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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

ROY and JOSIE FISHER, et al.,
Plaintiffs

No.: CV 74-90 TUC DCB
(Lead Case)

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

CV 74-204 TUC DCB
(Consolidated Case)

v.

ANITA LOHR, et al.,
Defendants,

SIDNEY L. SUTTON, et al.,
Defendants-Intervenors,

**FISHER PLAINTIFFS'
OBJECTIONS TO REPORT AND
RECOMMENDATION
REGARDING WAKEFIELD
MIDDLE SCHOOL (SEE DOC
2394)**

MARIA MENDOZA, et al.
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

TUCSON UNIFIED SCHOOL DISTRICT

NO. ONE, et al.

Defendants.

COMES NOW, Plaintiffs Roy and Josie Fisher (hereinafter the Fisher Plaintiffs), by and through counsel undersigned, Rubin Salter, Jr. to submit the instant objection to the Special Master's 12/18/19 "Report and Recommendation Regarding Wakefield Middle School" (see document number 2394 filed 12/18/19).

In support whereof The Fisher Plaintiffs submit the following:

No Positive Integrative Effect

Based upon the proposal in the District's DIA on Wakefield that was submitted to the school board, it is apparent that the District's proposal will have no positive integrative effect on the proposed population that will attend Wakefield. Wakefield is already in area which demographically is populated by minorities. Thus, the school is likely to open as a racially concentrated school. This would likely exacerbate segregation and defeat the aims of the Post Unitary Plan. Additionally, even if we were to accept the District's proposal as neutral, which we will argue is not the case, Swann v. Board of Education warns that a "student assignment plan is not acceptable merely because it appears to be neutral, for such a plan may fail to counteract the continuing effects of past school segregation," (Swann v. Board of Education, 402 U.S 1 1971).

Harmful Effect on Utterback Middle School

Utterback Middle School is designated for 1,225 students, only had 343 enrolled. It is expected to lose an additional 25 students to Wakefield according to the DIA done for support of reopening of Wakefield. Fisher's believes that District efforts, attention and resources should be focused on academics especially at Utterback.

1 Furthermore, it would appear the proposal will **decimate** Utterback Middle School by
2 potentially drawing away both students and resources. Utterback is already a struggling
3 school with AZ Merit Scores at or below 19% and as low as 7% throughout the 6th 7th and
4 8th Grades. Fisher Plaintiffs believe that the Wakefield proposal will detrimentally effect
5 academic achievement as it is likely high achieving children from Utterback may choose to
6 go to Wakefield. The District believes that the proposed “modified” lottery program will
7 potentially mean that the “high achieving” students who seek to go to Wakefield will be
8 limited. However there, are problems with the proposed lottery and whether it violates the
9 law. Fisher Plaintiffs have very real concerns about how the “modified” lottery could be used
10 to control school racial/ethnic composition in a manner which comports with the law.
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13 Fisher Plaintiff’s also believe that there are higher priorities that are more beneficial
14 to its class than reopening of Wakefield School. The resources, funds, and personnel should
15 be spent or directed towards the unfulfilled requirements of the USP to remove vestiges of
16 past segregated acts that caused black students to lag behind in achievement, graduation rates,
17 disparate suspension rates, and the failure to hire black teachers, hire and promote more black
18 administrators. These same issues existed in 1976, 1978, 2012, and finally 2018. It makes no
19 sense for TUSD to want to spend \$2,000,000 to reopen a school (Wakefield) that there was
20 no educational need for 7 years ago. This court relied upon evidence supporting the District’s
21 request to close Wakefield and approved the plan to close Wakefield. **Nothing** has changed
22 to show the District has a compelling need to now reopen Wakefield.
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26 Fisher Plaintiffs also believe that no 910(g) funds should be used for the Wakefield
27 proposal until the program is more thoroughly planned and implemented. Until the District
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1 can show that the funds will be used for purposes that meet the directives outlined in ARS
2 §15-910(g) such funding should be withheld.

3 **Lab School**

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5 Pursuant to responses from the District to Mendoza Plaintiff's RFI's 2605-2634, it
6 would appear that the District does not have a firm grasp on the logistics for implementation
7 of this ambitious program. Specifically, in response to RFI#2616 the District notes they have
8 been accused in the past of "going too far down the road" as it relates to the planning of
9 proposals like the one proposed here prior to obtaining a court order. Such accusations, which
10 were well founded have no bearing on Plaintiff's current objections. Rather, it appears that
11 the District now resorts to giving little to no information about the logistics of the
12 implementation of this program and asks Plaintiff's to be assured that the District and
13 University of Arizona will work out the details and development of the program of the coming
14 years. The District's history of taking on such tasks belies such a request. Without a solid
15 framework by which Fisher Plaintiffs can assess and critique the proposal we risk
16 squandering precious time, money and resources that could be directed towards other goals
17 of the USP.
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21 **Conclusion**

22 The goal of diversity at the reopened Wakefield Middle School will not be met.
23 History is on the side of the Fisher's in arriving at this prediction. The best use of the
24 Wakefield Campus is to continue the Resource Center and expand the Resource Center
25 Mission.
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1 RESPECTFULLY SUBMITTED this 20th day of December 2019.

2 LAW OFFICE OF RUBIN SALTER, JR.

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5 */s/ Rubin Salter, Jr.*
6 Rubin Salter, Jr.
7 Counsel for Fisher Plaintiffs
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10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on December 20, 2019, I electronically submitted the foregoing **FISHER**
12 **PLAINTIFFS' OBJECTIONS AND OBSERVATIONS TO THE SPECIAL MASTER'S**
13 **ANNUAL REPORT** for filing and transmittal of a Notice of Electronic Filing to the following
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