

No. 53 Ct. App. Md.

IN THE
COURT OF APPEALS
OF
MARYLAND

RAYMOND A. PEARSON,
et al constituting the
Board of Regents of the
University of Maryland,

vs.

DONALD MURRAY

PETITION TO ADVANCE
CASE FOR AN IMMEDIATE
HEARING

Mr. Clerk:

Please file.

Herbert R. O'Connor
Attorney General

Chas. J. LeVine III
Asst. Attorney General

Attorneys for Board of Regents
of the University of Mary-
land.

HERBERT R. O'CONNOR
ATTORNEY GENERAL
1901 BALTIMORE TRUST BUILDING
BALTIMORE MARYLAND

FILED

August 6, 1931

RAYMOND A. PEARSON, President,)
W. M. HILLEGEIST, Registrar,)
and GEORGE M. SHRIVER, et al)
constituting the BOARD OF)
REGENTS OF THE UNIVERSITY OF)
MARYLAND,)

vs.)

DONALD MURRAY.)

IN THE
COURT OF APPEALS
OF
MARYLAND.

The petition of the Board of Regents of the University of Maryland, appellants in the above entitled case, by Herbert R. O'Connor, Attorney General of the State of Maryland, and Charles T. LeViness, 3d, Assistant Attorney General, their attorneys, respectfully shows:

1. That by reason of the decision of the Baltimore City Court in the above entitled case, from which appeal to this Court was duly entered on the 25th day of June, 1935, and by reason of the writ of mandamus issued by said Court, your petitioners are required to admit the appellee to its Law School on September 24th, 1935.

2. That pursuant to the above mentioned Order of the trial court, several other applications by members of the colored race for admission to the Law School of the University of Maryland have been received by the registrar of the Baltimore schools of the University.

3. That one application by a colored student has been received for admission to the Pharmacist School of the University of Maryland.

4. That also there have been received and are on file applications by colored students for admission to the College of the University of Maryland, at College Park.

5. That your petitioners will be required to rule upon these applications, both for the Professional School, located in Baltimore, and the collegiate department located at College Park, prior to the opening of college in September.

6. That you petitioners consider it to be highly desirable, not only from the point of view of the University of Maryland, but from the point of view of the members of the white and colored races who are interested in the University of Maryland, that this question of the admission of colored students to the University be finally decided by this Honorable Court prior to the opening of college; and that your petitioners believe that they owe a duty to the parents of the members of the student body now enrolled in the University of Maryland to advise them prior to the opening of college whether or not colored students will be admitted, for such action as they may deem necessary or desirable to take; and your petitioners believe and therefore aver that in the interests of the public welfare of both the colored and the white races in this State and as a matter of public policy of this State this appeal, now set for the October term of the Court of Appeals, should be advanced and heard by this Honorable Court during the month of August, 1935, so that a decision may be obtained prior to the opening of college as aforesaid.

7. That it has always been the policy of this State to provide separate institutions of learning for members of the white and colored races; this policy has been effected

and safeguarded by the establishment of separate schools for colored persons, from the elementary grades up to and including the collegiate level; that for professional work special provision is made for members of the colored race by means of scholarships to institutions outside of the State, inasmuch as up to this time there has not been a sufficient number of colored applicants for professional education to require or to support separate professional schools; that this traditional policy of separation of the races is for the benefit of the colored as well as the white citizens of our community and undoubtedly has been a leading cause of the present amicable and cooperative relations which exist in this State between the two races.

8. That the Order of the Baltimore City Court hereinabove referred to presents a matter of grave public policy and is of immeasurable importance to the members of both the white and the colored races in this State; that it is as much to the advantage of the colored citizens as to the white race that this question be settled by this Honorable Court at the earliest possible moment; that there are approximately 2000 white students enrolled at College Park, 500 of whom are females; that your petitioners have been advised and therefore aver that there will be numerous withdrawals of white students, particularly female students, if the Order of the lower court hereinabove referred to is allowed to stand. As an indication of what may be anticipated in this respect, your petitioners here quote a letter received by the Acting President, from a father having three daughters now students at the University.

"Mr. H. C. Byrd
Acting President
University of Maryland
College Park, Md.

Dear Mr. Byrd:-

I received information indirectly from a negro engaged in educational work in Washington that a recent decision of the Court in Baltimore opens the University of Maryland to negroes this fall. And further, that negroes have applied for admission to the College Park branch of the University as well as to the branch located in Baltimore.

I am vitally interested in knowing immediately whether this information is correct, as I have three daughters in the University of Maryland, and naturally, would not want them to remain there. I would appreciate an immediate answer so that I can make other arrangements before the school term begins.

I should like to state further that I cannot understand why this information, if true, is being withheld from the parents of the student body and not allowing them sufficient time to make other arrangements. It would be most unfair to withhold this information.

Sincerely yours,

s/s George M. Quirk,
1305 Delafield Pl. N. W."

9. That the Attorney General's Office, which is by law designated as the legal advisor of the University of Maryland, is in receipt of a letter here quoted, from Acting President Byrd in respect to the possibility of colored students at College Park, coupled with a request that the case be heard immediately by this Honorable Court:

"The Attorney General of Maryland

Dear Sir:

The order of the Court to admit a negro to our Law School has created a situation which may be very disastrous for the University, and I am herewith making a special appeal to you to request the Court of Appeals to hear, immediately, our appeal from the lower court's decision.

Under the law, I am responsible for all discipline in the University, but if the order of the lower court is carried out, and negro students are admitted to the University, I should not like to be held responsible for what may happen. With five hundred girls on the campus at College Park, and with girls entering the Baltimore schools in constantly increasing numbers, the seriousness of the situation for the University, financially and in many other respects, cannot be overestimated.

I am convinced that the people of Maryland, because of custom, the State's long standing policy, and laws enacted by the Legislature, will support me in this request.

Sincerely,

/s/ H. C. Byrd

Acting President.

10. That the University of Maryland is only partially supported by the State and depends very largely upon the income from the student tuition fees and other similar charges; that the withdrawal of any considerable number of students will leave the University without funds for its current operation, resulting in great hardship to members of the faculty and possibly necessitating the abandoning of some of its academic work.

11. That your petitioners are advised that in refusing admission to the appellant under the circumstances of this case, that they acted within the power conferred upon them by Chapter 480 of the Acts of 1920, creating the University of Maryland through the merger of the former University of Maryland and the Maryland State College of Agriculture, and that the Board's action was in keeping with the traditional policy of the State of Maryland to conduct separate schools for white and negro citizens, and

in harmony with the design and intention of the Maryland Legislature as expressed in Chapter 234 of the Acts of 1933, and as expressed in the laws relating to the public school system of the State of Maryland. Your petitioners are further advised that the action of said Board was not in violation of any provision of the State or Federal Constitutions.

12. Your petitioners further show that unless the appeal in this case is heard prior to the date fixed for the opening of the institution in September, or unless this Court should grant a stay of execution from the order of the lower Court until this appeal is heard, the University of Maryland will suffer irreparable damage through the threatened withdrawal of students and the failure of other students to enter the University.

WHEREFORE YOUR PETITIONERS pray that this Court, in the exercise of its discretion, and in the public interest, may advance the hearing of this appeal and set the case for hearing during the month of August or early part of September, 1935, so that a decision may be obtained prior to the opening of College Park and the Professional Schools in the latter part of September; or in the alternative, your petitioners pray that this Court may grant a stay of execution from the order of the lower Court issued on June 25th, 1935 requiring your petitioners to admit the appellee as a student of the University.

And as in duty bound, etc.

Herbert R. O'Connor
Attorney General

Chas. J. Lewis, Jr.
Asst. Attorney General.

No 53 - October Term, 1935

IN THE
COURT OF APPEALS OF MARYLAND

October Term, 1935

No. 53

RAYMOND A. PEARSON, President,
W. M. HILLEGEIST, Registrar,
and GEORGE M. SHRIVER, et al,
constituting the BOARD OF REGENTS
of the UNIVERSITY OF MARYLAND

vs.

DONALD G. MURRAY, otherwise
DONALD GAINES MURRAY.

ANSWER TO PETITION TO ADVANCE

Mr. Clerk:

Please file, etc.

THURGOOD MARSHALL
ATTORNEY AT LAW
604 PHOENIX BUILDING
BALTIMORE, MD.

FILED

August 31-1935

RAYMOND A. PEARSON, President,
W. M. HILLEGOMST, Registrar,
and GEORGE M. SHRIVER, et al.
constituting the BOARD OF REGENTS
of the UNIVERSITY OF MARYLAND,

IN THE
COURT OF APPEALS
OF
MARYLAND

vs.

G.
DONALD/MURRAY, otherwise
DONALD GAINES MURRAY.

October Term, 1936 No. 53

ANSWER TO PETITION TO ADVANCE

1 The answer of Donald G. Murray, otherwise Donald Gaines Murray, appellee
2 in the above entitled cause, to the petition to advance the hearing of the ap-
3 peal herein, respectfully shows:

4 1. That he admits the allegations of fact contained in paragraph one of
5 said petition.

6 2. That he has no knowledge of the allegations of fact contained in para-
7 graph two of said petition; but if said allegations are true, the fact that
8 other Negroes have applied for admission to the School of Law of the University
9 of Maryland is irrelevant and immaterial as regards his rights in the premises.

10 3. That he has no knowledge of the allegations of fact contained in para-
11 graph three of said petition; but if said allegations are true, the fact a
12 Negro has applied for admission to the Pharmacist School of the University of
13 Maryland is irrelevant and immaterial as regards his rights in the premises.

14 4. That he has no knowledge of the allegations of fact contained in para-
15 graph four of said petition; but if said allegations are true, the fact that
16 other Negroes have applied for admission to the College of the University of
17 Maryland at College Park is irrelevant and immaterial as regards his rights in
18 the premises.

19 5. That he has no knowledge of the allegations of fact contained in para-
20 graph five of said petition; but if said allegations are true, the fact that
21 appellants will be required to rule on certain independent applications by other
22 Negroes for admission to divers Schools and departments of the University of
23 Maryland is irrelevant and immaterial as regards his rights in the premises.

24 6. That he admits the question of the admission of Negro students to the
25 University of Maryland is a matter of public concern, but he denies that his

1 individual right to be admitted to the School of Law of the University of Mary-
2 land is conditioned or dependent upon the admission of other Negro students to
3 other branches of the University. Further he avers that there is no necessity
4 for advancing the hearing of the appeal herein and no public benefit will re-
5 sult therefrom for the reason that regardless of the decision of this Honorable
6 Court the losing party will seek review by the United States Supreme Court,
7 which will not convene until after the Fall Term, 1935, of the University of
8 Maryland has opened; and no definitive answer to the questions raised in
9 paragraph six of said petition can be given until the United States Supreme
10 Court has acted.

11 7. That he denies the allegations of paragraph seven of said petition ex-
12 cept as set forth below. He admits that the State of Maryland and/or its
13 political subdivisions provide separate education for whites and Negroes in the
14 elementary and secondary levels, but says that the education offered the Ne-
15 groes is greatly inferior both in quality and quantity to the education offered
16 the whites. He denies that the State of Maryland and/or any political sub-
17 division offers any educational facilities to Negroes on the collegiate, gradu-
18 ate or professional levels within the State of Maryland, whereas it offers ex-
19 tensive educational facilities to whites on said levels. He avers that the
20 only provisions whatsoever that the State of Maryland makes for the education of
21 Negroes on the collegiate, graduate or professional levels are certain inade-
22 quate grants-in-aid by way of scholarships to institutions beyond the borders of
23 the State. Said grants-in-aid are made pursuant to authority conferred under
24 Chapter 577 of the Acts of 1935 from a total budget of \$10,000.00; that the
25 Commission on Higher Education of Negroes, which has the appointing and awarding
26 power under said Act, has on file 284 applications for scholarships to be
27 awarded from said \$10,000.00; that there will not be enough scholarship money
28 available to pay the tuition fees of the applicants in said foreign schools, or
29 otherwise equalize the relative costs of education abroad as compared with the
30 education offered by the State to whites in Maryland as to quality or quantity;
31 that there is no provision or authority for adjusting cost of transportation to
32 or subsistence in said foreign schools, over and above the cost of transporta-
33 tion to or subsistence in the University of Maryland; that the refusal to ac-

1 cept and admit appellee into the School of Law of the University of Maryland
2 solely on the ground he is a Negro would constitute as to him a denial of the
3 equal protection of the laws as guaranteed him by the Fourteenth Amendment to
4 the Constitution of the United States. Further appellee avers that some years
5 ago Negroes were accepted and admitted into the School of Law of the University
6 of Maryland, and at least one Negro graduated therefrom with the degree of
7 Bachelor of Laws; that the question how many Negroes heretofore have sought
8 graduate or professional training in the State of Maryland is irrelevant, in-
9 competent and immaterial to the decision of his personal constitutional rights
10 in the premises. Appellee expressly denies that the alleged "traditional
11 policy of separation of the races is for the benefit of the colored as well as
12 the white citizens", and avers that the separation of the races is for the
13 purpose of imposing upon the colored citizens inferior and inadequate educa-
14 tion, and of denying to them the equal protection of the laws guaranteed them
15 by the Fourteenth Amendment of the Constitution of the United States, and under
16 the segregated system Negroes have always received, and now receive, inferior
17 and inadequate education both in quality and quantity when compared to the
18 education furnished by the State and/or its political subdivisions to the
19 whites of Maryland. Appellee denies that the policy of separation of the
20 races has been a leading cause of "the present amicable and cooperative rela-
21 tions" between the black and white races in Maryland, and avers that the
22 policy of separation has been imposed on the Negroes by the whites to make it
23 easier to exploit and dominate the Negroes, and has been the source of constant
24 suspicion, mistrust and resentment on the part of Negroes and on the part of
25 white citizens who genuinely believe in full adherence to the spirit and
26 principles of the Constitution of the United States and the Amendments thereto.
27 Further appellee avers that in the absence of any equal training in the law
28 offered him by the State of Maryland other than in the School of Law of the
29 University of Maryland he must decline to purchase said alleged amicable and
30 cooperative relations by the sacrifice of his constitutional rights.

31 8. That he is advised by counsel that the allegations of fact contained
32 in paragraph eight of said petition are irrelevant, incompetent and immaterial
33 to the questions presented by this appeal, except that he avers that the al-

1 leged threat of large withdrawals of students in case he is admitted to the
2 School of Law of the University of Maryland is largely hysteria on the part of
3 the University officials. Further appellee avers that the State of Maryland
4 cannot deny one citizen the equal protection of its laws because other citizens
5 object, and points out further that the objecting party, George M. Quirk,
6 mentioned in said paragraph eight of said petition, is a nonresident of the
7 State of Maryland, enjoying the benefits of taxes paid by appellee and his
8 family, which benefits this nonresident would deny to appellee solely on account
9 of appellee's race or color. Appellee further avers that the sex issue had
10 never been introduced into this case until dragged in by the appellant officials
11 of the University of Maryland in said paragraph eight of said petition, and
12 alleges that this introduction of the sex issue is designed to befog the clear
13 issue of constitutionality and cover up a deliberate attempt on the part of the
14 University to deprive him of his constitutional rights solely on account of his
15 color.

16 9. That he is advised by counsel that the allegations of fact contained
17 in paragraph nine of said petition are irrelevant, incompetent and immaterial
18 to the questions presented by this appeal. Appellee avers that H.C. Byrd,
19 Acting President of the University of Maryland, was appointed and accepted his
20 present position of Acting President after the order of the Baltimore City
21 Court had been entered to admit appellee to the School of Law, and with full
22 knowledge of said order; that said H.C. Byrd as Acting President is responsi-
23 ble for discipline in the University, and has taken his solemn oath to uphold
24 the Constitution of the United States and the Amendments thereto; that he
25 will be held strictly accountable for any disorders occurring at the Univer-
26 sity, and any failure to exhaust every means at his command or disposal to
27 prevent the same; that he will be held strictly accountable for his letter
28 quoted in paragraph nine of said petition in so far as the same incites and
29 invites disrespect and disobedience of the said order of the Baltimore City
30 Court.

31 10. That he is advised by counsel that the allegations of fact contained in
32 paragraph ten of said petition are irrelevant, incompetent and immaterial to
33 questions of his personal constitutional rights in the premises.

1 11. That he is advised by counsel that the allegations contained in para-
2 graph eleven of said petition are not allegations of fact but conclusions of
3 law, and require no answer by this appellee. Appellee avers that the action
4 of the appellants in refusing to receive and consider his application, and to
5 admit him into the School of Law of the University of Maryland solely on ac-
6 count of his race or color, did violate the Fourteenth Amendment of the Consti-
7 tution of the United States and did deny to him the equal protection of the
8 law guaranteed thereby.

9 12. That he is advised by counsel that the allegations of fact contained
10 in paragraph twelve of said petition are irrelevant, incompetent and immaterial
11 to the questions presented by this appeal as to appellee's personal constitution-
12 al rights in the premises. Appellee avers that this cause cannot be ultimate-
13 ly decided prior to the opening of the School of Law of the University of Mary-
14 land on September 25, 1935, for that as above indicated whichever party may lose
15 the appeal before this Honorable Court will seek review by the United States
16 Supreme Court which will not even convene until October 7, 1935. Appellee
17 avers that for this Court to grant a stay of execution of the judgment of the
18 Baltimore City Court pending final decision of the appeal in this cause would
19 cause him irreparable injury for it would postpone his admission into the School
20 of Law at least for one year of his life, which he could never regain; that
21 after registration at the School of Law closes in September, 1935, there will be
22 no further registration until September, 1936, for beginning students; that
23 his personal constitutional rights cannot be made to depend upon the question
24 whether other students may withdraw from the University of Maryland.

25 13. Further answering appellee avers that there never has been any policy
26 of separating the races in graduate and professional schools maintained in
27 whole or in part by the State of Maryland, for that there never have been any
28 graduate or professional schools for Negroes; nor do the laws of Maryland re-
29 quire the separation of the races in graduate or professional schools.

30 AND NOW HAVING FULLY ANSWERED the said petition to advance the hearing of
31 the appeal in this cause, or in the alternative to grant a stay of execution,
32 appellee prays that said petition be denied.

1 And as in duty bound, etc.

2 Donald G. Murray

3 Donald G. Murray,

4 Appellee

5 Charles H. Houston

6 Thurgood Marshall

7 William I. Gornell

8 Attorneys for appellee.

9 STATE OF MARYLAND :

10 :

11 : ss:

12 City of Baltimore :

13 I hereby certify that on this 31st day of August, 1935,

14 before me, the subscriber, a Notary Public in and for the City of Baltimore,

15 personally appeared the above named Donald G. Murray and made oath in due form

16 of law that the matter and facts in the foregoing answer are true to the

17 best of his knowledge and belief.

18 Sarah J. Ambler

19 Notary Public

THURGOOD MARSHALL
ATTORNEY AT LAW
604 PHOENIX BUILDING
4 E. REDWOOD ST.
BALTIMORE, MD.

October 25, 1935.

Honorable James A. Young, Clerk,
Court of Appeals,
Annapolis, Maryland.

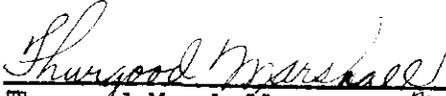
Dear Mr. Young:

Enclosed please find stipulation to read from documentary
evidence in case #53.

Will it be possible to have this signed by one of the
Judges and filed? If it is necessary for me to come to Annapolis
will you please so advise me.

Thanking you, I am

Sincerely yours,


Thurgood Marshall. ^{m.}

tm:m

No. 53 Oct. 7, 1935

In The
Court of Appeals
of
Maryland

RAYMOND A. PEARSON ET AL

vs.

DONALD G. MURRAY

STIPULATION

THURGOOD MARSHALL
ATTORNEY AT LAW
604 PHOENIX BUILDING
BALTIMORE, MD.

FILED

Oct 26, 1935

RAYMOND A. PEARSON, President
W. M. HILLEGEIST, Registrar,
and GEORGE M. SHRIVER, et. al.
Constituting the BOARD OF REGENTS
of the UNIVERSITY OF MARYLAND

vs.

DONALD G. MURRAY

In The
Court of Appeals
of
Maryland

October Term, 1935 No. 53.

To the Honorable, the Judges of Said Court:-

Pursuant to Rule Seven of the Rules of the Court of Appeals permission is hereby given to read from the following documentary evidence admitted in the lower Court but not included in the bill of exceptions filed in this case because of the length of said documents:

- (1) Plaintiff's exhibit No. 7, i.e. Certified copy of census figures of the State of Maryland.
- (2) Plaintiff's exhibit No. 11, i.e. Sixty-Seventh Annual Report of the State Board of Education.

Carroll J. Bond

Chas. J. LeVine

Attorney for Appellants.

Thurgood Marshall

Attorney for Appellees.