachers at \$680. The figures are for teachers in elementary schools. The plaintiff, however, is principal of a colored elementary school at Camp Parole, Anne Arundel County, Maryland, with three eleventh grade students and he is now in his eleventh year of teaching experience. The State minimum statutes do not prescribe a minimum salary for the position of a principal of a colored elementary school for white principals of the same grade schools, the minimum for the latter being \$1,550. The County Board has two white assistants being \$1,550. The County scale fixes the minimum salary of a white principal of a comparable school at \$1,550, and for a

defendants in this respect seem really unobjectionable. The whole problem is viewed historically in the light of the Maryland law and general state practice on the subject, and particularly in the light of the actual practical application of the Maryland statutes in Anne Arundel County. And indeed any controversy over the fact would seem to be ended by the testimony of the defendant, Fox, who is Superintendent of Education in Anne Arundel County and an executive officer of the County School Board, and that of Miss McNeely, the financial secretary of the Board, both of whom substantially admitted that the discrimination in the county schedule of minimum salaries for white and colored teachers respected by the fact of race or color.

I conclude therefore from the pleadings and testimony that the plaintiff has established that he as a colored teacher is unconstitutionally discriminated against in the practice of his profession by the discrimination made between white and colored teachers by the County School Board of Anne Arundel County; and that he is entitled to an injunction against the continuation of such discrimination on the ground that it is based solely on the extent that it is based solely on the grounds of race or color, and that he is also entitled to a declaratory decree to the effect that such unlawful discrimination exists; but I do not think the plaintiff is entitled to an injunction to the extent prayed for in the concluding clause of the prayer for an injunction reading: "and from payment to the plaintiff or any other colored teacher or principal employed by them a less salary than they pay any white teacher or principal employed by them and filling an equivalent position in the public schools of Anne Arundel County." It does not follow that because the positions are equivalent the particular persons filling them are necessarily equal in all respects in professional attainments and efficiency; and some range of discretion in determining actual salaries for particular teachers is entirely permissible to the County Board of Education. If the County Board continues to observe the minimum State statute for salaries for white teachers, it is difficult to see how it would have legal justification for paying colored teachers less than the minimum required for white teachers of similar standard professional qualifications and experience, as such discrimination would seem to be clearly based solely on race or color. But the Board has full discretion in its judgment

status as a qualified school teacher by profession and occupation to have the question determined. Again it is argued that an injunction should not be granted because there is an adequate remedy at law by mandamus in the State Court. This also was discussed in the former case, but in a somewhat different connection. The objections to an injunction which were there held valid, do not exist here; and Title 8, s. 43 of the United States Code expressly authorizes an injunction as a possibly appropriate remedy in this class of cases.

The County Board of Education also contends that if the plaintiff is entitled to the relief prayed for in this case, it has a remedy over against the State Board of Education and the County Commissioners of Anne Arundel County. But for the reasons fully stated in the opinion in the former case, I do not find or conclude that there is any judicial remedy, as distinct from legislative amendments, to which the defendants are entitled against the State Board of Education and the State Officers in charge of the Equalization Fund, or any present remedy over against the County Commissioners of Anne Arundel County. The applicable legal procedure is that the County Board of Education will have to prepare a new budget for the next scholastic year, and the County Commissioners, to the extent required by the statutes, will thereafter have to fix the necessary county rate for taxation. I conclude therefore that the third party complaints must be dismissed.

Counsel for the plaintiff are also not unmindful of the financial problems which will necessarily be faced by the County Board of Education and County Commissioners of Anne Arundel County by reason of the injunction to be issued in this case, and have expressed willingness to have the operative effect of the injunctions postponed until the preparation of the next annual budget by the County School Board; and therefore the judgment to be entered will conform to this agreement.

The findings of fact and conclusions of law expressed in this opinion are intended to be in compliance with Rule 52 of the Federal Rules of Civil Procedure; but if counsel on either side desire separate and more explicit findings of fact they can be prepared and submitted for consideration. As already stated, the controlling issue of fact is whether there has been unlawful discrimination by the defendants in determining the salaries of white and

Fourth Insertion.

**Niles, Barton, Morrow & York, Attorneys,**  
Baltimore Life Building.  
THIS IS TO GIVE NOTICE That the subscriber has obtained from the Orphans' Court of Baltimore City letters of administration on the estate of  
**CHARLES C. WACKER,**  
deceased. All persons having claims against said deceased are hereby warned to exhibit the same, with vouchers therefor legally authenticated, to the subscriber on or before the 9th day of May, 1940; they may otherwise, by law, be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment. Given under my hand this 6th day of November, 1939.  
**ANNA L. WACKER,**  
Administratrix.

**Alfonso von Wyszocki, Attorney,**  
100 East Pleasant Street.  
THIS IS TO GIVE NOTICE That the subscriber has obtained from the Orphans' Court of Baltimore City letters of administration on the estate of  
**CHARLES HOWARD MESTER,**  
deceased. All persons having claims against said deceased are hereby warned to exhibit the same, with vouchers therefor legally authenticated, to the subscriber on or before the 9th day of May, 1940; they may otherwise, by law, be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment. Given under my hand this 6th day of November, 1939.  
**ALFONSO VON WYSZOCKI,**  
Executor.

**Francis I. Mooney, Attorney,**  
111 North Charles Street.  
THIS IS TO GIVE NOTICE That the subscriber has obtained from the Orphans' Court of Baltimore City letters of administration on the estate of  
**CHARLES E. RICE,**  
deceased. All persons having claims against said deceased are hereby warned to exhibit the same, with vouchers therefor legally authenticated, to the subscriber on or before the 9th day of May, 1940; they may otherwise, by law, be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment. Given under my hand this 6th day of November, 1939.  
**EDWIN J. RICE,**  
Administrator.

**REAL ESTATE ONLY.**  
**John V. Klier, Attorney,**  
1222 Fidelity Building.  
THIS IS TO GIVE NOTICE That the subscriber has obtained from the Orphans' Court of Baltimore City letters of administration on the estate of  
**EMMA C. STEWART,**  
deceased. All persons having claims against said deceased are hereby warned to file in said Court their claim against said decedent, with the vouchers therefor legally authenticated, on or before the 9th day of May, 1940; they may otherwise, by law, be excluded from all benefit of said estate. All persons indebted to said estate are requested to make immediate payment. Given under my hand this 6th day of November, 1939.  
**BERTHA T. STEWART,**  
Administratrix.

**FALL MEETING**  
15 DAYS RACING  
**BOWIE**  
Nov. 16 to Dec. 2  
INCLUSIVE  
First Race, 1.30 P. M.  
Daily Double Window  
CLOSES 1.15 P. M.

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