IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CARL HEARD and FRANK HEARD by their next of friends and parents WILLIAM HEARD and EMMA MANOR HEARD, husband and wife; and CYNTHIA WILLIAMS, MYRNA RUTH WILLIAMS, PEARLIE MAE WILLIAMS and FLENOY WILLIAMS, JR., by their next of friends and parents FLENOY WILLIAMS and BEATRICE WILLIAMS, husband and wife,

Plaintiffs,

vs.

HAROLD DAVIS, as President, GEORGE T. MONROE, as Clerk, CALVIN McKNIGHT, as a Member of the Board of Trustees of the Wilson School District, a legally organized public school district in Maricopa County, State of Arizona; and G. S. SKIFF, as Superintendent of the Wilson Schools,

Defendants.

No. 77497

MOTION FOR SUMMARY JUDGMENT

COME NOW the plaintiffs in the above entitled action and move that this Court grant plaintiffs summary judgment based on the pleadings and the affidavit attached hereto. The grounds for this motion are:

(1) That there is no statute in the State of Arizona authorizing segregation on racial grounds;

(2) That such a segregation in absence of statute violates the Fourteenth Amendment of the Constitution of the United States of America;

(3) That if this Court holds that any statute in the State of Arizona permits segregation of students in the public schools based on race or creed that such a statute is void and of no effect as being contrary to the Constitution of the United States of America and the Constitution of the State of Arizona.

Respectfully submitted,

PARKER & MUECKE
HERBERT B. FINN
H. B. DANIELS

By _____
Attorneys for Plaintiffs

HERBERT B. FINN
ATTORNEY AT LAW
413 GOODRICH BUILDING
PHOENIX, ARIZONA
ALPINE 2-3513

## POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Counsel for plaintiffs have attached hereto a decision by the Honorable Fred C. Struckmeyer, Jr., Judge of the Superior Court of Maricopa County, and further cites in support of the proposition that the statute is invalid:

Macfarlane v. Goins, 50 S. 493 (Miss);

Knox v. Board of Education, 25 Pac. 616 (Kans.);

Woolridge v. Board of Education, 157 Pac. 1184 (Kans.);

Thurman-Watts v. Board of Education, 222 Pac. 123 (Kans.);

Bibbs v. Alton, 61 NE 1077 (Ill.).

Westminster School District of Orange County v. Mendez, 161 Fed. 2d 774 (9th Circ.)

Gonzales v. Sheeley, 96 Fed. Supp. 1004 (DC Ariz.)

Mailed copy to William P. Mahoney, Jr. County Attorney, attorney for defendants, Maricopa County Courthouse, Phoenix, Arizona, this 28th day of January, 1954.

HERBERT B. FINN
ATTORNEY AT LAW
419 GOODRICH BUILDING
PHOENIX, ARIZONA
ALPINE 2-3313

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CARL HEARD and FRANK HEARD by their next of friends and parents WILLIAM HEARD and EMMA MANOR HEARD, husband and wife; and CYNTHIA WILLIAMS, MYRNA RUTH WILLIAMS, PEARLIE MAE WILLIAMS and FLENOY WILLIAMS, JR., by their next of friends and parents FLENOY WILLIAMS and BEATRICE WILLIAMS, husband and wife,

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Defendants.

No. 77497

AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT

STATE OF ARIZONA )
) ss:
COUNTY OF MARICOPA )

WILLIAM HEARD, being first duly sworn, upon oath deposes and says:

That he is one of the plaintiffs in the above entitled action; that all the plaintiffs above named are members of the African race; and that all of the adult plaintiffs are parents of the minor plaintiffs and are taxpayers.

That this action is brought on behalf of all children of the African race, as well as on behalf of the plaintiffs, and that these individuals are so numerous as to make it impossible to bring them all before this Court. That there are common questions of law and fact and common relief being sought as will hereinafter appear, that plaintiffs file this action as a class action pursuant to Section 21-512, Arizona Code Annotated 1939.

HERBERT B. FINN
ATTORNEY AT LAW
418 GOODRICH BUILDING
PHOENIX, ARIZONA
ALPINE 2-3513

That plaintiffs named in this complaint and each of them was denied all admission to the Wilson School District schools as set forth herein by the defendants solely because the plaintiffs are and each of them is a member of the African race, and that further upon information and belief of your affiant this segregation and denial of admission was not authorized by any law or statute of the State of Arizona.

That defendants and each of them have at all times (and apparently intend to continue unless restrained as a result of this action) enforced segregation of African and Caucasian people without authority of any law or statute of the State of Arizona.

That plaintiffs and others similarly situated are suffering an irreparable injury by reason of the actions of the defendants herein complained of.

That the elementary schools of the Wilson School District are set apart for White students and that segregation of Negro people by race has a detrimental effect upon such Negro people, imparting to them a distinct inferiority, retarding their educational and mental development, depriving them of many of the benefits they would receive in an integrated school system free from racial discrimination or segregation.

That plaintiffs have petitioned defendants requesting that defendants cease discriminating and segregating against children of the Negro race of elementary school age in the Wilson School District, Maricopa County, Arizona. This, defendants have failed and refused to do.

x William Heard
William Heard

Subscribed and sworn to before me this 21st day of January, 1954.

Notary Public

My commission expires: ~~June 28, 1957~~ Oct. 8, 1957

HERBERT B. FINN
ATTORNEY AT LAW
415 GOODRICH BUILDING
PHOENIX, ARIZONA
ALPINE 2-3513

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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|---|---|
| ROBERT B. PHILLIPS, JR., by his father and next of friend, Robert B. Phillips, et al., Plaintiffs, vs. PHOENIX UNION HIGH SCHOOLS AND JUNIOR COLLEGE DISTRICT, ET AL., Defendants. | No. 72909<br><br>OPINION AND ORDER |

Plaintiffs, members of the African race, bring this action against the Board of Education of the Phoenix Union High School District to test the right of such school district to segregate the plaintiffs' children in the public schools. The School District admits that members of the African race are segregated from members of the Caucasian race thereby directly presenting the question whether such segregation is lawful.

For clarity, a brief reference is made to the status of the past laws and some of the matters actuating the adoption of the present law. The first law pertaining to segregation was adopted in 1909 by the Territorial Legislature. Thereafter numerous revisions of the original act together with laws supplementing it were enacted which culminated in the Twentieth Legislature in 1951 amending Section 54-416 (R. C. A. 1939) requiring mandatory segregation of pupils of the African race in elementary grades and repealing Section 54-918 permitting such segregation in high schools.

The Supreme Court of the United States in Gong Lum vs. Rice, 275 U. S. 78, 72 L. Ed 172, 48 Sup. Ct. 91, settled the question as to whether segregation by a state, acting through its legislature, is in itself lawful. It was then decided that segregation of groups of pupils does not violate the Federal Constitution if equal facilities are provided. Nonetheless democracy rejects any theory of second-class citizenship. There are no second-class citizens in Arizona. And the trend from the time of the enunciation in the Declaration of Independence of the principle "that all men are created equal" has been to constantly reconsider the status of minority groups and their problems.

Even in this country there have been many instances of oppression of such minority groups on racial, religious, cultural and economic grounds. The history of this nation indicates a strong tendency towards an increasing insistence upon the reality of those principles which form the basis of our democracy. Even today the Supreme Court of the United States has before it once again for reconsideration the question of whether any segregation at all is lawful. In the spirit of this marked social maturity our Legislature abandoned mandatory segregation. A half century of intolerance is enough.

In considering the effect of the abandonment of segregation in this state, certain problems immediately appear such as investments in school accommodations necessitated by segregation, and the Legislature undoubtedly in an attempt to ameliorate the economic impact adopted the following statute:

"They (Boards of Trustees) may segregate groups of pupils."

The effect of this statute is, of course, to transfer the responsibility of the transition to the local school authorities. Such delegation is clearly unconstitutional. Particularly is it

true as in this case where the Legislature has delegated its power to an administrative board without at the same time establishing a standard, criterion or guide as to the circumstances under which such power may be exercised. State of Arizona vs. Marana Plantations, Inc. (Decided January 19, 1953.) Buehman vs. Bechtel, 57 Ariz. 363, 114 Pac. 2d 226. Betts vs. Lightning Delivery Co., 42 Ariz. 105, 22 Pac. 2nd 827. It is fundamental to our system of government that the rights of men are to be determined by laws and not be administrative officers or bureaus, nor can this principle be surrendered for convenience or nullified for the sake of expediency. Yick Wo vs. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. 1064.

If the Legislature can confer upon the school board the arbitrary power to segregate pupils of African ancestry from pupils of Caucasian ancestry, then the same right must exist to segregate pupils of French, German, Chinese, Spanish, or other ancestry; and if such unlimited and unrestricted power can be exercised on the basis of ancestry, it can be exercised on such a purely whimsical basis as the color of hair, eyes, or for any reason as pure fancy might dictate.

This Court therefore holds that portion of Chapter 138 Laws of 1952, and that portion of Section 54-430 providing that boards of trustees "may segregate groups of pupils" are unconstitutional, that the action of the Phoenix Union High School District in segregating members of the African race from those of the Caucasian race is unlawful, and that a permanent injunction shall issue restraining and enjoining the defendants unless an appeal is herefrom taken in the manner and within the time provided by law.

Dated this 9th day of February, 1953.

FRED C. STRUCKMEYER, JR.
Fred C. Struckmeyer, Jr.
Judge of the Superior Court