(FILED MAY 23, 2001)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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PLANS, Inc.,

Plaintiff,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, TWIN RIDGES ELEMENTARY SCHOOL DISTRICT, DOES 1-100,

Defendants.

NO. CIV. S-98-0266 FCD PAN

MEMORANDUM AHD ORDER

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Plaintiff PLANS, Inc. ("PLANS") brings suit against the Sacramento City Unified School District ("SCUSD") and Twin Ridges Elementary School District ("Twin Ridges") (collectively "defendants"), alleging that their operation of Waldorf public schools violates the First Amendment of the United States Constitution, as well various provisions of the California Constitution. On April 6, 2001, defendants filed a notice of new authority, bringing to the court's attention the recently decided

case of Altman v, Bedford Central School District, 245 F.3d 49 (2nd Ctr. 2001). After reviewing the Altman decision, the court elected to revisit its prior order regarding plaintiff's taxpayer standing to bring this action. See Order filed Sept. 24, 1999 (denying defendants' motion for summary adjudication of the standing issue). At a hearing on April 11, 2001, the court asked the parties to submit supplemental briefing on the issue of taxpayer standing, including a discussion of the Altman case. The court also asked plaintiff to make an offer of proof regarding the expenditure of public funds in support of the Waldorf teaching method at the schools in question. Plaintiff filed its supplemental briefing on April 27, 2001. Defendants filed their supplemental briefing on May 3, 2001. Having reviewed the supplemental briefing, recent case law, and the entire record, the court now vacates a portion of its September 24, 1999 order, and grants defendants' motion for summary adjudication regarding taxpayer standing.

STANDARD

If a court "develops doubts about one of its own interlocutory rulings, it need not weigh any factors or consider any countervailing considerations before it may reconsider its own . . . ruling." Jeffries v. Wood, 114 F.3d 1484, 1510 (9th Cir. 1997) (internal citation omitted). The "interlocutory orders and rulings made pre-trial by a district judge are subject to modification by the district judge at any time prior to final judgment . . . ." Amarel v. Connell, 102 F.3d 1494, 1515 (9th Cir. 1996) (internal citations and quotations omitted).

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BACKGROUND

The facts of this case are recited in detail in this court's September 24, 1999 order granting in part and denying in part defendants' motion for summary judgment. Those facts are incorporated herein by reference.

ANALYIS

1. Taxpayer Standing

Article III of the United States Constitution limits the "judicial power" of this court to the resolution of "cases" and "controversies." A fundamental requirement for the exercise of this court's judicial power is that a litigant have standing to challenge the conduct the party seeks to adjudicate,

> [A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, and that the injury fairly can be traced to the challenged action and is likely to be redressed by a favorable decision.

Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472 (1982) (internal citations and quotations omitted).

PLANS alleges that it has standing to bring this action because its members are taxpayers in the relevant community, and the challenged practice involves the expenditure of public funds. To establish standing as a taxpayer, plaintiff must bring a "good-faith pocketbook action." Doremus v. Board of Educ. of Hawthorne, 342 U.S. 429, 434 (1952). A good-faith pocketbook action requires demonstration that the government spends "a measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of," Doe v.

Madison Sch. Dist. No. 321, 177 F.3d 789, 794 (9th Cir. 1999) (en banc) (quoting Doremus, 42 U.S. at 434). More specifically, plaintiff must prove that the activity "is supported by any separate tax or paid for from any particular appropriation or that it *adds any sum whatever to the cost of conducting the school.*" Id. at 793-94 (internal quotations omitted) (quoting Doremus, 342 U.S. at 433) (emphasis added). Taxpayer standing will not be found where the expenditure is merely an "ordinary cost[] . . . that the school would pay *whether or not*" the school conducted the challenged activity. See Cole v. Oroville Union High Sch. Dist., 228 F.3d 1092, 1100 n.5 (9th Cir. 2000) (internal quotations omitted) (quoting Madison Sch. Dist.., 177 F.3d at 794) (emphasis added). As the Altman court recently articulated, "general findings" regarding "funding the general budget for general school district expenses" are insufficient to establish taxpayer standing. See Altman. 245 F.3d at 74.

In the present case, PLANS comprehensively challenges the entire operation of the schools at issue. It argues that it "has identified significant expenditures of tax funds used to operate these schools." See Pltf's Memo re: Standing, filed April 27, 2001, at 2. However, as discussed, an expenditure of tax funds for the ordinary costs of operating schools is insufficient for taxpayer standing purposes.

In August 1994, Twin Ridges agreed to sponsor a Waldorf method school and opened the Twin Ridges Alternative Charter School in September 1994. However, plaintiff does not demonstrate that, but for the Waldorf method, defendants would not have opened the new school. As for SCUSD's Oak Ridge School,

it existed before it began operating as a Waldorf methods magnet school in September of 1995. PLANS fails to show that the schools' ordinary expenditures on teachers' salaries, equipment, building maintenance, supplies, and other expenses would have been lower had the schools employed a teaching method other than the Waldorf method.

PLANS identifies with particularity only one single expenditure it claims is directly attributable to the Waldorf method. Specifically, PLANS alleges that, in 1995, SCUSD teachers attended a teacher training program at Rudolf Steiner College, a school for teacher training in Waldorf education. However, PLANS has failed to offer evidence that the Steiner teacher training program increased SCUSD's ordinary teacher training costs in any appreciable amount.

Furthermore, PLANS failed to submit an offer of proof identifying any additional measurable appropriations spent solely on the Waldorf method, as requested by the court on April 11, 2001. Thus, PLANS has failed to demonstrate that the adoption of the Waldorf method *added any sum at all* to the ordinary cost of operating the schools at issue.

In the absence of such a showing, plaintiff's generalized reference to the entire operating budget of the schools in question is insufficient to sustain taxpayer standing. See Cole, 228 F.3d at 1100 n.5 (no taxpayer standing where school spends tax funds on ordinary costs that it would incur regardless of challenged activity); Altman, 245 F.3d at 74 (taxpayers' responsibility for "funding the general budget for general school district expenses" was insufficient to sustain taxpayer standing

where there was no evidence that purchases of supplies used challenged activities "were made solely for [such] activities" Gonzales v. North Township of Lake County. 4 F.3d 1412, 1416 (3rd Cir. 1993) (no taxpayer standing where taxpayers challenged the township's display of crucifix in park, but park maintenance costs "would be incurred with or without the presence of the crucifix."}; see also ACLU-NJ v. Township. of Wall. 246 F.3d 261, 264 {3rd Cir. 2001} (finding no standing where taxpayers challenged holiday display based on alleged religious elements where there was "no indication that . . . expenditure attributable to the challenged elements of the display would have been more than the de minimis expenditure that was involved in the Bible reading in Doremus.")

2. State Constitution Claims

This action was brought in this court on the basis of a federal question jurisdiction. In light of the elimination of plaintiff's sole federal cause of action under the Establishment Clause, the court declines to assume supplemental jurisdiction over plaintiff's remaining claims brought under Article IX, Section 8 and Article XVI, Section 5 of the California Constitution. See Acri v. Varian Associates, Inc., 114 F.3d 1000 (9th Cir. 1997) (en banc); Gini v. Las Vegas Metropolitan Police Dept., 40 F.3d 1041, 1046 (9th Cir. 1994) ("[I]n the case in which federal-law claims are eliminated before trial the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state law claims.") (quoting Schneider v. TRW, Inc., 938 F.2d 986, 993 (9th Cir. 1991)).

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CONCLUSION

1. The portion of the court's September 24, 1999 order denying defendants' motion for summary adjudication regarding taxpayer standing is hereby VACATED.

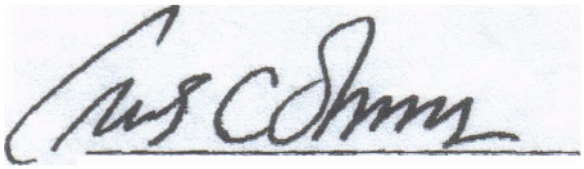
2. Defendants' motion for summary adjudication regarding the issue of taxpayer standing is GRANTED.

3. Plaintiff's remaining state law claims are DISMISSED WITHOUT PREJUDICE.

4. The Clerk is instructed to close the file.

IT IS SO ORDERED.

DATED: May 18, 2001



FRANK C. DAMRELL, Jr. UNITED STATES DISTRICT JUDGE