

Majority Opinion >

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

CRATON LIDDELL, et al., Plaintiffs, v. BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,
Defendants.

No. 4:72CV100 HEA

July 20, 2016, Filed July 20, 2016, Decided

For USA, Intervenor Plaintiff: Torey Brooks Cummings, LEAD ATTORNEY, U.S. DEPARTMENT OF JUSTICE, Washington, DC USA.

For Mr. Ken Ross, Jr., Lediva Pierce, Intervenor Plaintiffs: Jeremy A. Root, LEAD ATTORNEYS, PRO HAC VICE, STINSON AND LEONARD LLP, Jefferson City, MO USA.

For Caldwell/Naacp, Plaintiff: Michael A. Middleton, LEAD ATTORNEY, Columbia, MO USA; Veronica Johnson, LEAD ATTORNEY, HOWARD AND JOHNSON, LLC, St. Louis, MO USA; William L. Taylor, LEAD ATTORNEY, Washington, DC USA.

For Deric James Liddell, Plaintiff: William A. Douthit, LEAD ATTORNEY, St. Louis, MO USA.

For Special Administrative Board of The Transitional School District of The City of St. Louis, Defendant: Evan Z. Reid, Ronald A. Norwood, LEAD ATTORNEYS, Bridget G. Hoy, Carleen B. Griffith, LEWIS RICE, LLC, St. Louis, MO USA.

For Special School District, Defendant: Donna A. Smith, LEAD ATTORNEY, St. Louis, MO USA.

For Missouri, State of, Defendant: Henry F. Luepke, III, John J. Lynch, LEAD ATTORNEYS, ATTORNEY GENERAL OF MISSOURI, St. Louis, MO USA; John R. Munich, LEAD ATTORNEY, STINSON AND LEONARD LLP, St. Louis, MO USA; Paul Ray Maguffee, LEAD ATTORNEY, University of Missouri Office of the General Counsel, Columbia, MO USA; James R. Layton, ATTORNEY GENERAL OF MISSOURI, Jefferson City, MO USA; Jeremiah J. Morgan, ATTORNEY GENERAL OF MISSOURI, Assistant Attorney General, Jefferson City, MO USA.

For St. Louis County, St. Louis County School Districts, Defendant: Andrew B. Leonard, LEAD ATTORNEY, MCCARTHY AND LEONARD, Town & Country, MO USA; Douglas A. Copeland, LEAD ATTORNEY, COPELAND AND THOMPSON, Clayton, MO USA; Frank Susman, LEAD ATTORNEY, SPENCER FANE LLP, St. Louis, MO USA; John Gianoulakis, LEAD ATTORNEY, SHANDS AND ELBERT LLP, St. Louis, MO USA; Richard H. Ulrich, LEAD ATTORNEY, SUMMERS AND COMPTON, LLC, St. Louis, MO USA; Robert P. Baine, Jr., LEAD ATTORNEY, Florissant, MO USA; Thomas E. Tueth, LEAD ATTORNEY, TUETH AND KEENEY, St. Louis, MO USA.

For City Board, Defendant: Kenneth C. Brostron, LEAD ATTORNEY, LASHLY AND BAER, P.C., St. Louis, MO USA.

For Lindbergh School Districct, Defendant: John Gianoulakis, Mark J. Bremer, LEAD ATTORNEYS, SHANDS AND

ELBERT LLP, St. Louis, MO USA.

For Minnie Liddell, Movant: William A. Douthit, LEAD ATTORNEY, St. Louis, MO USA.

HENRY EDWARD AUTREY, UNITED STATES DISTRICT JUDGE.

HENRY EDWARD AUTREY

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Motion to Intervene on Behalf of Charter Public School Parents and Children, [Doc. No. 398]. The Liddell Plaintiff Class, the Caldwell/NAACP Plaintiff Class and the Special Administrative Board of the Transitional School District of the City of St. Louis (Opponents) oppose the Motion. The Court heard arguments on this matter on July 13, 2016. For the reasons set forth below, the Motion to Intervene is denied.

Discussion

In support of their opposition to the Motion to Intervene, Opponents first assert that Movants lack standing.

Under [Article III, § 2](#) of the United States [*2] Constitution, federal jurisdiction is limited to "Cases" and "Controversies." [U.S. Const. Art. III, § 2](#). "One element of the case-or-controversy requirement' is that plaintiffs 'must establish that they have standing to sue.'" *Clapper v. Amnesty Int'l U.S.A.*, [133 S. Ct. 1138](#), [1146](#), [185 L. Ed. 2d 264](#) (2013) (quoting *Raines v. Byrd*, [521 U.S. 811](#), [818](#), [117 S. Ct. 2312](#), [138 L. Ed. 2d 849](#) (1997)). "Article III standing is a threshold question in every federal court case." *United States v. Bearden*, 328 F.3d 1011, [1013](#) (8th Cir.2003). "The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy." *Preiser v. Newkirk*, [422 U.S. 395](#), [401](#), [95 S. Ct. 2330](#), [45 L. Ed. 2d 272](#), (1975). The "irreducible constitutional minimum" of standing consists of three elements. *Spokeo, Inc. v. Robins*, [136 S. Ct. 1540](#), [1547](#), [194 L. Ed. 2d 635](#) (2016) (citing *Lujan v. Defenders of Wildlife*, [504 U.S. 555](#), [560](#), [112 S. Ct. 2130](#), [119 L. Ed. 2d 351](#) (1992)). "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.*

Movants argue that they seek intervention because they fear that the pending Motion to Enforce the Settlement Agreement "may impair or impeded" the educational interests of their children in the continued funding of the St. Louis Charter schools. Further, *if* the Special Administrative Board prevails on the motion, Movants would suffer a loss in educational funding. It may also require them to seek alternative educational settings to continue their education, which could disrupt the children's social and academic achievement potential.

Initially, Opponents recognize that Movants were not parties to the Desegregation Settlement Agreement (DSA), nor are they parties to this case.

[S]trangers to a consent decree generally do not have standing to enforce a consent decree. In order for a third party to be able to enforce a consent decree, the third party must, at a minimum, show that the parties to the consent decree not only intended to confer a benefit upon that third party, but also intended to give that third party a legally binding and enforceable right to that benefit.

Pure Country, Inc. v. Sigma Chi Fraternity, [312 F.3d 952](#), [958](#) (8th Cir. 2002) (citations omitted). Movants were not parties to the DSA, nor were they specifically contemplated as beneficiaries under the DSA, the sole purpose of which was desegregation remediation. Movants have failed to present any evidence or argument to demonstrate that the continued existence of the Charter schools fulfills the stated desegregation remediation purpose of the DSA. Indeed,

as Opponents argue, Movants' position appears to be in conflict with the March 12, 1999 Court's Order which identified the purpose and assignment of the Desegregation Sales Tax.

Movants also argue general nebulous injuries that *might* occur *if* the Motion to Enforce the Settlement Agreement is sustained. The Eighth Circuit Court of Appeals has recognized that

"a threatened injury must be certainly impending to constitute injury in fact," and that "allegations of future injury must be particular and concrete." *Johnson v. Missouri*, [142 F.3d 1087](#) , [1089](#) (8th Cir.1998) (alterations and internal quotation marks omitted).

Miller v. City of St. Paul, No. 15-2885, 2016 U.S. App. LEXIS 9362 , [[2016 BL 162860](#)], 2016 WL 2956753 , at *3 (8th [*3] Cir. May 23, 2016). Here, Movants' urged injuries fail to satisfy the injury in fact requirement. Movants cannot set out any specific injury that will certainly occur if they are not allowed to intervene. This Court agrees with Judge Whipple's Order in *Jenkins v. School District of Kansas City*, Case 4:77cv429 DW, wherein Judge Whipple held

Here, MCPSA alleges its members have an interest in receiving monies to which they are lawfully entitled under the laws of Missouri and the United States. The settlement agreement at issue in this action was formed and entered as an order of this Court prior to the existence of the charter schools. As such, neither MCPSA nor any individual charter school was a party to the agreement. The Court's June 15, 2006 Order is concerned only with construing the terms of the settlement agreement and the obligations those terms impose on the parties to the agreement. Neither the settlement agreement nor any other orders of the Court concerning the dismissal of the State Defendants contemplates the existence or funding of the charter schools. Accordingly, the Court finds that the MCPSA lacks standing to intervene.

Based upon the foregoing analysis, the Court concludes that Movants lack standing to intervene in this matter, and therefore, the Motion will be denied.

Accordingly,

IT IS HEREBY ORDERED that Movants' Motion to Intervene, [Doc. No 398], is **DENIED**.

Dated this 20th day of July, 2016.

/s/ Henry Edward Autrey

HENRY EDWARD AUTREY

UNITED STATES DISTRICT JUDGE

General Information

Judge(s)	Henry Edward Autrey
Related Docket(s)	4:72-cv-00100 (E.D. Mo.);
Topic(s)	Constitutional Law
Court	United States District Court for the Eastern District of Missouri
Parties	CRATON LIDDELL, et al., Plaintiffs, v. BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al., Defendants.
Date Filed	2016-07-20 00:00:00