

Docket No. HHD-CV-05-4019406-S

CONNECTICUT COALITION FOR
JUSTICE IN EDUCATION FUNDING,

et al.

Plaintiffs

v.

M. JODI RELL, et al.

Defendants

: SUPERIOR COURT
:
:
: JUDICIAL DISTRICT OF HARTFORD
:
: AT HARTFORD
:
:
: MARCH 3, 2006
:

MOTION TO DISMISS

The defendants in the above action respectfully move the Court pursuant to Conn. Practice Book §§10-30 et seq. to dismiss all claims by the Connecticut Coalition for Justice in Education Funding, Inc. ("CCJEF"), and all claims against the Governor, the State Comptroller and the State Treasurer, on the grounds that the Court lacks jurisdiction over such claims. The CCJEF lacks standing, and the Governor, State Comptroller and State Treasurer are not proper defendants to the claims made in this action.

In support of this motion the defendants respectfully submit the accompanying memorandum of law.

DEFENDANTS

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY:



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**ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED**

ORDER

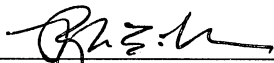
The foregoing motion having been duly presented to the Court, it is hereby ORDERED:
GRANTED/DENIED.

By the Court

CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing motion was mailed, first class postage prepaid, this 3rd day of March, 2006 to:

✓ Robert A. Solomon
Jerome N. Frank Legal Services Org.
P.O. Box 209090
New Haven, CT 06520-9090



Ralph E. Urban
Assistant Attorney General

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SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
AT HARTFORD

MARCH 3, 2006

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

I. Introduction

The defendants respectfully submit this memorandum in support of their accompanying motion to dismiss.

This action seeks to challenge the current system, codified in state law, whereby the State of Connecticut provides state funds to local municipalities to support public education in Connecticut's cities and towns. Purporting to allege causes of action under Article I, §§ 1 and 20, and Article VIII, § 1 of the Connecticut Constitution, as well as 42 U.S.C. §1983 ("§1983"), the complaint seeks declaratory and injunctive relief.

In addition to public school students from various cities and towns, suing by and through their "parents and next friends," the plaintiffs include the Connecticut Coalition for Justice in Education Funding, Inc. ("CCJEF"). CCJEF is described in the complaint as

a Connecticut not-for-profit corporation, which is committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities. CCJEF's membership includes parents, teachers, education advocacy organizations, community groups, teachers' unions, and parent teacher organizations. CCJEF draws its members from throughout Connecticut, including the towns of Bloomfield, Bridgeport, Danbury, East

Hartford, Hamden, Hartford, Manchester, Middletown, New Britain, New Haven, New London, Norwalk, Plainfield, Putnam, Stamford, Stratford, and Windham.

(Complaint, para. 29). The defendants in the action are the Governor, the members of the State Board of Education, the State's Commissioner of Education, the State Treasurer and the State Comptroller, all of whom have been sued in their official capacities only.

As set forth more fully below, CCJEF lacks standing, and its claims should be dismissed, and the Governor, the Treasurer and the Comptroller are not proper defendants, and the claims against them should similarly be dismissed.

II. Discussion

A. The Court Lacks Subject Matter Jurisdiction Over the Claims Brought by the Connecticut Coalition for Justice in Education Funding ("CCJEF").

1. Standing Is A Necessary Component of Subject Matter Jurisdiction.

It has long been "a basic principle of our law ... that the plaintiffs must have standing in order for a court to have jurisdiction to render a declaratory judgment. Connecticut Ass'n. of Boards of Education, Inc. v. Shedd, 197 Conn. 554, 558 ... (1985)." Connecticut Ass'n. of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 613 (1986); Connecticut Business & Industry Ass'n., Inc. v. Commission of Hospitals & Health Care, 218 Conn. 335, 346 (1991). Thus, "[t]he declaratory judgment procedure consequently may be employed only to resolve a justiciable controversy where the interests are adverse, where there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement." Id. at 347-348 (internal quotations omitted) (citing Horton v. Meskill, 172 Conn. 615, 627 (1977)).

A party pursuing declaratory relief must therefore demonstrate, as in ordinary actions, a "justiciable right" in the controversy sought to be resolved, that is, "contract, property or personal rights ... as such will be affected by the [court's]

decision” A party without a justiciable right in the matter sought to be adjudicated lacks standing to raise the matter in a declaratory judgment action.

Connecticut Business & Industry Ass’n, 218 Conn. at 348 (quoting McGee v. Dunnigan, 138 Conn. 263, 267 (1951)).

Standing “is not a technical rule intended to keep aggrieved parties out of court, “ but instead “is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and accurately represented.” Worrell, 199 Conn. at 612 (citing Baker v. Carr, 369 U.S. 186, 204 (1962), among others); Carrubba v. Moskowitz, 274 Conn. 533, 550-551 (2005). A justiciable interest is “something more than is comprised in the most ardent wish or partial feeling. It implies a *right* in the subject of the controversy” Worrell, 199 Conn. at 614 (quoting Crocker v. Higgins, 7 Conn. 342, 346 (1829)) (Emphasis in original). Although issues of standing are often raised in the declaratory judgment context, the principles of standing enunciated in Worrell, 199 Conn. at 613, and other cases, are not limited to declaratory judgment actions. See Connecticut Business & Industry Ass’n, 218 Conn. at 360-361 (and cases cited therein).

The issue of standing implicates the court’s subject matter jurisdiction. Steenek v. University of Bridgeport, 235 Conn. 572, 580 (1995); AvalonBay Communities, Inc. v. Town of Orange, 256 Conn. 557, 567 (2001). Thus, a motion to dismiss is the appropriate procedural means for raising standing and hence subject matter jurisdiction. See Connecticut Associated Builders & Contractors v. Anson, 251 Conn. 202, 205 (1999); Connecticut State Medical Society v. Connecticut Board of Examiners in Podiatry, 203 Conn. 295, 298 (1987); Worrell, 199 Conn. at 610.

2. CCJEF Lacks Third Party Standing.

In determining issues of standing, “the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue.” Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 492 (1978); Schaghticoke Tribal Nation v. Harrison, 264 Conn. 829, 832 (2003); Delio v. Earth Garden Florist, Inc., 28 Conn. App. 73, 78 (1992). This principal requirement of standing is “ordinarily held to have been met when a complainant makes a colorable claim of direct injury *he ... is likely to suffer ...*” Maloney v. Pac, 183 Conn. 313, 321 (1981) (emphasis added); Malerba v. Cessna Aircraft Co., 210 Conn. 189, 192 (1989); Delio, 28 Conn. App. at 78. The “general rule is that one party has no standing to raise another’s rights.” Id. (citing State v. Williams, 206 Conn. 203, 207 (1988)). See also, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (citing Warth v. Seldin, 422 U.S. 490, 508 (1975)).

As noted above, the causes of action alleged in the complaint are based on three provisions of the Connecticut Constitution -- Article I, §§ 1 (“Equality of Rights”) and 2 (“Equal Protection”) and Article VIII, § 1 (“Free Public Schools”) -- as well as §1983, a federal statute intended to enforce federal constitutional rights. While a corporation can be considered a “person,” at least within the meaning of the equal protection clauses of the federal and state constitutions, (Benjamin v. Bailey, 234 Conn. 455, 473 (1995); Grosjean v. American Press Co., 297 U.S. 233, 244 (1936)), a corporation is not a student endowed with rights under the “education” clause of the Connecticut Constitution (Article VIII, § 1). Moreover, when seeking relief under the equal protection provisions, a corporation must be suing to protect its *own* rights. Adams v. City of Park Ridge, 293 F.2d 585, 587 (7th Cir. 1961); Advocates for the Arts v. Thomson, 532 F.2d 792, 994 (1st Cir. 1976); Des Vergnes v. Seekonk Water Dist., 601 F.2d 9, 21 (1st Cir. 1979).

Here, as is evident by the allegations of paragraphs 158, 161, 164 and 168 of the complaint, CCJEF is not suing to protect its corporate constitutional rights. While these paragraphs refer to the “plaintiffs,” it is quite evident that the allegations reference the *students’* rights, not the corporation’s -- “by failing to maintain a public school system with suitable and substantially equal educational opportunities, the State is violating Article Eighth, § 1 and Article First, §§ 1 and 20 of the State Constitution,” (para. 158); “by failing to maintain a public school system that provide plaintiffs with suitable educational opportunities, the State is violating Article Eighth, § 1 of the State Constitution,” (para. 161); “by failing to maintain a public school system that provides plaintiffs with substantially equal educational opportunities, the State is violating Article Eighth, § 1 and Article First, §§ 1 and 20 of the State Constitution,” (para. 164); “[t]he State’s failure ... has disproportionately impacted African-American, Latino and other minority *students*, in violation of Article Eighth, § 1 and Article First, §§ 1 and 20 of the State Constitution and 42 U.S.C. § 1983.” (para. 168) (emphasis added).

Under federal jurisprudence, a similar rule applies. See Powers v. Ohio, 499 U.S. 400, 410-411 (1991) (Under federal constitutional and jurisprudential considerations, to overcome the general rule that a litigant cannot rest a claim on the legal rights of third parties, the litigant must himself have suffered some injury in fact, must have a close association with the third party, and there must exist some hindrance to the third party’s ability to protect his own rights).¹

CCJEF cannot assert the rights of others. Delio, 28 Conn. App. at 78; Gay & Lesbian Law Students Ass’n. v. Board of Trustees, 236 Conn. 453, 490 (1996); Worrell, 199 Conn. at

¹ CCJEF cannot meet this federal law test either; again, there is no alleged injury in fact to the corporation, and CCJEF obviously could not establish any hindrance to the students raising these claims on their own behalf, since the students have raised the claims elsewhere in the complaint.

614 (An “ardent wish” is insufficient to confer standing); Lujan, 504 U.S. at 563 (Special interest in a subject is insufficient to confer standing).

3. CCJEF Lacks Standing to Assert These Claims On Its Own Behalf.

An organization or association can suffer injury in its own right and thus have standing. Connecticut Associated Builders & Contractors v. Hartford, 251 Conn. 169, 178 (1999); Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-379 (1982) (A nonprofit corporation seeking to assure equal housing opportunity under the federal Fair Housing Act has standing under the Act); National Coalition Government of the Union of Burma v. Unocal, Inc., 176 F.R.D. 329, 342 (C.D. Cal. 1997) (Trade unions and their affiliates have standing under the Havens Realty standard); see also, AvalonBay Communities, 256 Conn. at 592.

When examined in light of the alleged causes of action, however, it is apparent that CCJEF cannot meet this standard either. As noted, it holds no educational rights. It is not a student who is entitled to attend “free public elementary and secondary schools” pursuant to Article VIII, § 1 of the Connecticut Constitution. Sheff v. O’Neill, 238 Conn. 1 (1996); Broadley v. Board of Education, 229 Conn. 1 (1994); Horton v. Meskill, 172 Conn. 615 (1974). Moreover, as discussed above, it is not suing to protect its *own* equal protection rights.

4. CCJEF Lacks Representational Standing.

In its landmark decision in Worrell, 199 Conn. at 616, the Connecticut Supreme Court, citing Hunt v. Washington State Apple Commission, 432 U.S. 333, 337, 343 (1977), adopted the Hunt decision’s “three part test that must be satisfied before an association will be granted standing to assert the rights of its members, without also asserting injury to itself.” Thus,

an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their *own* right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the

claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Worrell, 199 Conn. at 616 (quoting Hunt, 432 U.S. at 343) (Emphasis added). See also, Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976). One principal reason underpinning the Worrell Court's adoption of the Hunt representational standing test was judicial economy. As described by the Worrell Court,

[a]llowing associations to represent their members' interests in appropriate cases may promote judicial economy and efficiency. One plaintiff can, in a single lawsuit, adequately represent, and perhaps vindicate, the interests of many members, thus avoiding repetitive and costly independent actions. Permitting the association or organization to sue to protect the interests of its members avoids multiplicity of suits by similarly situated plaintiffs involving the same or similar causes of action and provides an efficient and expeditious method of adjudicating disputes.

Worrell, 199 Conn. at 617-618.

Since Worrell, Connecticut courts have had numerous occasions to apply Worrell's analysis. In Connecticut State Medical Society v. Connecticut Board of Examiners in Podiatry, 203 Conn. 295, 304-305 (1987), the Court held that the Medical Society met the three prerequisites of representational standing where individual physicians' practices would be affected by the possible expansion of the permitted scope of practice for podiatrists, the issue was germane to the Medical Society's central purpose, and participation of individual members of the Society would not be required. In Connecticut Association of Not-for-Profit Providers for the Aging v. Department of Social Services, 244 Conn. 378, 387-388 (1998), the plaintiff satisfied the Worrell test, because the association's members had standing in their own right, the interests sought to be protected were germane to the association, and individual members did not need to be parties to the action.

By contrast, the Court has consistently held that where an organization seeks to assert not its own claims but the claims of others that might impact the organization's members, the interest and risk of injury to the organization's members was too attenuated to support the organization's standing. Thus, in Connecticut Associated Builders & Contractors, Inc. v. Anson, 251 Conn. at 202, 209-215, the Court held that non-union subcontractors and a non-union individual electrician lacked standing to challenge the use of a project labor agreement requiring compliance with collective bargaining terms and a no strike provision as part of the bid requirements for a public works construction project. Although the subcontractors and electrician might have been affected by the use of the project labor agreement, the Court nonetheless ruled that they lacked standing because they could not bid on the project. Similarly, in Connecticut Business & Industry Association, the Court, applying the Worrell standard, held that the plaintiff insurers association's interests were insufficiently distinguishable from those of the general public to afford them standing to challenge new hospital rates. Connecticut Business & Industry Association v. Connecticut Commission on Hospitals & Healthcare, 218 Conn. 335, 348 (1991)

In this case, CCJEF fails to satisfy the first and third prongs of the requirements for representational standing. First, no members of the organization would be able to pursue the lawsuit's claims in their own right. Again, CCJEF is composed of "parents, teachers, education advocacy organizations, community groups, teachers' unions, and parent teacher organizations." (Complaint, para. 29). Notably, none of them are students. CCJEF's members hold no

educational rights, and their own equal protection rights are not being asserted. Thus, they lack standing “to sue in their own right.” Worrell, 199 Conn. at 616.²

While typically parents do have the right to pursue claims on behalf of their children, as indeed they have done elsewhere in the lawsuit, parents do so, not in their *own* right, but rather as “next friends” to their minor children. See, e.g., Carrubba v. Moskowitz, 274 Conn. at 550-551 (2005). Because the parents’ representation of their minor children is not for the parents’ benefit, a corporation representing the parents cannot piggyback an associational standing claim on the parents’ representational status.

CCJEF also fails the third prong of the Worrell test, namely, the lack of any need for individual participation, because of the individualized nature of each student’s educational needs and experiences. This is especially so in light of the lawsuit’s claims of alleged inequitable opportunities and purportedly “unsuitable” programs and conditions, should such claims survive. The participation of individual students will be required to adjudicate such claims. With respect to the parent members of the organization, their individualized participation, contrary to Worrell, *is* required, if only as “next friends” of the minor children plaintiffs.

Finally, the judicial economy and efficiency rationale for allowing representational standing by organizations, as articulated in Worrell, is also not satisfied here. The rationale posits that organizational plaintiffs can often serve as adequate representatives of the organizations’ members, eliminating the need for members to sue on their own, thus promoting judicial economy. Worrell, 199 Conn. at 617-618. However, this rationale is necessarily premised on the first prong of the Worrell test being met, namely, that the members of the organization *could*

² Notably, even with respect to the §1983 claim -- apparently only included in hopes of procuring attorneys’ fees -- the members of the organization are obviously *not* the allegedly disproportionately impacted “African-American, Latino, and other minority *students*” referred to. (Complaint, para. 168) (emphasis added).

have brought the claims in their own right -- a circumstance, as discussed above, not present here. Id. at 616. Moreover, in this case, the parties whose rights have allegedly been infringed, the students, are *already* plaintiffs, not only in their individual capacities, but as putative representatives of a purported class of students from certain designated school districts who are alleged to be “not receiving suitable and substantially equal educational opportunities.” (Complaint, para. 37). The students are adequately represented, and do not need the corporation to represent their interests.

In that CCJEF lacks representational standing under Worrell and its progeny, and its presence as a plaintiff in no way furthers judicial economy, its claims should be dismissed.

B. The Claims Against the Governor, the Treasurer and the Comptroller Should Be Dismissed

In actions for declaratory and injunctive relief challenging the constitutionality of a state statute, state officers with administrative functions under the statute are the proper defendants. Serrano v. Priest, 557 P.2d 929 (Cal. 1976) (State legislature and Governor not indispensable parties to action challenging the constitutionality of state public school financing system). This is because where a plaintiff seeks a declaration that a state statute is unconstitutional, in order to be a proper defendant, the state officer, at a minimum, must have some connection with the enforcement of the statutory provision at issue. Socialist Workers Party v. Leahy, 145 F.3d. 1240 (11th Cir. 1998). Where a state official has no role in the enforcement or administration of the challenged statute, the courts have dismissed the claims against such officials. Chairman of the Board of Trustees of the Employment Retirement System v. Waldron, 401 A.2d 172 (Md. 1979) (Employee Retirement System and its officials had no duty to administer or enforce statutory provision regarding retired judges, and thus were not appropriate parties to the action challenging the provision); New York State Rifle Ass’n., Inc. v. City of Mount Vernon, 540 N.Y.S. 2d 15

(N.Y. App. Div. 2d Dep't. 1989) (Because judge of the county courts were not the entities requiring pistol permit applicants to pay investigation fees and submit character references, they were not proper parties to action seeking to hold such requirements invalid); Berry v. Daigle, 322 A.2d 320 (Me. 1974) (Tax Assessor did not collect poll tax, could not have refunded tax, and thus was not proper party to action for declaratory judgment action regarding the constitutionality of the tax); Sobel v. Higgins, 573 N.Y.S. 2d 1000 (N.Y. Sup. Ct. 1991) (Attorney General does not enforce rent control law, thus is not proper party to an action challenging the law).

A Governor's status as the chief elected officer of a state does not provide an exception to this rule. Thus where only the state's Department of Children and Family Services had executive and administrative supervision over mental health facilities, programs and services, the Governor was not a proper defendant. Harris v. Bush, 106 F.Supp. 2d 1272 (N.D. Fla. 2000); accord, City of Pittsburgh v. Commonwealth of Pennsylvania, 535 A.2d 680 (Pa. Comm. App. 1987) (Because neither Governor nor Secretary of Revenue had a duty or obligation to enforce city's taxing authority, they were not proper parties to an action seeking declaration that local tax enabling act and home rule charter provisions were unconstitutional); Williams v. Virginia State Board of Elections, 288 F.Supp. 622 (E.D.Va. 1968) (Governor not proper defendant in action challenging constitutionality of statewide election of presidential electors); Johnson Bonding Co., Inc. v. Commonwealth of Kentucky, 420 F.Supp. 331 (E.D.Ky. 1976) (Governor and Attorney General are not proper defendants in action challenging constitutionality of act making it unlawful to engage in the business of bail bonding, in that courts and their clerks, not Governor or Attorney General, enforced the law).; Sobel v. Higgins, 573 N.Y.S. 2d 1000 (N.Y. Sup. 1991)

(Attorney General does not enforce rent control law, thus is not proper party to an action challenging the law).

The same rule applies where the action is couched as a violation of 42 U.S.C. §1983. Lecchesi v. State, 807 P.2d 85 (Colo. App. 1990) (Persons sued under §1983 must be those whose duties include implementation or enforcement of the statute being assailed, thus Governor, State Property Tax Commissioner and County Attorney not proper defendants in taxpayers' declaratory judgment action); Demiragh v. DeVos, 337 F.Supp. 483, 485 (D.Conn. 1972) (State Welfare Commissioner dismissed from §1983 action challenging city ordinance because he had no involvement in administering the ordinance).

If the state official's duties are wholly ministerial, they are similarly not proper defendants. See, e.g., Conseco Loan Finance Co. v. Boswell, 687 N.W.2d 646 (Minn. App. 2004) (Government agencies that conducted sheriff's sale are not proper parties; they were only exercising ministerial duties). For example, where the Comptroller merely cuts the checks, the Comptroller is not a proper defendant. Matter of Marthen v. Evans, 104 Misc. 2d 553, 428 N.Y.S.2d 828 (1980) (rev. on other grounds, 83 A.D. 2d 415, 445 N.Y.S. 2d 329 (1981)) (State Comptroller dismissed).

As noted, this case seeks to challenge the system, codified in state law, whereby the State of Connecticut provides state funds to local municipalities to support public education in Connecticut's cities and towns. The provisions for state financial assistance to local school districts are contained within Chapters 172 (support for public schools and transportation to schools) and 173 (support for public school construction) of the General Statutes. A careful review of these chapters establishes that the Governor plays no administrative or other role in these statutes' operation. She does not calculate, oversee or distribute either competitive or non-

competitive grant funds, and plays no part in determining which municipalities or school districts receive competitive grant funds. In short, she has no role, either discretionary or ministerial, in the distribution of such funds. As such, the claims against her should be dismissed.

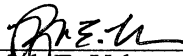
The statutory duties of the State Treasurer and State Comptroller are wholly ministerial with respect to state support for public education. In essence, the Comptroller issues the payments to the various municipalities and districts as determined by the Commissioner of Education (see, e.g., Conn. Gen. Stat. §§ 10-262i; 10-288; 10-289g; 10-292f; 10-292l; 10-292m), while the Treasurer is only authorized to issue bonds in amounts as determined by other public entities (see, e.g., Conn. Gen. Stat. §§ 10-265; 10-287d; 10-287j; 10-292k). Because of the ministerial nature of these duties, plaintiffs' claims against the Comptroller and Treasurer should also be dismissed.

III. Conclusion

For all the foregoing reasons, and such further reasons as may appear at argument on the matter, the defendants respectfully urge the Court to dismiss all claims brought by CCJEF, and dismiss all claims against the Governor, the Comptroller and the Treasurer.

DEFENDANTS

RICHARD BLUMENTHAL
ATTORNEY GENERAL

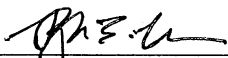
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CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing memorandum was mailed,
first class postage prepaid, this 3rd day of March, 2006 to:

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