

1951

Abner W. Allen v. Board of Education of Weber County School District : Respondent's Petition for Rehearing

Utah Supreme Court

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Glen E. Fuller; Attorney for Respondent;

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Argument:

Inasmuch as this Petition for Rehearing is based entirely upon the Respondent's Cross-Appeal and the contention being that the Court completely disregarded and overlooked the Cross-Appeal in its decision, pages 20 to 40 of the original brief on file in this cause are hereby incorporated herein by reference and made a part hereof.

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FIRST: INASMUCH AS THE DECISION WAS NEITHER ISSUED NOR FILED UNTIL THE END OF THE SINGLE SCHOOL YEAR FOR WHICH THE INJUNCTION WAS ISSUED IT IS CONTENDED BY RESPONDENT THAT THE ISSUE HAD BECOME MOOT AND THAT, PARTICULARLY IN VIEW OF THE REASONS GIVEN FOR SETTING ASIDE THE LOWER COURT'S FINDING OF ARBITRARY ACTION ON THE PART OF THE APPELLANT, THE DECISION SHOULD BE CORRECTED SO AS TO REVERSE THE ONE-YEAR INJUNCTION ONLY, UNLESS OTHERWISE REVERSED FOR REASONS HERINAFTER GIVEN;

SECOND: IF THE COURT INTENDED ITS DECISION TO BE A FINAL ADJUDICATION ON THE MATTER OF APPELLANTS' ARBITRARY ACTION, IT ERRED IN SO RULING FOR THE REASON THAT IT DID NOT PROPERLY CONSIDER THE DIFFICULTIES OF OGDEN VALLEY CHILDREN AND THEIR PARENTS IN HAVING SAID CHILDREN MOVED TO SCHOOL OVER THE ROUTE CONTEMPLATED, CONSIDERING THE DISTANCES, TEMPERATURES, HOURS, ROAD CONDITIONS AND OTHER NATURAL HAZARDS WHICH EXIST;

THIRD: IF THE COURT INTENDED ITS DECISION TO BE A FINAL ADJUDICATION ON THE MATTER OF APPELLANTS' ARBITRARY ACTION, IT ERRED IN RULING, BY IMPLICATION, THAT NO EXTRAORDINARY SET OF CIRCUMSTANCES SUCH AS HERE EXIST SHOULD TAKE PRECEDENCE OVER SURVEYS CONDUCTED BY SCHOOL MEN WHICH DO NOT IN ANY RESPECT CONSIDER THE PECULIAR MATTERS AND PROBLEMS SET FORTH IN RESPONDENT'S CROSS-APPEAL.

3. Respondent herewith incorporates the material and authorities contained in pages 20 to 40 of his original brief in this matter in support of the foregoing statements of error.

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WHEREFORE, it is requested that this Court make an Order granting Respondent and Cross-Appellant a Re-Hearing in this matter.



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