NO. X09 CV 05 4019406

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC. ET AL.	:	SUPERIOR COURT
	:	COMPLEX LITIGATION DOCKET
v.	:	JUDICIAL DISTRICT OF HARTFORD
M. JODI RELL ET AL.	:	AUGUST 17, 2006

MEMORANDUM OF DECISION ON MOTION TO DISMISS

The complaint in this action is a thoroughgoing challenge to this state's system for funding public education, alleging that the present system denies to the children of Connecticut "suitable and substantially equal educational opportunities" in violation of article eighth, § 1 and article first, §§ 1 and 20 of the Connecticut constitution.[1] It seeks declaratory and injunctive relief to remedy the claimed deficiencies in the present system. The only questions before the court at this time are (1) whether the first-named plaintiff, the Connecticut Coalition for Justice in Education Funding, Inc. (the coalition), has standing to bring this action and (2) whether the governor, the state treasurer and the state comptroller are proper parties defendant.

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[1] Because the defendants are claimed to act under color of state law in implementing the allegedly unconstitutional funding system; Amended Complaint, ¶ 169; the complaint also alleges a violation of 42 U.S.C. § 1983. Id., ¶ 170.

These issues are the subject of a motion to dismiss filed by the defendants, to which the coalition has objected and on which the court heard argument on May 15, 2006.

I

A proper application of the Supreme Court's opinion in Connecticut Assn. Of Health Care Providers v. Worrell, 199 Conn. 609 (1986), is dispositive of the defendants' first claim.

"It is 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 Assn. of Boards of Education, Inc. v. Shedd, 197 Conn. 554, 558 (1985). In Worrell the Court rejected an earlier, limited view of the standing of associations to bring actions on behalf of their members and adopted the "federal standards for association standing that provide for efficient, expeditious and vigorous resolution of controversies affecting similarly situated persons." Connecticut Assn. of Health Care Providers v. Worrell, supra, 199 Conn. 614-15. Those federal standards provide that "(a)n 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 organiza-

tion's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt v. Washington State Apple Advertising Comm., 432 U.S. 333, 343 (1977). The defendants do not question whether the coalition satisfies the second element of the test[2]; they argue that its claim of standing falls short of the first and third standards.

Some of the coalition members are alleged to be parents. Complaint of January 20, 2005 (sic), ¶ 31.[3] This was not true, however, when the original complaint and the amended complaint were filed, according to an affidavit filed by counsel for the coalition. Thus, the coalition cannot establish that it had standing at the time when the complaint and the amended complaint were filed. See Connecticut Associated Builders & Contractors, Inc. v. City of Hartford, 251 Conn. 169, 184-85 (1999). The same

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[2] The complaint alleges that the Coalition is "a Connecticut not-for-profit corporation, which is committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities." Complaint of January 20, 2005 (sic), ¶ 31.

[3] This complaint is really an amended complaint and carries the typewritten date of "January 20, 2005". It was date-stamped by the Superior Court clerk's office on "January 20, 2006". The latter date is obviously correct since the original complaint was filed on December 12, 2005.

affidavit, however, further avers that parents were added to the membership prior to argument of the defendants' motion to dismiss, which questioned the coalition's representational standing.[4]

Should the court, therefore, exercise what discretion it may have; Id., 191; and find that the coalition *now* satisfies the first standard for associational standing adopted by Worrell from Hunt?

Ten of the other plaintiffs in the suit are parents suing "individually and on behalf of" their respective children, and the defendants do not challenge their standing to sue in that capacity. See Lowe v. Shelton, 83 Conn. App. 750 (2004). They argue, however, that Worrell's requirement that the members of an association be able to sue "in their own right" before the association can have representational standing is not met in this

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[4] The same affidavit states that the coalition membership also includes "public school students over the age of eighteen (18) years" and "municipalities and boards of education", but the amended complaint makes no such allegation. Therefore, since "the integrity of the judicial process requires issues to be tried in the manner in which the parties have framed them in their pleadings"; Williams Ford, Inc. v. Hartford Courant Co., 232 Conn. 559, 570 (1995); the court will limit its consideration of the first prong of the Worrell test to the coalition's claim that it represents *parent* members who could sue in their own right. The coalition does not claim that any of its other members, as alleged in the amended complaint, provide it with associational standing.

case because the parent members of the coalition cannot sue to vindicate their own rights but only those of their children. They cite no authority for such a gloss on Worrell, and their argument reduces to a claim that, if one is suing in a representative capacity, she cannot be suing "in her own right." This is inconsistent with the holding in Lowe that standing exists for one who is suing either "in an individual *or representative* capacity" as long as the person has "some real interest in the cause of action". (Emphasis original) Id., 755. "As the plaintiff's next friends, the plaintiff's parents had an interest, in a representative capacity, to invoke the jurisdiction of the court." Id. Accordingly, the court rejects the defendants' attempt to limit the application of the first standard.

So, individual parents have standing to sue and some of the the coalition's members are now parents. But, neither the allegation as to the coalition's membership in the amended complaint nor the affidavit of its counsel establishes that the parents who are now claimed to be members are parents of students in the public schools of Connecticut. Nor did the coalition request an evidentiary hearing at which it could establish the right of its parent members to sue in their own right, i.e.,

"individually and on behalf of" their children. Thus, even if the court were to ignore the general rule that an association seeking to establish standing must prove that it had standing at the time it brought suit, there is no basis in the record for the court to conclude that, even at present, the coalition represents members who could sue "individually and on behalf of" their children to redress the grievances alleged in the complaint.

The coalition bears the ultimate burden of proving its standing to bring this suit. Seymour v. Region One Board of Education, 274 Conn. 92, 104 (2005). The court concludes that the coalition has failed to establish that it meets the first standard of Worrell, i.e., that any of its members would have standing to sue in their own right. While this is sufficient to warrant that the defendants' motion to dismiss the coalition's claims be granted, the court will address their argument that the coalition fails to meet the third standard of Worrell as well.

"Representational standing depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the

association actually injured....Associational standing is particularly appropriate...where the relief sought is...a declaratory judgment...." Connecticut Assn. of Health Care Facilities v. Worrell, supra, 199 Conn. 616.

In State Medical Society v. Board of Examiners in Podiatry, 203 Conn. 295, 304-05 (1987), the Court applied Worrell to find that the plaintiff society had standing to appeal from a declaratory ruling by the defendant board that the treatment of ankle problems is within the scope of podiatry practice in Connecticut. Id., 297. The court did not find it necessary to consider how the board's ruling adversely affected the individual members of the medical society. Addressing the third Hunt standard, the court held that, "(b)ecause money damages are not sought for alleged injuries to the individual members [of the society], proof relating solely to the variant experiences of each physician resulting from the board's declaratory ruling will not be necessary." Id., 305.

Indeed, in Worrell, itself, the association plaintiffs were held to have standing to sue on behalf of their individual members, health care facilities which claimed to be experiencing a "crisis" because of the action of the department of mental

health (the department) in rejecting admission of mentally ill persons to state institutions. The Court did not find it necessary to inquire into the particularized effects of the alleged policy of the department on individual health care facilities, finding that "(t)he relief sought...will alleviate the onerous burden of providing for committed patients placed in the member facilities." Id., 617. See also Connecticut Assn. of Not-for-Profit Providers v. Department of Social Services, 244 Conn. 378, 387(1998)("Finally, because this action seeks only a general declaration concerning the legality of the department's practice, it is unnecessary for any individual member to be a party to this action.")

In this case the relief claimed is limited to declarations of rights under the state constitution and injunctions meant to remedy alleged violations of those rights. Individual damages are not sought on behalf of the individual members of the coalition. Therefore, as was true in the Worrell and State Medical Society cases, the third Hunt standard is satisfied.[5]

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[5] The defendants claim that, regardless of the remedies sought, evidence will have to be presented concerning the individual plaintiffs and, perhaps, their families in order to evaluate the plaintiffs' claims of unconstitutionality in the state's educational funding system. Given the allegations of the complaint, this is not self-evident to the court, but that is an issue left for another day. Suffice it to say for now that nowhere

II

At first blush it would seem that the defendants have chosen the wrong vehicle to reach their desired destination, the dropping of parties who they claim are improperly joined as parties defendant, the governor, the treasurer and the comptroller. Joinder of improper parties is not one of the grounds listed in the Practice Book for a motion to dismiss. See Practice Book § 10-31. See also § 9-19. The plaintiffs, however, do not object to the motion on that ground; in fact, they have brought to the court's attention a case in which a trial court has considered the same claim as it relates to the governor on a motion to dismiss and addressed it as an issue of justiciability, i.e., as a claim that the governor cannot afford the plaintiffs the relief they seek. Rivera v. Rowland, superior court, Judicial District of Hartford (Docket No. CV 95 0545629, Oct. 22, 1996). In that case the plaintiffs made the same kind of broad gauge attack on the state's system for providing counsel for indigent accused as the present plaintiffs are mounting against the system for funding public education.

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in Worrell or its progeny is it suggested that the scope of the admissible evidence determines whether the third of the three Hunt standards is met.

The governor was a defendant, along with the members of the public defender services commission, the governing body for public defender services in this state.[6] The court denied the motion to dismiss the governor from the suit, saying:

> Taken collectively, the named defendants...are among those principally responsible for supervising the functions of government being challenged in the complaint. The Governor is constitutionally obligated to "take care that the laws be faithfully executed," Connecticut Constitution, Article Fourth, Section 12, and is also authorized by statute to "investigate into, and take proper action concerning, any matter involving the enforcement of the laws of the state and the protection of its citizens." Conn. General Statutes § 3-1. As a practical matter, litigation of this kind...frequently involves named defendants who are public officials at the local, state or federal level....In litigation seeking systemic or institutional reform, public officials are often the only appropriate defendants given their significant positions of public trust and responsibility. (Citations omitted.) Id., 9-10.[7]

While this decision of a coordinate court is not binding, this court finds it well-reasoned and persuasive. If anything, the

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[6] In this case the governor's co-defendants include the members of the state board of education and the commissioner of education.

[7] The court also pointed out that "legislators are generally immune from civil lawsuits seeking injunctive relief." Id. This may explain why, even though article 8, § 1 of the constitution specifically charges the general assembly with the duty to implement its mandate of free public elementary and secondary schools "by appropriate legislation", no legislators are joined as defendants.

governor has greater direct influence over the public education system than she does over the public defender system. For example, while the governor appoints only one member of the public defender services commission, its chair; Conn. General Statutes § 51-289 (a); she appoints all the members of the state board of education, with the advice and consent of the general assembly; § 10-1; and selects one of her appointees to serve as chair. § 10-2 (a). The board, in turn, appoints the commissioner of education to a term of office coterminous with the governor's term, and the commissioner is the department's administrative officer, charged with administering, coordinating and supervising the activities of the department of education in accordance with the policies established by the board. § 10-3a (a). The defendants admit that all of these officials appointed by the governor are proper parties defendant. It is difficult to see how the person who appoints them and who holds the "supreme executive power of the state"; Conn. Const., article IV, § 5 ; could not be. The court finds that the governor is a proper party defendant.[8]

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[8] Of the cases cited by the defendants in support of their motion to dismiss the governor as a party defendant only Serrano v. Priest, 557 P.2d 929 (Calif. 1976), is an education case, and there the California Supreme Court held that the governor was not an *indispensable* party to the lawsuit. Id., 941-42. The

The treasurer and the comptroller were defendants in an earlier challenge to the method of funding public education in this state; Horton v. Meskill, 195 Conn. 24 (1985); and the orders of the trial court ran directly to them, enjoining them from disbursing funds pursuant to what the court found was an unconstitutional funding mechanism. Id., 33 n. 10. While the issue of the propriety of these specific orders was not directly litigated in the Supreme Court, the treasurer and the comptroller were described in the Court's decision as having "implementing responsibility" for the constitutionally flawed statutes; Id., 33; and the reversal of the decision of the trial court was on grounds having nothing to do with its orders to these officials.[9] The court finds that the treasurer and the comptroller are proper defendants.

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defendants' claim here is that the governor is not a *proper* party, a very different claim. Id., 942. The Florida Supreme Court, on the other hand, held that the governor was a proper defendant in a suit challenging that state's education financing system. Coalition for Adequacy & Fairness in School Funding v. Chiles, 680 So.2d 400, 403 (1996).

[9] The plaintiffs point to many specific responsibilities which both the treasurer and the comptroller have in regard to the funding of the state public education system. Plaintiff's Memorandum in Opposition to Motion to Dismiss, # 105, pp. 21-22.

III

The motion to dismiss the claims made by the coalition is GRANTED. The motion to dismiss the governor, the treasurer and the comptroller as parties defendant is DENIED.

BY THE COURT

Joseph M. Shortall, J.