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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ROBERT D. PHILLIPS, JR., by his father and next of friend, Robert D. Phillips, et al., Plaintiffs, vs. PHOENIX UNION HIGH SCHOOLS AND JUNIOR COLLEGE DISTRICT, ET AL., Defendants.	No. 72909 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. Harana Plantations, Inc. (Decided January 19, 1953.) Buelman vs. Bechtel, 57 Ariz. 363, 114 Pac. 2nd 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 by 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.
Judge of the Superior Court