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Recommended Citation
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IN THE SUPREME COURT

OF THE STATE OF UTAH

JAMES H. STARKEY AND JAMES)
HAROLD STARKEY, FOR HIMSELF)
AND FOR ALL OTHER PERSONS)
SIMILARLY SITUATED,)

Plaintiff and Appellant,)

vs.) CASE NO.

BOARD OF EDUCATION OF DAVIS) 9897
COUNTY SCHOOL DISTRICT,)

Defendant and Respondent.)

FILED
APR 12 1963
Supreme Court, Utah

BRIEF OF APPELLANT JAMES HAROLD STARKEY

Appeal From the Judgment
of the Second Judicial District Court
for Davis County
Honorable Thornley K. Swan, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.	)	________
BOARD OF EDUCATION OF DAVIS	)	
COUNTY SCHOOL DISTRICT,	)	
Defendant and Respondent.	)	

BRIEF OF APPELLANT JAMES HAROLD STARKEY

STATEMENT OF THE CASE

(a) This is an action to restrain enforcement of a resolution of Defendant-Respondent barring Plaintiff-Appellant from participating in extra-curricular activities at Davis High School at Kaysville, Utah.

(b) Judgment was granted to defendant

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in the lower court and plaintiff-appellant's complaint was dismissed on the ground that the resolution of defendant-respondent is not capricious, arbitrary or discriminatory and does not deny to plaintiff-appellant any federal or state constitutional guarantee of due process of the law or equal protection of the law. Plaintiff-appellant's complaint was dismissed on the further ground that he is over eighteen years of age.

(c) Plaintiff-appellant seeks an order of this Court reversing the judgment of the lower Court and ordering the lower Court to enter a decree in plaintiff's favor prohibiting the enforcement of the resolution of defendant and for such other relief as may be just and equitable in the premises.

STATEMENT OF THE FACTS

Stipulations made in the lower Court establish: that Plaintiff-Appellant James

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Harold Starkey is now a student at Davis High School, in the Davis County School District; that at the time the Resolution here contested was enforced against said plaintiff, he was a member of the wrestling team representing the high school; that he was Vice President of the Boy's Association, a student body office in the high school, and that he was on the Usher Squad in the high school. It was further stipulated that "except for some disability or ineligibility, James Harold Starkey would be expected to be among those who would try out for the baseball team at Davis High School." Stipulation was entered into that plaintiff was barred from participating in the above named activities as a result of the enforcement of a resolution of defendant dated January 8, 1962. (R. 2,3,4) Plaintiff was married December 22, 1962.

Pertinent portions of the Resolution

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herein complained of read:

> "The Board of Education hereby resolves that no married student shall be permitted to participate as a student body or class officer, on athletic teams or in those extracurricular activities which are separate and apart from the regular daily class schedules and expectations for graduation requirements... <u>Furthermore, presently married students may continue in athletics only until the end of the 1962-63 school year...</u>"
> (Emphasis added)

The resolution was dated January 8, 1962 and became effective as of that time.

STATEMENT OF POINTS

POINT ONE

THE DISTRICT COURT ERRED IN GRANTING JUDGMENT TO DEFENDANT AND NOT TO PLAINTIFF JAMES HAROLD STARKEY.

POINT TWO

THE DISTRICT COURT ERRED IN RULING THAT THE RESOLUTION OF DEFENDANT OF JANUARY 8, 1962, IS NOT CAPRICIOUS, ARBITRARY OR DISCRIMINATORY AND DOES NOT DENY TO PLAINTIFF ANY FEDERAL OR

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S [illegible] ANTEE OF DUE PROCESS

OF LAW OR EQUAL PROTECTION OF THE LAW.

POINT THREE

THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT OF PLAINTIFF JAMES HAROLD STARKEY ON THE GROUND THAT SAID PLAINTIFF IS OVER EIGHTEEN YEARS OF AGE.

ARGUMENT

POINTS ONE AND TWO

THE DISTRICT COURT ERRED IN GRANTING JUDGMENT TO DEFENDANT AND NOT TO PLAINTIFF JAMES HAROLD STARKEY.

THE DISTRICT COURT ERRED IN RULING THAT THE RESOLUTION OF DEFENDANT OF JANUARY 8, 1962 IS NOT CAPRICIOUS, ARBITRARY OR DISCRIMINATORY AND DOES NOT DENY TO PLAINTIFF ANY FEDERAL OR STATE CONSTITUTIONAL GUARANTEE OF DUE PROCESS OF THE LAW OR EQUAL PROTECTION OF THE LAW.

Plaintiff contends that the Court erred in failing to grant judgment to the plaintiff and bases his contention in part on Article X,

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Section 1 of the Constitution of Utah:

> "The legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control."

It cannot be maintained that the term "schools" refers only to purely academic pursuits which make up only a part of the total curriculum offered in the schools throughout the State. At a time when opportunity for acceptance and scholarships to colleges and universities may be greatly influenced by a student's participation in extracurricular activities at the secondary level, it is implausible to assert that these activities are not as much a part of the school as the purely academic disciplines. For a determination as to what activities are considered part of the educational system see Beard vs. Board of Education 16 Pac. 2d 900; see also re Ganopski, 2 A 2d 742, Penna. 1938; McNair vs. School

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District, 87 Mont. 423, 288 Pac. 188; Belton vs. Gebhart, 87 A 2d 862 (Del.). See also Logan City School Dist. vs. Kowallis, 77 Pac. 2d 348, ___ Utah ___ (1938). See also Brown vs. Board of Education, 347 U.S. 483.

A further reading of Article X, Section 1 of the Utah Constitution advised that the "Legislature shall provide for the establishment and maintenance of a uniform system of public schools..." It cannot be contended that there is a "uniform system" when a student may be denied to participate in school activities simply because he is married.

Plaintiff contends that the Court erred in failing to grant judgment to the plaintiff and bases his contention on Article I, Section 7 of the Constitution of Utah and Amendment XIV to the Constitution of the United States: (Constitution of Utah, Article I Section 7)

"No person shall be deprived of life, liberty or property, without due process

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(Constitution of the United States, Amendment XIV, Section 1)

> "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of Law; nor deny to any person within its jurisdiction the equal protection of the laws."

The definition of "extra-curricular activities" by Superintendent Harold Holt (R. 46) as "any activity that did not tie in with courses that are being taken <u>for credit and required for graduation</u>" (emphasis added) is capricious, arbitrary, discriminatory and violative of the constitutional provisions above enumerated. The definition of "extra-curricular activities" to include athletics, Usher Squad, the position of Vice President of the Boy's Association and to exclude band, debate, acappella choir, opera, school plays (R. 48, 49), is arbitrary, capricious, discriminatory and violative of the constitutional guarantees of due process of

... of the laws above

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enumerated.

Plaintiff further contends that the Court erred in failing to grant judgment to the plaintiff and bases his contention on Article I, Section 24 of the Constitution of Utah:

> "All laws of a general nature shall have uniform operation."

The Resolution herein complained of not only discriminates against married students as a class but discriminates against certain married students within the class. The Resolution is per se not uniform in operation:

> "...presently married students may continue in athletics...until the end of the 1962-63 school year."

The Resolution does not bar all married students from participation in activities but only those married after January 8, 1962 and therefore is not uniform in operation pursuant to Article I Section 24 as set forth above. The Resolution does not satisfy constitutional

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guarantees of due process of law and equal protection of the laws because it does not apply equally to members of the same class.

Plaintiff contends that the Court erred in failing to grant judgment to the plaintiff and argues that while the incidence of marriage among students may be decreased as a result of restriction of activities of married students pursuant to the Resolution complained of, contrariwise, by implication, the incidence of dropouts, illicit relations, abortions, unwed mothers, illegitimate children and "secret" marriages may increase as a result of the sanctions imposed against marriage.

POINT THREE

THE DISTRICT COURT ERRED IN DISMISSING THE COMPLAINT OF PLAINTIFF JAMES HAROLD STARKEY ON THE GROUND THAT SAID PLAINTIFF IS OVER EIGHTEEN YEARS OF AGE.

The lower Court, apparently relying on

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a provision of Utah Law (Section 53-4-7 U.C.A. 1953) that public schools are free to children between the ages of six years and eighteen years of age, dismissed plaintiff's complaint on the ground that plaintiff had celebrated his eighteenth birthday and that defendant no longer had any duty to educate plaintiff or to extend to him any of the benefits of the public school system.

Plaintiff contends that the Court erred in dismissing plaintiff's complaint because he had reached eighteen years of age. Notwithstanding any provision of Section 53-4-7 U.C.A. 1953 to the contrary, when defendant extends the benefits and privileges of the public school system to all other eighteen year old students, it cannot in the next stroke deny the same to plaintiff. To do so is a violation of the due process of law provision of Article I Section 7 of the Utah Constitution

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and due process of law, equal protection of the laws, and privileges and immunities of citizens of the United States as guaranteed by Amendment XIV to the Constitution of the United States. The proposition of defendant as sustained by the lower Court would mean literally that the majority of the senior class would be dismissed from school midway through the academic year as each student reached his eighteenth birthday. Also implicit in the proposition sustained by the lower Court is that defendant Board of Education is misappropriating public funds by furnishing educational facilities free of charge to children after their eighteenth birthday because the authority to provide free education is a delegated authority and defendant has not been delegated authority to provide free education after age eighteen. Dismissal of plaintiff's complaint because he had

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reached his eighteenth birthday constitutes prejudicial error.

CONCLUSION

For the foregoing reasons, plaintiff-appellant respectfully requests this Court to reverse the judgment of the District Court and set it aside with instruction to enter an order restraining enforcement by defendant of the Resolution of January 8, 1962 against plaintiff; and for a judgment in favor of plaintiff for his costs, and such other relief herein as the Court may deem proper.

Respectfully submitted,

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