

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

FILED
 WALTER S. WILSON
 CLERK

W. S. Wilson
 JUL 2 1952

ROBERT B. PHILLIPS, JR., by his father and next of friend ROBERT B. PHILLIPS; TOMMY WILLIAMS, by her mother and next of friend ROSA J. WILLIAMS; and DAVID CLARK, JR., by his father and next of friend DAVID CLARK,

Plaintiffs,

-vs-

PHOENIX UNION HIGH SCHOOLS AND JUNIOR COLLEGE DISTRICT; DR. TREVOR O. ADAM, MRS. F. A. BONS, FRANK HAZEL BUSH, JOHN E. HERMSELER and DR. NORMAN A. BOSS, as members of said BOARD OF EDUCATION; DR. E. W. MONTGOMERY, as Superintendent; JAMES S. CARTER, as Principal of PHOENIX UNION HIGH SCHOOL,

Defendants.

No. 72909 BV. 6

COMPLAINT FOR DECLARATORY JUDGMENT and FOR ORDER RESTRAINING DEFENDANTS FROM CARRYING ON PRACTICES OF RACIAL SEGREGATION.

1

The jurisdiction of this court is invoked under Section 27-701, Arizona Code Annotated, 1939 (Laws of 1927, Ch. 10, Section 1, page 18, R. C. 1928, Section 4-365.) and Section 27-702 Arizona Code Annotated, 1939, (Laws of 1929, Ch. 10, Sections 2, 3, page 16, Cons. R. C. 1928, Section 4-366.) Relating to Declaratory Judgment.

Organizational defendants herein operate within the confines of Maricopa County, state of Arizona, and the individual defendants herein act in their official capacities within the confines of the county of Maricopa, state of Arizona.

Defendant, Phoenix Union High School and Junior College District exists pursuant to the laws of the state of Arizona as an administrative department of the state, discharging governmental functions. Defendant, Board of Education of the Phoenix High Schools and Junior College District exists pursuant to the laws of the state of Arizona as an administrative department of the state, discharging governmental functions, specifically the maintenance and operation of the high schools in Phoenix, Maricopa, Arizona.

Defendant, Dr. E. W. Montgomery, is Superintendent of and as such is general administrator for said High School District and said high schools. Defendant, James B. Carter, is principal of, and as such has administration over the Phoenix Union High School, and defendants, Dr. Trevor G. Brown, Mrs. F. A. Bona, John E. Herrscher, Frank Haze Burch and Dr. Norman A. Ross are members of said Board of Education of the Phoenix High Schools and Junior College District.

The individual defendants herein are sued in their official capacities.

II

Minor plaintiffs are citizens of the United States and Arizona and are classified as pupils of the African race, and eligible to attend high schools in Phoenix, Maricopa, Arizona. They satisfy all requirements to attend any high school in Phoenix, Maricopa, Arizona.

Adult plaintiffs are citizens of the United States and Arizona and are members of the African race. They are the parents and next of friend of minor plaintiffs. They are taxpayers.

III

Plaintiffs bring this action in their own behalf and in the behalf of all other children of the African race attending high schools within the Phoenix Union High School and Junior College Districts, in the city of Phoenix, Maricopa, Arizona, and their parents and next of friend similarly situated and affected with reference to the matters here involved. These individuals are so numerous as to make it impossible to bring them all before this court. There being common questions of law and fact, and common relief being sought as will hereinafter solely appear, plaintiffs file this action as a class action pursuant to Section 21-512, Arizona Code Annotated, 1939, (Rules of Civ. Proc., Rule 20 (a).) Plaintiffs also invoke jurisdiction of this court under Section 26-101, Arizona Code Annotated, 1939, and this action in addition seeks to restrain the action of the defendants herein in segregating groups of pupils as herein and below set forth.

IV

Plaintiffs and others of their class are required and they do attend segregated high schools for the African Race, to-wit: Carver High School; and are refused the right to attend Phoenix Union High School maintained by defendants in whose district they live.

V

An actual controversy of justiciable nature exists between plaintiffs and defendants involving their rights under certain Arizona Statutes, more particularly, Section 54-416, Arizona Code Annotated, 1939, (Ch. 140, 1951 Session Laws, Arizona) and Section 54-430, Arizona Code Annotated, 1939, (Laws 1912, Ch. 77-54, page 364; R. S. 1913 - 2750; R. C. 1928 - 1025).

The questions in controversy between the parties are:

A. The question of whether chapter 140, 1951 session laws and Section 54-416 A. C. A., 1939 and chapter 54-430 A. C. A., 1939, empowers the defendants to segregate groups of pupils because of race; the only question involved being whether or not this segregation which is based solely on the fact that the minor plaintiffs are members of the African Race complies with the terms and provisions of the laws and statutes of Arizona.

B. The further question, (if this court holds that the Statutes drawn in question herein authorize segregation), of whether the policy, custom, practice and usage of defendants, and each of them, in denying on account of race and color the minor plaintiffs, and other children of the African Race of high school age residing in Phoenix, Maricopa, Arizona, educational opportunities, advantages and facilities in the high schools, including those hereinafter specified equal to the educational opportunities, advantages and facilities afforded and available to white children of high school age similarly situated is unconstitutional and void as being a denial of the rights guaranteed under the Fourteenth Amendment to the Constitution of the United States.

C. The further question (if this court holds that the Statutes

custom, practice and usage of defendants, and each of them, in denying on account of race and color the adult plaintiffs and other parents and guardians of children of the African Race of high school age similarly situated in Phoenix, Maricopa, Arizona, rights and privileges of sending their children to high schools in said city and county with educational opportunities, advantages and facilities, including those hereinafter specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of high school age are unconstitutional and void, as being a denial of the educational laws guaranteed under the Fourteenth Amendment to the Constitution of the United States.

VI

Defendants herein maintain in the city of Phoenix, Maricopa, Arizona, a system of high schools pursuant to the authority granted them under Section 54-416, 54-430, A. C. A., 1939, as amended by Chapter 140, 1951 Session Laws of Arizona. Said statutes are set forth in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein. Included within that system is the Phoenix Union High School. Plaintiffs Robert B. Phillips, Jr., Tolly Williams and David Clark, Jr., live within the district or zone in which white children living in the City of Phoenix, Maricopa, Arizona are directed and required by defendants to attend.

On September 10, 1951, that being the date set for admission to high school for all eligible children residing in Phoenix, Maricopa, Arizona, and in which they were required to apply, plaintiffs Robert B. Phillips, Jr., Tolly Williams and David Clark, Jr., applied for admission to the Phoenix Union High School, and that then and there each of them complied with and offered to comply with all rules and regulations respecting such admissions.

That plaintiffs named in this paragraph were, and each of them was, denied admission to the said high school, as set forth herein, by the defendants, and by the particular defendant aforesaid, who was principal of said high school, solely because plaintiffs are,

and each of them is, a pupil of the African Race. Said denial of admission was solely because of the practices, customs, and policies of the defendants in regard to authority and was not authorized by any law or statute in the State of Arizona.

VII

The state of Arizona has established a system of free public high schools in the state of Arizona, and the Constitution and the laws of the state of Arizona provide for the financing of said schools.

VIII

The maintenance and administration of public high schools in Phoenix, Maricopa, Arizona, is vested in the Board of Education of the Phoenix High Schools and Junior College District.

IX

The high schools of Phoenix, Maricopa, Arizona, are under the direct control and supervision of defendants acting as administrative departments and divisions of the state of Arizona. Defendants are under a duty to maintain the system of high schools in Phoenix, Maricopa, Arizona.

Plaintiffs are confused and embarrassed as to their legal rights.

A. Defendants, and each of them at all times must enforce and unless restrained as a result of this action, will continue to enforce segregation of African and Caucasian pupils without authority of any law or Statute in the state of Arizona, in the enforcement of this segregation. Defendants have set up and are maintaining one high school for all eligible pupils of the African race of Phoenix, Maricopa, Arizona, and another group of schools, including Phoenix Union High School, for all children other than pupils of the African Race. This separation and exclusion is based solely upon the race and/or color of plaintiffs, and those on whose behalf this action is brought, and pursuant to the Statutes hereinabove set forth, and is a violation of the equal protection laws of the Fourteenth Amendment to the Constitution of the United States, and a violation of the equal operation laws of the Constitution of the State of Arizona. No group of students, save those of African

descent are excluded from the high schools of Phoenix, Maricopa, Arizona, set apart for white students.

B. Plaintiffs and others similarly situated are suffering irreparable injury, and are threatened by irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than this suit for declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage and inconvenience not only to plaintiffs, and those similarly situated, but to defendants as governmental agencies.

X

The high schools of Phoenix, Maricopa, Arizona, set apart for white students, particularly Phoenix Union High School, are superior to the schools set apart for pupils of the African race in that students of all races, colors and national descent, except African, are admitted thereto; and in that segregation of African pupils by race has a detrimental effect upon such African pupils, imparting to them a stigma of inferiority, retarding their educational and mental development, and depriving them of some of the benefits they would receive in integrated school system free from racial discrimination and segregation.

XI

Plaintiffs have petitioned defendants requesting that defendants cease discriminating and segregating against children of the African race of high school age attending high schools in Phoenix, Maricopa, Arizona, and defendants have failed and refused to cease discriminating and segregating against plaintiffs, and the class they represent, solely because of race, and/or color in violation of their rights to equal protection of the laws provided by the Fourteenth Amendment to the Constitution of the United States, and equal operation of the laws as required by the Constitution of the State of Arizona.

WHEREFORE plaintiffs pray respectfully :

1. That upon filing of this complaint as may appear proper and convenient the court advance this cause on the docket and order a speedy hearing on this action according to law.

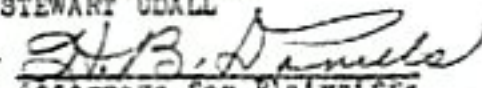
2. That upon such hearing this court adjudge, decree and declare the rights and legal relations of the parties to the subject matter here in controversy in order that such declaration shall have the force and effect of a final judgment and decree.

3. That this court either enter judgment or decree declaring that the policy, custom, practice and usage of defendants, and each of them in denying on account of their race and color minor plaintiffs and other African pupils of high school age in Phoenix, Maricopa Arizona, educational opportunities, advantages and facilities equal to those afforded to white children is a denial of the equal protection of the Arizona laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, or that this Court enter a judgment or decree declaring that Chapter 140, 1951 Session Laws, Arizona, and Chapter 54-430, Arizona Code Annotated, 1939, do not permit or require segregation of pupils solely because of their race and color and therefore the acts of defendants violate the Constitutional rights of plaintiffs.

4. That this court issue a permanent injunction forever restraining and enjoining the defendants, and each of them, from making any distinction based upon race or color in admission of plaintiffs to the high schools of Phoenix, Maricopa, Arizona.

5. That plaintiffs recover their costs, and for such further, other or additional relief as may appear to the court to be just and equitable.

H. B. DANIELS
BURTON R. LEWKOWITZ
HERBERT B. FINN
STEWART UDALL

By 
Attorneys for Plaintiffs

RALPH ESTRADA
C. M. WRIGHT
Of Counsel

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

ROBERT B. PHILLIPS, father and next of friend of Robert B. Phillips, Jr., one of the plaintiffs herein, being first duly sworn on oath deposes and says: that he makes this affidavit for and on behalf of said plaintiff, being thereunto duly authorized; that he has read the above and foregoing complaint and knows the contents thereof and the same is true in his own knowledge and belief.

Robert B. Phillips

Subscribed and sworn to before me this 1st day of July, 1952.

Haynes B. Daniels
NOTARY PUBLIC

My Commission expires:

Nov 18, 1952