

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JOHN DOE, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) NO. 3:06-0924  
 )  
 WILSON COUNTY SCHOOL SYSTEM, ) Judge Echols/Bryant  
 et al., ) **Jury Demand**  
 )  
 Defendants. )

MEMORANDUM AND ORDER

Pending before the Court is the motion to intervene filed on behalf of Doug Gold, Christy Gold, James Walker and Jennifer Walker ("Applicants") (Docket Entry No. 20). Plaintiffs have filed their Memorandum in Opposition (Docket Entry No. 28). Defendants have filed a response stating that they take no position on this motion (Docket Entry No. 30).

For the reasons stated below, Applicants' motion to intervene as defendants is hereby **GRANTED**.

Plaintiffs seek money damages and injunctive relief prohibiting certain activities at Lakeview Elementary School ("the School") which they allege illegally endorse and promote the Christian religion in violation of the Establishment Clause of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are parents of minor children who are, or soon will be, eligible to attend the School. Plaintiffs maintain that, but for the allegedly illegal activities that are the subject of their complaint, they would enroll their children at the School. Defendants are the Wilson County School System; Dr. Jim Duncan,

Director of Wilson County Schools; Wendell Marlowe, Principal of the School; Yvonne Smith, Assistant Principal; and Janet Adamson, a teacher at the School. Among the activities that plaintiffs seek to enjoin are: (1) the "Prayer at the Flagpole" event, (2) the National Day of Prayer event, (3) the "Praying Parents" activities, (4) teacher-led classroom prayers, and (5) the Christian theme and "overly religious songs" at a Christmas program. (Complaint, paragraph 1, Docket Entry No. 1).

The Applicants have filed their motion to intervene as defendants in this case pursuant to Rule 24, Federal Rules of Civil Procedure. Applicants are parents of children who attend the School. Applicants also have participated in and, in some cases, led the "Prayer at the Flagpole" event, the National Day of Prayer observance, and the "Praying Parents" activities that are the subject of the complaint (Docket Entry Nos. 21 and 22). Applicants maintain that granting the relief sought by plaintiffs would necessarily violate the Applicants' rights under the First and Fourteenth Amendments to the United States Constitution, and that they should be allowed to intervene to assert those rights. Plaintiffs, in response, oppose Applicants' intervention and argue (1) that Applicants do not have a substantial legal interest in this case that would justify intervention, and (2) that the defendants will adequately represent Applicants' interests.

Under the Federal Rules of Civil Procedure, an outsider may intervene as "of right:"

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the

action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed.R.Civ.P. 24(a). The Sixth Circuit Court of Appeals has interpreted Rule 24(a) as establishing four elements, each of which must be satisfied before intervention as of right will be granted: (1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court. Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6<sup>th</sup> Cir. 1997)(citing Cuyahoga Valley Ry. Co. v. Tracy, 6 F.3d 389, 395 (6<sup>th</sup> Cir. 1993)).

Plaintiffs apparently do not challenge intervention on the basis of timeliness, and the undersigned finds that the filing of Applicants' motion to intervene was timely.

Plaintiffs maintain that Applicants do not have a substantial interest in this case. According to Wright and Miller, "[t]here is not yet any clear definition of the nature of the 'interest relating to the property or transaction which is the subject of the action' that is required for intervention of right. Indeed, it well may be that this is a question not worth answering." 7C Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, § 1908 (2d ed. 1986). Moreover, the Sixth

Circuit subscribes to a "rather expansive notion of the interest sufficient to invoke intervention of right." Grutter v. Bollinger, 188 F.3d 394, 398 (6<sup>th</sup> Cir. 1999)(citing Miller, 103 F.3d at 1245). "The inquiry into the substantiality of the claimed interest is necessarily fact-specific." Id. The Court of Appeals for the D.C. Circuit addressed the "interest" requirement for intervention as follows:

The decision whether intervention of right is warranted thus involves an accommodation between two potentially conflicting goals: to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending. Since this task will depend upon the contours of the particular controversy, general rules and past decisions cannot provide uniformly dependable guides. \* \* \* [T]here is no apparent reason why an "economic interest" should always be necessary to justify intervention. The goal of "disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process" may in certain circumstances be met by allowing parents whose only "interest" is the education of their children to intervene.

Smuck v. Hobson, 408 F.2d 175, 179 (D.C. Cir. 1969)(quoting Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967)).

Applicants claim that their constitutional rights under the First and Fourteenth Amendments will be violated if the subject activities at the School are enjoined, as plaintiffs seek in their complaint. Moreover, Applicants' claims are not merely theoretical, since they have personally participated in several of the disputed activities in the past and profess their intent to continue these activities in the future. While not deciding the

merits of these competing claims, the undersigned finds that the Applicants have asserted a substantial legal interest in this case sufficient to support their intervention as of right. "Even if it could be said that the question raised is a close one, 'close cases should be resolved in favor of recognizing an interest under Rule 24(a).'" Grutter, 188 F.3d at 399 (quoting Miller, 103 F.3d at 1247).

Applicants also must show that impairment of their substantial legal interest is possible if intervention is denied, but "[t]his burden is minimal." Id. "To satisfy this element, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied." Miller, 103 F.3d at 1247 (citing Purnell v. City of Akron, 925 F.2d 941, 948 (6<sup>th</sup> Cir. 1991))(emphasis added). In this action plaintiffs urge the Court to enjoin the very activities that Applicants allege embody their constitutional rights. If intervention were denied and a ruling adverse to the defendants resulted, Applicants would then be at a significant disadvantage in asserting their rights in subsequent litigation. The undersigned finds that Applicants have shown that impairment of their legal interest is possible if intervention is denied.

Finally, the Applicants must show that the existing defendants may not adequately represent the Applicants' interests. The Sixth Circuit has held that the proposed intervenors are not required to show that the representation will in fact be

inadequate, but that "it may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments." Grutter, 188 F.3d at 400 (quoting Miller, 103 F.3d at 1247). Although the existing defendants and the Applicants seek the same outcome - rejection of plaintiffs' challenge to the disputed activities - it is apparent that Applicants seek to advance constitutional arguments that are not available to, and will not be made by, the existing defendants. Accordingly, the undersigned finds that Applicants have satisfied the fourth element required for intervention as of right under Rule 24(a) and that their motion to intervene under Rule 24(a) should be granted.

Alternatively, the undersigned finds that the Applicants claims and the main action have questions of law and fact in common and, therefore, that Applicants should be allowed to intervene permissively under Rule 24(b).

For the foregoing reasons, Applicants' motion to intervene is hereby **GRANTED**.

It is so **ORDERED**.

s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge