IN THE

Supreme Court of the United States

October Term, 1947

No. 72

J. D. SHELLEY, et al., Petitioners,

v.

LOUIS KRAEMER and FERN E. KRAEMER, Respondents.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

No. 87

ORSEL McGHEE and MINNIE S. McGHEE, his wife, Petitioners,

v.

BENJAMIN J. SIPES and ANNA C. SIPES, JAMES A COON and ADDIE A. COON, et al., Respondents.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

No. 290

JAMES M. HURD and MARY I. HURD, Petitioners,

v.

FREDERIC E. HODGE, LENA A. MURRAY HODGE, PASQUALE DeRITA, VICTORIA DeRITA, et al., Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

No. 291

RAPHAEL G. URCIOLO, ROBERT H. ROWE, ISABELLE J. ROWE, HERBERT B. SAVAGE, et al., Petitioners.

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CONSOLIDATED BRIEF IN BEHALF OF
American Jewish Committee
B'nai B'rith (Anti-Defamation League)
Jewish War Veterans of the United States of America
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As *Amici Curiae*

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TABLE OF CONTENTS

	PAGE
Interest of the *Amici*	2
Opinions Below	5
Jurisdiction	5
Statement of Facts	6
Summary of the Argument	7
Argument:	
I. The Judicial Enforcement of Racial Restrictive Covenants in the Michigan and Missouri Cases Is a Violation of the Due Process Clause of the Fourteenth Amendment to the Constitution; and of Sections 1977 and 1978 of the Revised Statutes (8 U. S. C., Secs. 41, 42)	9
A. The Right of a Citizen to Acquire, Own, Enjoy and Dispose of Property Without Discrimination as to Race or Color Is a Federal Civil Right Protected by the Constitution	9
B. State Action Depriving a Person of the Ownership, Use or Occupancy of Property Solely Because of His Race or Color Is Forbidden by the Due Process Clause of the Fourteenth Amendment	16
C. The Decrees of the State Courts Were Forbidden State Action and Therefore Violated the Due Process Clause of the Fourteenth Amendment	17
(a) Judicial Action Is State Action	17
(b) The Decrees Herein Are Forbidden State Action and Therefore Violate the Fourteenth Amendment	20

PAGE

II. The Judicial Enforcement of Racial Restrictive Covenants in the Michigan and Missouri Cases Is a Violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution 24

III. The Judicial Enforcement of the Racial Restrictive Covenants in the District of Columbia Cases Violates the Due Process Clause of the Fifth Amendment and Section 1978 of the Revised Statutes (8 U. S. C., Sec. 42) 33

IV. The Case of *Corrigan* v. *Buckley* Did Not Decide the Questions Presented Herein 34

Conclusion 36

Appendix 37

TABLE OF CASES

Adkins v. Children's Hospital, 261 U. S. 525 21
Allgeyer v. State of Louisiana, 165 U. S. 578 13

Baumann v. Pinckney, 118 N. Y. 604 31
Bowles v. Willingham, 321 U. S. 503 33
Bridges v. California, 314 U. S. 52 19
Brinkerhoff-Faris Trust Co. v. Hill, 281 U. S. 673 18
Buchanan v. Warley, 245 U. S. 60 .....10, 12, 15, 16, 22, 23, 25, 26, 31

Cantwell v. Connecticut, 310 U. S. 296 19
Carey v. City of Atlanta, 143 Ga. 192, 84 S. E. 456 16
Carter v. Texas, 177 U. S. 442 32
Chicago B. & Q. R. Co. v. Chicago, 166 U. S. 226 20
Civil Rights Cases, 109 U. S. 3 .....10, 21, 33
Clinard v. City of Winston-Salem, 217 N. C. 119, 6 S. E. (2d) 867 16
Corrigan v. Buckley, 271 U. S. 323 ..... 8, 34

Ex Parte Virginia, 100 U. S. 339 18

Fay v. New York, 331 U. S. , 91 Law Ed. Adv. Opinion 1517 (No. 377, decided June 23, 1947) 24

PAGE

Gandolfo v. Hartman, 49 Fed. 181 23

Hall v. DeCuir, 95 U. S. 485 12
Harmon v. Tyler, 273 U. S. 668 ..... 16, 22
Heiner v. Donnan, 285 U. S. 312 33
Hill v. Texas, 316 U. S. 400 31
Hirabayashi v. U. S., 320 U. S. 81 32
Holden v. Hardy, 169 U. S. 366 12
Holmes v. Gravenhorst, 263 N. Y. 148 12
Home Tel. & Tel. Co. v. Los Angeles, 227 U. S. 278 32
Hurd v. Hodge, No. 290 ..... 5, 6, 7, 11
Hurd v. Hodge, 162 F. (2d) 233 ..... 5, 23
Hurtado v. California, 110 U. S. 516 33

Jackson v. State, 132 Md. 311, 103 A. 910 16

Korematsu v. U. S., 323 U. S. 214 26

Liberty Annex Corp. v. City of Dallas, 289 S. W. 1067 16
Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685 29

McCabe v. Atchison, T. & S. F. R. Co., 235 U. S. 141 28
McGhee v. Sipes, No. 87 ..... 5, 6, 7
Marsh v. Alabama, 326 U. S. 501 17
Missouri ex rel. Gaines v. Canada, 305 U. S. 337 28
Mitchell v. U. S., 313 U. S. 80 28

Nebbia v. New York, 291 U. S. 502 30
Norman v. Baltimore and Ohio Railroad Co., 294 U. S. 240 29

Powell v. Alabama, 287 U. S. 45 19

Raymond v. Chicago Union Traction Co., 207 U. S. 20 32
Richmond v. Deans, 281 U. S. 704 16

Shelley v. Kraemer, 198 S. W. (2d) 679 ..... 5, 6
Shelley v. Kraemer, No. 72 5
Sipes v. McGhee, 316 Mich. 614, 25 N. W. (2d) 638.... 5, 27
Smith v. Loughman, 245 N. Y. 486 27
Snowden v. Hughes, 321 U. S. 1 32
State of Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U. S. 116 12

PAGE

Steele v. Louisville and Nashville Railroad Co., 323 U. S. 192 13
Sterling v. Constantin, 287 U. S. 378 12
Strauder v. West Va., 100 U. S. 303 ..... 21, 24
Terrace v. Thompson, 263 U. S. 197 ..... 12, 14, 15

Terrace v. Thompson, 274 Fed. 841 14
Truax v. Corrigan, 257 U. S. 312 15
Twining v. New Jersey, 211 U. S. 78 ..... 19, 33
Tyler v. Harmon, 158 La. 439 22

Urciolo v. Hodge, No. 291 ..... 5, 6, 7, 11
Urciolo v. Hodge, 162 F. (2d) 233 5

Virginia v. Rives, 100 U. S. 313 17

OTHER AUTHORITIES CITED

Fifth Amendment 8, 33, 34

Thirteenth Amendment 34, 35

Fourteenth Amendment 7, 8, 9, 10, 12, 13, 14, 16-22, 24, 25, 31, 32, 33, 34, 35

Revised Statutes, Section 1977 ..... 8, 9, 34
Section 1978 ..... 8, 9, 10, 33, 34
Section 1979 34

8 United States Code, Section 41 ..... 8, 9, 34
Section 42 ..... 8, 9, 10, 33, 34

Judicial Code, Sec. 237 (28 U. S. C., Sec. 344(b)) 5
Sec. 240 (28 U. S. C., Sec. 347(a)) 5

Civil Rights Acts 10

McGovney, D. O., *Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds Is Unconstitutional,* 33 Calif. Law Rev. 5 28

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American Jewish Committee
B'nai B'rith (Anti-Defamation League)
Jewish War Veterans of the United States of America
Jewish Labor Committee
As *Amici Curiae*

Interest of the Amici

This brief is filed on behalf of the following organizations:[1]

American Jewish Committee
B'nai B'rith (Anti-Defamation League)
Jewish Labor Committee
Jewish War Veterans of the United States of America

Each of these organizations has among its fundamental tenets the preservation of the rights guaranteed every citizen by our Federal Constitution. Each has recognized that any invasion of the democratic right of any individual or group undermines the foundation of our democratic system.

Organizations dedicated to the defense of American democracy cannot stand by silently while the residential areas of our cities and towns are overrun by a spreading flood of restrictive covenants banning occupancy by members of specific racial or religious groups. The dangers to our democratic way of life arising from racial residential segregation are obvious. Organizations such as those sponsoring this brief cannot acquiesce in the application in America of discriminatory practices to so vital an aspect of our economy as housing.

In 1890 San Francisco sought to achieve racial zoning by adopting an ordinance barring Chinese from living in certain areas of the city. This was followed by the enactment of similar ordinances directed against Negroes in several southern and border cities. In 1917, however, a holding by this court that such ordinances were unconsti-

[1] A short description of each of the organizations is attached as an appendix to this brief.

tutional placed an insurmountable obstacle in the way of efforts to achieve racial residential segregation by legislation. Thereafter, those seeking to extend the pattern of racial segregation found a new and better means of achieving their goal. They seized upon the ancient and well established device of the private restrictive covenant barring from a neighborhood uses detrimental to the health or comfort of those residing in it, such as glue or soap factories, livery stables, charnel houses, and brothels. They adapted the private restrictive covenant to their needs, revising it to bar—instead of specified uses—occupancy by those racial, religious, or ethnic groups which they considered undesirable. The use of this new technique spread with ominous rapidity, primarily because many state courts upheld and enforced the new covenants; nearly always the courts failed to distinguish between a covenant barring an obnoxious use and a covenant barring residential occupancy by members of specific racial or religious groups.

The racial restrictive covenant is an instrument of bigotry giving aid and comfort to racial and religious prejudice. Implicit in such a covenant is the anti-democratic and false racist doctrine that undesirable social traits are an attribute not of the individual but of a racial or religious group. Such covenants classify an individual not on the basis of his behavior, but on the basis of his racial origin. They would deny the free choice of a home to a Carver, Cardozo, or Lin Yutang merely because of color or religion. They ascribe social objectionability to unborn generations.

Slums and overcrowding are the inescapable concomitants of restrictive covenants and racial segregation. Death, disease and crime are the notorious spawn of overcrowding. Inter-group stresses and tensions which threaten our democratic state arise inevitably when racial or reli-

gious groups find themselves isolated within the community and forced to live in circumscribed segregated areas. Clearly, the growing fusion of interest of America's varied racial, religious, and ethnic groups, the free interchange of varying cultural viewpoints, the development of mutual tolerance and confidence among our citizens—requisites for the strengthening and fulfillment of our democracy—are dangerously impeded by restrictive covenants. It is not surprising that the President's Committee On Civil Rights found that "segregation is an obstacle to establishing harmonious relationships among groups" and recommended vigorous action to outlaw restrictive covenants.

Although Negroes have suffered most from the widespread use of restrictive covenants, many other groups including Mexicans, Spanish Americans, Orientals, Armenians, Hindus, Syrians, Turks, Jews, and Catholics have found such covenants barring them from many residential areas in many cities. In a recent case in California a full-blooded American Indian was ordered by the court to vacate his home because of a limitation upon occupancy to Caucasians only. In a Maryland suburb of Washington, D. C., a group of home owners, seeking to enforce a restrictive covenant against Jews, petitioned the Maryland court for a decree directing a non-Jewish wife to oust her Jewish husband from their jointly owned home. This is the reductio ad absurdum to which racial restrictive covenants lead.

The impact of the racial restrictive covenant does not end at the water's edge. In many lands the prestige of American democracy suffers because our practice in the field of race relations does not always square with our ideals. Even now, democracy is engaged in a world-wide struggle to demonstrate its supremacy over contending political idealogies. The refusal of judicial support for

racial restrictive covenants will remove a powerful propaganda weapon from the hands of democracy's opponents.

The organizations sponsoring this brief are peculiarly alert to the dangers to democracy arising from racial or religious residential segregation. Jewish experience under European despotism gave rise to the word "ghetto". The threat of revival of that institution—implicit in the mushroom growth in almost every major American city of racial restrictive covenants—demands intercession in these cases.

All parties to the cases for review herein have given their consent to the filing of this brief *amicus curiae*.

Opinions Below

The opinion of the Supreme Court of Missouri in *Shelley* v. *Kraemer* (R. 153) is reported in 198 S. W. (2d) 679.

The opinion of the Supreme Court of Michigan in *McGhee* v. *Sipes* (R. 87) is reported in 316 Mich. 614, 25 N. W. (2d) 638.

The opinion of the United States Court of Appeals in *Hurd* v. *Hodge* and *Urciolo* v. *Hodge* (R. 417-432) is reported in 162 F. (2d) 233.

Jurisdiction

Jurisdiction of this Court of both *Shelley* v. *Kraemer* (No. 72) and *McGhee* v. *Sipes* (No. 87) is invoked under Section 237 of the Judicial Code (28 U. S. C., Sec. 344 (b)).

Jurisdiction of *Hurd* v. *Hodge* (No. 290) and of *Urciolo* v. *Hodge* (No. 291) is invoked under Section 240 of the Judicial Code (28 U. S. C., Sec. 347 (a)).

The judgment sought to be reviewed in *Shelley* v. *Kraemer* was entered by the Supreme Court of the State of Missouri on December 9, 1946. Motion for rehearing was filed on December 24, 1946, and denied on January 13, 1947. Petition for certiorari was filed in this Court on April 21, 1947, and was granted June 23, 1947.

The judgment sought to be reviewed in *McGhee* v. *Sipes* was entered in the Supreme Court of the State of Michigan on January 7, 1947. Application for rehearing was filed on January 23, 1947, and denied March 3, 1947. Petition for certiorari was filed in this Court on May 10, 1947, and granted June 23, 1947.

The judgments sought to be reviewed in *Hurd* v. *Hodge* and *Urciolo* v. *Hodge* were entered by the United States Court of Appeals for the District of Columbia on May 26, 1947. Motion for rehearing was denied June 23, 1947. Consolidated petitions for certiorari, filed on August 22, 1947, were granted on October 20, 1947.

Statement of Facts

There are four cases herein involving the validity of judicial enforcement of racial restrictive covenants: one originating in St. Louis, Missouri; one from Detroit, Michigan; and two consolidated actions from the District of Columbia. The purpose of the covenants was to preserve the respective neighborhoods for white residents only, and to prevent the occupation of the restricted property by Negroes.

In *Shelley* v. *Kraemer,* No. 72, the Missouri case, the covenant prohibiting ownership and occupancy was made in 1911 and was to run for fifty years. The trial court decided in favor of the Negro purchasers, but this judg-

ment was reversed on appeal with direction that a decree be entered holding the restrictions valid and granting the relief sought by the plaintiffs.

In *McGhee* v. *Sipes,* No. 87, the Michigan case, the covenant, made in 1934, was to run for twenty-five years. It prohibited use and occupancy by non-Caucasians, and was not to become effective until at least eighty percent of the frontage on the block was covered by the same or a similar restriction. The trial court granted the relief sought by the plaintiff, and the judgment was affirmed on appeal.

In *Hurd* v. *Hodge,* No. 290, and *Urciolo* v. *Hodge,* No. 291, the consolidated District of Columbia cases, the restrictions were against alienation to Negroes, and were perpetual. Urciolo, one of the petitioners, is white; the others are Negroes. The trial court rendered judgment, divesting the Negro purchasers of title, enjoining the white owners from renting, leasing, or conveying the property to Negroes, and ordering the Negro purchasers to vacate the premises. This was affirmed on appeal, with Mr. Justice Edgerton dissenting.

Summary of the Argument

These cases present to this Court squarely for the first time the validity of judicial enforcement of restrictive covenants that bar the sale to or the occupancy by Negroes of real property. The following arguments will be urged by this brief:

I. The decrees of the Missouri and Michigan Courts deprived the petitioners of their property without due process of law in violation of the Fourteenth Amendment

to the Constitution; and were in violation of Sections 1977 and 1978 of the Revised Statutes (8 U. S. C., Secs. 41, 42).

II. The decrees of the Missouri and Michigan Courts denied to the petitioners equal protection of the law in violation of the Fourteenth Amendment to the Constitution.

III. The decrees of the District of Columbia Court deprived the petitioners of their property without due process of law in violation of the Fifth Amendment to the Constitution; and were in violation of Section 1978 of the Revised Statutes (8 U. S. C., Sec. 42).

IV. The questions raised by the present cases have never been decided by this Court. The case of *Corrigan* v. *Buckley,* 271 U. S. 323, frequently relied on to sustain the constitutionality of racial restrictive covenants, did not decide the questions presented herein.

Inasmuch as the many more questions involved in these cases are fully covered in the main briefs submitted by the petitioners herein, we are confining ourselves in this *amicus* brief to the invalidity of judicial enforcement of racial restrictive covenants under the Fifth and Fourteenth Amendments of the Constitution, and under Sections 1977 and 1978 of the Revised Statutes (8 U. S. C., Secs. 41, 42).

I

The judicial enforcement of racial restrictive covenants in the Michigan and Missouri cases is a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution; and of Sections 1977 and 1978 of the Revised Statutes (8 U. S. C., Secs. 41, 42).

A. The right of a citizen to acquire, own, enjoy and dispose of property without discrimination as to race or color is a federal civil right protected by the Constitution.

Section 1977, Revised Statutes (8 U. S. C., Sec. 41) provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Section 1978, Revised Statutes (8 U. S. C., Sec. 42) provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

The statutes are a declaration by Congress of the right of all citizens to acquire and enjoy property without discrimination as to race or color. If a white man can make a valid contract to purchase real property, Congress says that a Negro can make the same contract. If a white man

has a right to acquire and own a particular piece of property the language of Section 1978 indicates that a Negro has the identical right.

These sections were derived from the Civil Rights Acts of 1866-75 which were under consideration in the *Civil Rights Cases,* 109 U. S. 3. In his opinion, Mr. Justice Bradley asserted that there were certain "fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential difference between freedom and slavery." Among the rights "which are the essence of civil freedom" is the right, the Court said, to "purchase, lease, sell and convey property" (p. 22).

These rights, the *Civil Rights Cases* held, cannot be protected by the federal government under the Fourteenth Amendment from infringement by individual action, "unsupported by state authority in the shape of law, customs, or *judicial* or executive proceedings" (p. 17). (Italics added.) They are, nevertheless, among the constitutional rights of all citizens of the United States. It will appear later that the infringement in the present cases was supported "by state authority * * * in the shape of * * * judicial * * * proceedings."

In *Buchanan* v. *Warley,* 245 U. S. 60, the City of Louisville, Kentucky, enacted a municipal ordinance that forbade any white person or Negro to reside on any city block in which the majority of houses were occupied by persons of the other color. This Court held that the ordinance violated the due process clause of the Fourteenth Amendment. It was declared in that case that the right to dispose of one's property without discrimination as to race or color is a civil right protected by the Constitution. The Court said (p. 81):

> The case presented does not deal with an attempt to prohibit the amalgamation of the races. The right which the ordinance annulled was the civil right of a white man to dispose of his property if he saw fit to do so to a person of color, and of a colored person to make such disposition to a white person.
>
> It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.

It appears to be settled from the foregoing that the right to acquire, own, and dispose of property without discrimination as to race or color is a civil right that is an incident of national citizenship and is guaranteed by the Constitution.

In all cases herein the property involved had been deeded to the Negro petitioners.[1] In the *Missouri* and *District of Columbia* cases there were restrictions against ownership as well as occupancy; the purchasers held the property subject to being divested of title if the restrictions were upheld. In the *Michigan* case there was only a restriction against occupancy. In the *Michigan* case, therefore, the petitioner acquired valid, legal title, and was possessed of all the incidents of ownership. The property was residential property in a residential neighborhood, and its use as a home was a proper, legal use. He could have rented it to white occupants. He was forbidden, because of his color, to occupy it himself.

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[1] The petitioner Urciolo in *Urciolo* v. *Hodge*, No. 291, is white (R. 380). Hurd, in *Hurd* v. *Hodge*, No. 290, at the trial claimed to be a Mohawk Indian (R. 238), but was found by the court to be a Negro (R. 380).

In *Buchanan* v. *Warley, supra,* the City of Louisville sought to accomplish the same result by means of a municipal ordinance. The Court said, at page 74:[2]

> The Fourteenth Amendment protects life, liberty, and property from invasion by the states without due process of law. Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property * * * Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land.

That the right to use one's property for a lawful, proper purpose is an incident of ownership, and as such is within the protection of the constitutional guaranty of due process, is conclusively settled. Particularly is this true of the right to use residential property for residential purposes.[3] This was clearly recognized in *Buchanan* v. *Warley, supra,* which stated that occupancy was an incident of the right of purchase or sale of real property (p. 75).

It is significant that all of the restrictions upon real property enforcible by the police power such as the "livery stables, brickyards, and the like," mentioned in *Buchanan* v. *Warley* as the legitimate subject of restrictive cove-

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[2] The due process clause was relied upon because the action was brought by a white vendor who was deprived by the ordinance of the right to dispose of his property. There can be no doubt that the same result would have been reached under the due process and equal protection clauses had the action been brought by a Negro purchaser.

[3] *Terrace* v. *Thompson,* 263 U. S. 197, 215 (citing *Buchanan* v. *Warley, supra,* 245 U. S. 60, and *Holden* v. *Hardy,* 169 U. S. 366, 391); *State of Washington ex rel. Seattle Title Trust Co.* v. *Roberge,* 278 U. S. 116, 121; *Sterling* v. *Constantin,* 287 U. S. 378; *Hall* v. *DeCuir,* 95 U. S. 485, 508; *Holmes* v. *Gravenhorst,* 263 N. Y. 148, 152.

nants, were restrictions upon use. They were burdens imposed upon the property not upon the occupants. A blacksmith, a glue maker, or a livery stable proprietor, may be lawfully restricted in the pursuit of his respective occupation in a particular neighborhood but no one will deny that he may live, without legal interference, where anyone else may live.

That this is one of the rights protected by the Fourteenth Amendment, and that cannot be taken away without denial of due process, seems to be settled beyond question. In *Allgeyer* v. *State of Louisiana,* 165 U. S. 578, the Court said (p. 589):

> The liberty mentioned in that amendment [the Fourteenth] means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen * * * to live and work where he will.

This distinction between limitations on use and limitations on occupancy is important. The one imposes a servitude upon property which, at times, is legally permissible. The other imposes a servitude upon the individual which is repugnant to the basic concepts of the Constitution. It takes away from him, solely because of the color of his skin, a right which the *Allgeyer* case says is guaranteed to him by the Fourteenth Amendment—the right to live where he will. The language of this Court in *Steele* v. *Louisville and Nashville Railroad Co.,* 323 U. S. 192, 203, is equally pertinent to the present cases:

> Here the discriminations based on race alone are obviously irrelevant and invidious.

It may be claimed that the cases sustaining statutes prohibiting aliens from owning real property are in point here. Let us consider this for a moment.

The leading case is *Terrace* v. *Thompson,* 263 U. S. 197, in which the Court had under consideration a provision of the Constitution of the State of Washington that prohibited the "ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States." There was likewise involved a statute, the Anti-Alien Land Law, forbidding the use of property by a non-declarant alien.

Terrace, a citizen of the United States, wished to lease certain agricultural land to a Japanese. He, therefore, brought suit against the Attorney General to enjoin him from enforcing the Anti-Alien Land Law on the ground that it conflicted with the due process and equal protection clauses of the Fourteenth Amendment.

This Court overruled the contention, and in so doing made perfectly clear the rationale of its decision. The essential difference between aliens and non-aliens, insofar as legislation of this kind is concerned, lies in their respective obligation of loyalty to the government.

"The rights, privileges and duties of aliens differ widely from those of citizens," the Court said, "and those of alien declarants differ substantially from those of non-declarants" (p. 218). It then quoted the following with approval from the opinion of the court below:[4]

> It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens (pp. 220, 221).

[4] 274 Fed. 841, 849.

It is clear that the legislation was sustained as a justified protective measure. The classification into citizens, declarant aliens, and non-declarant aliens was reasonable and not arbitrary. A state has a right to impose standards of loyalty upon those who would hold land within its borders. It is not unreasonable to put into a particular category those aliens who have shown so little devotion to our institutions as to have refrained from seeking citizenship.

As to those who are barred from naturalization by congressional enactment, the Court said: "The State properly may assume that the considerations upon which Congress made such classification are substantial and reasonable."

There is no doubt that a law that makes reasonable, non-arbitrary classifications does not deny equal protection.[5] But discrimination based upon race or color does not come within that rule. Unless it can be determined that a man's loyalty can be measured by his ancestry or the color of his skin, classification based upon those considerations is unreasonable and arbitrary.

If the State of Washington statute, instead of prohibiting non-declarant aliens from owning or leasing property, had barred Negroes, it would have been unconstitutional under *Buchanan* v. *Warley*. This seems to be a complete refutation of the pertinency of *Terrace* v. *Thompson*.

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[5] *Truax* v. *Corrigan*, 257 U. S. 312, 337.

B. State action depriving a person of the ownership, use or occupancy of property solely because of his race or color is forbidden by the due process clause of the Fourteenth Amendment.

The issue in *Buchanan* v. *Warley,* 245 U. S. 60, was stated by the Court in these words (p. 75):

> The concrete question here is: May the occupancy and, necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the states, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?

And again, at page 78:

> In the face of these constitutional and statutory provisions, can a white man be denied, consistently with due process of law, the right to dispose of his property to a purchaser by prohibiting the occupation of it for the sole reason that the purchaser is a person of color, intending to occupy the premises as a place of residence?

The answer to these questions is emphatic and final:

> We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the state, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case, the ordinance cannot stand (p. 82).

The proposition that such discriminatory action by the states is forbidden is thus definitely settled by *Buchanan* v. *Warley.*[6]

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[6] *Harmon* v. *Tyler,* 273 U. S. 668; *Richmond* v. *Deans,* 281 U. S. 704; *Carey* v. *City of Atlanta,* 143 Ga. 192, 84 S. E. 456; *Jackson* v. *State,* 132 Md. 311, 103 A. 910; *Clinard* v. *City of Winston-Salem,* 217 N. C. 119, 6 S. E. (2d) 867; *Liberty Annex Corp.* v. *City of Dallas,* 289 S. W. 1067.

C. The decrees of the state courts were forbidden state action and therefore violated the due process clause of the Fourteenth Amendment.

(a)

Judicial action is state action.

Thus far we have shown that the right to buy, sell, and occupy real property without discrimination as to race or color is a civil right guaranteed and protected by the Constitution. It is also clear that any legislation that would take away that right would be forbidden state action and therefore unconstitutional.

To paraphrase the language of *Marsh* v. *Alabama*, 326 U. S. 501, 505, if the parties to these racial covenants "owned all the homes, and all the stores, and all the streets, and all the sidewalks, all those owners together could not have set up a municipal government with sufficient power to pass an ordinance" barring the ownership, use, and alienation of real property on the ground of color.

The question, therefore, is, can private parties, by making a contract, empower the judiciary to do that which is beyond the sovereign power of the state to do?

It has long been settled that the judicial action of a state court is the action of the state itself, and that when such action contravenes the Constitution it comes within the purview of the Fourteenth Amendment.

As far back as 1879 this Court said in *Virginia* v. *Rives*, 100 U. S. 313, 318:

> It is doubtless true that a State may act through different agencies,—either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another.

In *Ex Parte Virginia,* 100 U. S. 339, the same year, the Court said (p. 346):

> They [the prohibitions of the Fourteenth Amendment] have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way.

These were cases involving the right of Negroes to serve as jurors. This Court has not hesitated to set aside a determination of the highest Court of a state, either on matters of procedure or substantive law, when it manifestly violated the provisions of the Fourteenth Amendment, and when a far reaching deprivation of Constitutional rights was implicit in the decision.

In *Brinkerhoff-Faris Trust Co.* v. *Hill,* 281 U. S. 673, an application for an injunction to restrain the collection of an alleged discriminatory tax was denied because the plaintiff had not exhausted his remedies before the tax commissioner. An earlier decision of the Missouri court had held that the tax commissioner was without power to grant the relief sought. This ruling was later reversed, but in the meantime plaintiff's time to file a complaint with the tax commissioner had expired, and he was deprived of his day in court. Mr. Justice Brandeis, writing the opinion of this Court, said, at pages 679, 680:

> If the result above stated were attained by an exercise of the state's legislative power, the transgression of the due process clause of the Fourteenth Amendment would be obvious * * * The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid * * * state statute. The federal guaranty of due process extends to state action through its judicial, as

> well as through its legislative, executive, or administrative branch of government.

In *Powell* v. *Alabama,* 287 U. S. 45, the defendants had been convicted of rape without the proper assignment by the court of counsel. This Court reversed the judgment of the Supreme Court of Alabama affirming the conviction because by judicial action due process had been denied to the defendants by the State of Alabama.

In *Bridges* v. *California,* 314 U. S. 252, the defendant was convicted of contempt under the common law of the state. This Court reversed that sentence because the action of the California court denied to the defendant the right of free speech protected by the Fourteenth Amendment.

In *Cantwell* v. *Connecticut,* 310 U. S. 296, this Court likewise set aside a conviction because the defendant had been denied the right of free speech guaranteed by the Fourteenth Amendment. In that case the conviction was for the common law offense of inciting a breach of the peace, and this Court overruled the judgment of the Connecticut court in interpreting its own judge-made law.

The statement of the Court on this point in *Twining* v. *New Jersey,* 211 U. S. 78, has been widely quoted. In that case the question involved was the right of a trial judge in a criminal case to comment upon the failure of a defendant to testify in his own behalf. Although the Court decided that the comments did not constitute a denial of due process, it stated (pp. 90, 91):

> The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the state.

Due process of law means something more than mere compliance with the forms and rules of legal procedure.

A man might have a fair trial; the judge might be careful and accurate in his application to the case of the state law; yet, if the ultimate decision results in the denial of a constitutionally protected right there has been an infringement of the Fourteenth Amendment.

This was clearly expressed in *Chicago, B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226, in which it was claimed that property had been taken from the railroad in condemnation proceedings by the City of Chicago without adequate compensation. The Court said (pp. 234, 235):

> But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form * * * the final judgment of a state court, under the authority of which the property is in fact taken, is to be deemed the act of the State within the meaning of that amendment.

(b)

The decrees herein are forbidden state action and therefore violate the Fourteenth Amendment.

We do not contend that the procedural rights of the litigants in these cases were not scrupulously protected, nor do we contend that the trial courts were without jurisdiction to adjudicate private contracts between individuals. It is the *result* of the adjudication that we challenge. The decrees deprived the petitioners of fundamental constitutional rights. They were, therefore, forbidden state action.

We do not claim that all state judicial action is reviewable by this Court, nor do we ask that the Court go beyond the issues presently before it. There is no necessity here further to extend "the vague contours" of the due process clause.[7] The Court said in *Strauder* v. *West Virginia*,[8] "The Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible."

All that we are asking the Court to decide here is that *when a decree of a state court accomplishes a result forbidden to the state legislature, and deprives a person because of his race, color, or religion, of a fundamental right guaranteed and protected by the Constitution, it is forbidden state action and invalid under the Fourteenth Amendment.*

We submit that this is precisely the effect of the decrees in the present cases. We have shown that the right of a person to buy, sell, occupy, and enjoy property, and "to live and work where he will" is guaranteed and protected by the Constitution. It is apparent that the decrees herein take that right away.

It has been urged that the *Civil Rights Cases*, 109 U. S. 3, is controlling. The decision in those cases held that racial discrimination by individuals did not raise a reviewable federal question. The discriminatory acts, the barring of Negroes from inns and places of public amusement, were complete and self-enforcing; there was no need to invoke the aid of the government. The Court indicated clearly that if the discrimination, to be effective, needed the support of judicial action the situation would be different. Mr. Justice Bradley said, at page 17:

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[7] Holmes J., dissenting opinion in *Adkins* v. *Children's Hospital*, 261 U. S. 525.

[8] 100 U. S. 303, 310.

> In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution, against state aggression, cannot be impaired by the wrongful acts of individuals, *unsupported by state authority in the shape of* laws, customs, or *judicial* or executive *proceedings.* (Italics added.)

If, as the above language indicates, the impairment of civil rights by individuals comes within the prohibitions of the Fourteenth Amendment when supported by judicial proceedings, it follows that the impairment of constitutional rights by the judicial enforcement of private contracts, such as these restrictive covenants, likewise comes under the ban.

There is a further consideration that should be mentioned. If individuals, by private agreement, can establish racially segregated areas, they are virtually performing a legislative act. This was the effect of the ordinance held unconstitutional in *Harmon v. Tyler.*[9]

In that case a New Orleans ordinance barred whites or Negroes from "any community or portion of the city * * * except on the written consent of a majority of the opposite race inhabiting such community or portion of the city."[10] In effect, it conferred local option upon the residents of New Orleans to establish racial zoning restrictions. It was held unconstitutional on the authority of *Buchanan* v. *Warley.* Surely the absence of such ordinance in the present case cannot confer greater power upon the contracting parties than they would have had under an ordinance.

The argument that a state cannot do by judicial action that which it is forbidden to do by legislation is succinctly

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[9] 273 U. S. 668.

[10] Quoted in *Tyler* v. *Harmon,* 158 La. 439, 440.

and convincingly stated by Mr. Justice Edgerton in his dissenting opinion in the court below in *Hurd* v. *Hodge*:[11]

> It is strangely inconsistent to hold as this court does that although no legislature can authorize a court, even for a moment, to prevent Negroes from acquiring and using particular property, a mere owner of property at a given moment can authorize a court to do so for all time. Either the due process clauses of the Constitution do not forbid governments to prevent Negroes from acquiring and using particular property, in which case they do not forbid courts to enforce racial restrictions which statutes have imposed; or these clauses do forbid governments to prevent Negroes from acquiring and using particular property, in which case they forbid courts to enforce racial restrictions which covenants have imposed. *Buchanan* v. *Warley* rules out the first alternative. As Judge Ross, the donor of the American Bar Association's Ross Essay Prize, said long ago in refusing to enforce by injunction a covenant against transfers to Chinese: "It would be a very narrow construction of the constitutional amendment in question and of the decisions based upon it * * * to hold that, while state and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the state may lawfully do so by contract, which the courts may enforce * * * The courts should no more enforce the one than the other."[12]

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[11] 162 F. (2d) 233, 240.

[12] *Gandolfo* v. *Hartman*, 49 Fed. 181, 182.

II

The judicial enforcement of racial restrictive covenants in the Michigan and Missouri cases is a violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

The equal protection clause of the Fourteenth Amendment, as was said in the recent case of *Fay* v. *New York*,[1]

> prohibits prejudicial disparities before the law. Under it a system which might be constitutionally unobjectionable if applied to all, may be brought within the prohibition if some have more favorable treatment.

It would seem to be beyond argument that to permit a white man to live in his own house and to forbid a Negro to live in his is a prejudicial disparity. To eject a Negro from his home solely because of his color, and to allow his white neighbor to remain unmolested certainly gives the white man "more favorable treatment."

We may add that it is a shocking prejudicial disparity for the law to interfere in a private arrangement between a willing seller and a willing purchaser of real property, and prohibit or annul the transaction because the purchaser is a Negro.[2]

The purpose of the Fourteenth Amendment was to prohibit precisely the sort of racial distinctions accomplished by the covenants in these cases. This was eloquently stated in *Strauder* v. *West Virginia,* 100 U. S. 303,

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[1] 331 U. S. , 91 Law Ed. Adv. Opinions 1517, 1530 (No. 377, decided June 23, 1947).

[2] All of these restrictive covenant cases involve transactions between willing vendors and willing purchasers. If that were not so, there could be no cases.

where, after summarizing the provisions of the Fourteenth Amendment the Court said, at pages 307, 308:

> What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States and, in regard to the colored race, for whose protection the Amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the Amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored; exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

It is pertinent to consider for a moment the underlying purpose of these racial restrictive covenants. The tragic fact of race prejudice is so pervasive and so deeply rooted in our national life that this court can, without multiplication of illustrations, take judicial notice of it. A widespread belief in the specious "inferiority in civil society" of the Negro referred to in the *Strauder* case unquestionably exists.

This lamentable fact of race prejudice is, of course, seldom admitted, and various rationalizations have been advanced to justify these discriminatory covenants. The most frequent are that the restrictive covenants preserve real estate values and that they prevent interracial strife. Assuming *arguendo* that these contentions may have some validity, they cannot justify a contravention of the Constitution. Both of these arguments were summarily disposed of in *Buchanan* v. *Warley, supra*, pages 81, 82:

> It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.
>
> It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors, or put to disagreeable though lawful uses with like results.

The truth of the matter is that some white people do not want Negroes as neighbors. This they cannot accomplish by legislation, so the racial restrictive covenant was devised to circumvent the ruling of *Buchanan* v. *Warley*. The very fact that fears are expressed in these cases that the presence of Negroes in a neighborhood will depreciate values and promote strife is in itself persuasive evidence of the basic reason for the discrimination,—racial antagonism.

That racial hostility is an important motive for these restrictions is recognized in *Buchanan* v. *Warley*, where the Court said, at pages 80, 81:

> That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration may be freely admitted.

The opinion then adds:

> But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.

The language of this Court in *Korematsu* v. *U. S.*, 323 U. S. 214, 216, is therefore, squarely in point:

> It should be noted to begin with, that all legal restrictions which curtail the civil rights of a single

> racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; ***racial antagonism never can.*** (Italics added.)

Two arguments have frequently been advanced in support of the judicial enforcement of racial restrictive covenants. One is that the courts would, if called upon, enforce similar covenants by Negroes against whites, and consequently there is no denial of equal protection. The other is that to refuse to enforce these covenants would deny equal protection to the contracting parties. This was explicitly stated in the opinion by the court below in *Sipes* v. *McGhee*.[3]

The speciousness of these contentions is apparent. That Negroes are being herded in restricted slum areas with the concomitant result of disease, crime, and racial tension is well known. It is unrealistic to say that the whites, who have unrestricted access to all the habitable areas of the country, may perhaps be barred by Negroes from some of them by discriminatory covenants. It would ignore the obvious facts of contemporary life to imagine a desirable residential neighborhood inhabited by wealthy Negroes from which whites would be excluded. As Mr. Justice Cardozo said in *Smith* v. *Loughman*, 245 N. Y. 486, 496, of another constitutional provision:

> We are not to whittle it down by refinement of exception or by the implication of a reciprocal advantage that is merely trivial or specious.

However, the constitutional objection is not answered by supposing the possibility of reciprocal discrimination.

[3] 316 Mich. 614, 25 N. W. (2d) 638, 644.

A denial of a constitutional right to a Negro today cannot be sustained because a similar right may perhaps be denied to a white man in the hypothetical future. This is convincingly presented by Professor McGovney[4] who says:

> But in every case of state court enforcement of a restrictive agreement the blow falls upon an individual, not upon a group as such. The command of the Clause is that no state shall deny to any person the equal protection of the laws. The immunity granted is an individual one. When because of an agreement of one group a state ousts a Negro from residing in the home of his choice it does not square itself with the command of the clause by enforcing the agreement of another group by which a white man is barred from the home of his choice. Instead of complying with the Clause, the state commits two violations of it. Two individuals, one Negro and one white, has each been discriminated against because of his race. Under the Equal Protection Clause, as under Due Process Clauses, the Supreme Court, has several times pointed out that "the essence of the constitutional right is that it is a personal one * * * It is the individual who is entitled to the equal protection of the laws."[5]

The contention that refusal to enforce these covenants would deny equal protection to the contracting parties is equally unsound. If we balance rights conferred by private contracts against fundamental constitutional rights, there can be no question that constitutional rights must prevail.

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[4] McGovney, D. O., *Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds Is Unconstitutional,* 33 Calif. Law Rev. 5, 28, 29.

[5] See, also cases cited, *ibid.*, page 29: *McCabe* v. *Atchison, T & S. F. R. Co.,* 235 U. S. 141, 161, 162; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337, 351; *Mitchell* v. *U. S.,* 313 U. S. 80, 97.

In these cases the relative equities may be thus stated: On the one hand there are the contracting parties who in good faith believed that by joining in a covenant they could secure their property from the undesirable proximity of colored neighbors. On the other hand there is the Negro who, during an acute housing shortage is prevented from acquiring a home, or, having acquired it, is driven out of it solely because he is a Negro.

It has been made abundantly clear in the cases quoted above[6] that the right of a person to acquire property and remain unmolested in the enjoyment of it is a paramount constitutional right. This right is superior to any private contractual right, and all contracts are subordinate to it. As Mr. Chief Justice Hughes said in *Norman* v. *Baltimore and Ohio Railroad Co.*, 294 U. S. 240, 308:

> Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

Mr. Justice Brewer said in *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685, 692:

> But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, or nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur.

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[6] See, also, cases cited in note 3, Point I, *supra* (p. 12).

The language of this Court in *Nebbia* v. *New York*, 291 U. S. 502, 523, is also in point:

> Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm.

It cannot be denied that the restrictive covenants herein were to the detriment of the Negro owners and worked them harm. If they had been white there would have been no such detriment or harm. It follows, therefore, that the judicial enforcement of these covenants, based solely upon the color of the skin, constitutes a denial of equal protection of the law.

It is our contention that judicial enforcement of these restrictive covenants would be unconstitutional even as to the original parties to the agreement. If one of the parties attempted to sell to a Negro, an injunction to restrain him would be prohibited state action.

But the facts in the cases at bar are stronger, for the victims of these restrictions are not parties to the agreements that create them. Their constitutional right to buy, sell, and enjoy property has been invaded without the slightest semblance of consent. A person may lawfully bargain away some of his constitutional rights. He can never bargain away the constitutional right of another.

It has been contended that the cases that uphold the constitutionality of "equal but separate" accommodations for Negroes in public conveyances are authority for the ra-

cial segregation created by restrictive covenants. There are two answers:

The first is that housing is unique. An agreement to purchase a particular piece of property is not satisfied by the offer of some other property.[7] During a housing shortage such as exists at the present time there may not be another house available. But in any event, two houses are not identical in the sense that two dining cars or two Pullman cars or even two schools are identical. A white man seeking a home has a constitutionally protected right to indulge in all the nuances and vagaries of taste. To refuse the same right to a Negro is to deny him equal protection which, as the Court said in *Hill* v. *Texas,* 316 U. S. 400, 404, "is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand."

But the complete and final answer to the "equal but separate" argument is that this Court has clearly and emphatically declared that it does not apply to racial segregation in housing. *Buchanan* v. *Warley,* page 81, says:

> As we have seen, this court has held laws valid which separated the races on the basis of equal accommodations in public conveyances, and courts of high authority have held enactments lawful which provide for separation in the public schools of white and colored pupils where equal privileges are given. But, in view of the rights secured by the Fourteenth Amendment to the Federal Constitution, such legislation must have its limitations, and cannot be sustained where the exercise of authority exceeds the restraints of the Constitution. We think these limitations are exceeded in laws and ordinances of the character now before us.

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[7] *Baumann* v. *Pinckney,* 118 N. Y. 604, 612, 613, and authorities therein cited.

All that we said in the previous point concerning due process applies equally to the equal protection clause of the Fourteenth Amendment. Judicial action is state action, and a judicial decree that denies equal protection of the law is denial by the state.[8] It is forbidden state action, "odious to a free people whose institutions are founded upon a doctrine of equality." *Hirabayashi* v. *United States,* 320 U. S. 81, 100.

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[8] In addition to cases cited under due process, in Point I, *supra,* see also, *Raymond* v. *Chicago Union Traction Co.,* 207 U. S. 20, 36; *Home Tel. & Tel. Co.* v. *Los Angeles,* 227 U. S. 278, 287, 288; *Carter* v. *Texas,* 177 U. S. 442, 447; *Snowden* v. *Hughes,* 321 U. S. 1, 16.

III

The judicial enforcement of the racial restrictive covenants in the District of Columbia cases violates the Due Process Clause of the Fifth Amendment and Section 1978 of the Revised Statutes (8 U. S. C., Sec. 42).

Section 1978 of the Revised Statutes, which is a congressional enactment, is the municipal law of the District of Columbia, *Civil Rights Cases* (*supra*).[1] The decrees which deny to Negroes "the same right * * * as is enjoyed by white citizens * * * to * * * purchase, lease, sell, hold and convey" real property is clearly in violation thereof.

It is well settled that the words "due process" have the same meaning in the Fifth and Fourteenth Amendment.[2] In *Twining* v. *New Jersey*,[3] discussing due process, it was said:

> If any different meaning of the same words as they are used in the Fourteenth Amendment [and in the Fifth Amendment] can be conceived, none has yet appeared in judicial decision.

All that we said above concerning due process under the Fourteenth Amendment, therefore, applies here. It would have been beyond the power of Congress to enact a racial residential segregation law for the District of Columbia. The judicial enforcement of the restrictive covenants is forbidden governmental action and consequently deprived the petitioners of their property without due process of law.

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[1] 109 U. S. 3, 19.

[2] *Heiner* v. *Donnan*, 285 U. S. 312, 326; *Hurtado* v. *California*, 110 U. S. 516; *Bowles* v. *Willingham*, 321 U. S. 503, 518.

[3] 211 U. S. 78, 101.

IV

The case of *Corrigan* v. *Buckley* did not decide the questions presented herein.

The case of *Corrigan* v. *Buckley,* 271 U. S. 323, has been frequently relied upon by state courts and the courts of the District of Columbia to sustain the constitutionality of racial restrictive covenants. An examination of the opinion will show that the case has been misinterpreted, and that the questions presented here are still undecided.

Corrigan, Buckley and others made an agreement that no part of the restricted property, which was located in the District of Columbia, should be sold to or occupied by Negroes. Corrigan made a contract to sell a lot to a Negro, and a bill was filed to enjoin the sale. A motion was made to dismiss the bill on the ground that the covenant was void because it violated the Constitution and the Laws of the United States, and was against public policy. This motion was denied.

The case reached this Court on *appeal.* The defendants based their appeal on the sole grounds that the covenant was void because it violated the Fifth, Thirteenth, and Fourteenth Amendments, and Sections 1977, 1978, 1979, Revised Statutes.

The Court refused to entertain jurisdiction and dismissed the appeal because the record did not present a constitutional or statutory question substantial in character and properly raised in the lower court.

The attack in this case was solely upon the constitutionality of *the covenant.* The Court stated in its opinion that contracts between individuals did not come under the prohibitions of the Fifth, Thirteenth and Fourteenth Amendments, nor were they invalidated by Sections 1977, 1978 of the Revised Statutes. The Fifth Amendment, the

Court said, is a limitation upon the powers of the general government; the Thirteenth Amendment forbids involuntary servitude, but does not otherwise protect individual rights; and the 14th Amendment is a limitation upon state action, which was not involved in the case since it arose in the District of Columbia.

The constitutionality of the *decrees* of the lower court (as distinguished from the constitutionality of the covenants) was raised upon the argument in the Supreme Court, but was not in the record. On this point the Court said, page 331:

> * * * this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under Paragraph 3 of the Code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the court of appeals or in this court; and it likewise is lacking in substance.

It appears, therefore, that this point which is now raised in the present cases, that judicial enforcement of racial restrictive covenants is forbidden governmental action, "might have constituted ground for an appeal" if it had been properly raised.

Since the case was dismissed on jurisdictional grounds the statement "and is likewise lacking in substance" is dictum on a point which the Court stated was not before it.

Conclusion

For the reasons urged herein, we respectfully ask that the judgments of the courts below be reversed.

Respectfully submitted,

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APPENDIX

American Jewish Committee

The American Jewish Committee is a corporation created by an Act of the Legislature of the State of New York in 1906. Its charter states:

> The object of this corporation shall be to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto * * *.

During the forty years of our existence it has been one of the fundamental tenets of our organization that the welfare and security of Jews in America depends upon the preservation of constitutional guarantees. An invasion of the civil rights of any group is a threat to the safety of all groups.

For this reason we have, on many occasions fought in defense of civil liberties although Jewish interests were not specifically involved. The present racial restrictive covenant case is one with which we are deeply concerned. The pattern of discrimination in housing because of race, religion and color has grown ominously in recent years, and millions of persons are being deprived of rights that are freely enjoyed by others. Covenants against Jews are becoming more frequent, but this is not our sole interest. An invasion of fundamental constitutional rights on a nationwide scale presents to this Court a question of transcendent public importance.

B'nai B'rith (Anti-Defamation League)

B'nai B'rith, founded in 1843, is the oldest civic organization of American Jews. It represents a membership of 300,000 men and women and their families. The Anti-Defamation League was organized in 1913, as a section of the parent organization, in order to cope with racial and religious prejudice in the United States. The program developed by the League is designed to achieve the following objectives: to eliminate and counteract defamation and discrimination against the various racial, religious, and ethnic groups which comprise our American people; to counteract un-American and anti-democratic activity; to advance goodwill and mutual understanding among American groups; to encourage and translate into greater effectiveness the ideals of American democracy.

Jewish War Veterans of the United States of America

The Jewish War Veterans of the United States of America was organized in 1896 by Civil War veterans of the Jewish faith. At the present time it has 100,000 members organized in 600 Posts in 275 cities throughout the United States. It carries an extensive veteran service program representing veterans before the Veterans Administration, conducts hospital and rehabilitation programs for veterans, gives advice, guidance and counseling through nineteen offices throughout the United States. It carries on Americanism programs and, in general, programs similar to those of the American Legion, Veterans of Foreign Wars and other veteran organizations.

Jewish Labor Committee

The Jewish Labor Committee is an organization representing 500,000 affiliated Jewish trade unionists belonging to the A.F. of L. and C.I.O. Included among its affiliations are the International Ladies Garment Workers' Union, A.F. of L., United Hat and Cap and Millinery Workers, A.F. of L. and the Amalgamated Clothing Workers of America, C.I.O. as well as many smaller organizations. It functions in behalf of these organizations for the protection of Jewish and Jewish labor interests throughout the world. On the American scene it conducts extensive educational work in behalf of good human relations within the A.F. of L., the C.I.O. and independent unions, and overseas it provides aid and assistance to labor and Jewish labor, cooperative and cultural institutions.