

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE and GREGORY)
MOORE, for themselves and as the)
parents or guardians of their minor)
children, JASON EASTHAM, SHANNON)
MOORE and MALLORY MOORE;)
MIKE WILLIAMS and MAGGIE WILLIAMS,)
for themselves and as the parents of their)
minor daughter, CHRISTINE WILLIAMS;)
MELVIN OTTON and ROSEMARY)
OTTON, for themselves and on behalf)
of their minor children, HELENA)
OTTON, FREDERICK OTTON and)
BENJAMIN OTTON; WAYNE)
MORGAN and MARTHA MORGAN,)
for themselves and as parents of their)
minor children, WAYNE MORGAN II,)
PATRICK MORGAN, RILEY MORGAN,)
and SKYE MORGAN; JERRY S. DIXON,)
on behalf of himself and as the father of)
KIPP DIXON and PYPER DIXON, minors;)
the YUPIIT SCHOOL DISTRICT;)
the BERING STRAIT SCHOOL DISTRICT;)
the KUSPUK SCHOOL DISTRICT;)
NEA-ALASKA, INC.; and CITIZENS FOR)
THE EDUCATIONAL ADVANCEMENT OF)
ALASKA'S CHILDREN, INC.,)
Plaintiffs,)
vs.)
STATE OF ALASKA,)
Defendant.)

Case No. 3AN-04-9756 Civil

ORDER DENYING SECOND MOTION TO DISMISS

This is the second motion to dismiss filed by the state in this case. In this motion, the state presents three separate assertions: (1) that the court lacks jurisdiction over

the State of Alaska as the named defendant on account of sovereign immunity; (2) that the plaintiffs have failed to name as defendants the regional education attendance areas (REAA's), municipal school districts and municipalities, all of whom the state asserts are necessary defendants in this action; and (3) if this case is not dismissed under either of the first two bases, then several of the plaintiffs should be dismissed because they lack standing. Based on this court's review and consideration of the arguments of the parties, the state's motion is denied in all respects except as to its assertion that the school districts lack standing to assert the due process claim alleged in the complaint.

1. The State does not have sovereign immunity in this action seeking declaratory relief for alleged state constitutional violations.

The state first asserts that the plaintiffs cannot sue the State of Alaska for the alleged constitutional violations because of sovereign immunity. The state acknowledges this "defect is procedural and can be cured by naming a state official" as the defendant. State's Motion at 2. However, since the plaintiffs have not yet cured the defect in their first two amended complaints, the state asserts that dismissal is now appropriate.

The plaintiffs assert they can sue the state itself over alleged constitutional violations, where, as here, they are seeking declaratory relief as opposed to damages. And the plaintiffs note that the Alaska Supreme Court has repeatedly and for many decades determined constitutional challenges in which the only named defendant was the state, and has done so without apparent challenge by the state. Thus, in the

plaintiffs' view, "the state has expressly or impliedly relinquished any right to assert sovereign immunity as a defense in declaratory judgment actions involving constitutional claims." Plaintiff's Opp. at 35.

Although this issue has not been directly determined by the Alaska Supreme Court, this court concludes that the state is not immune from an action for declaratory relief with respect to alleged constitutional violations. While damages recovery against the state for alleged constitutional violations is restricted, declaratory relief is not. See, e.g., Robinson v. Francis, 777 P.2d 202 (Alaska 1989). In Robinson, the Alaska Supreme Court held that a damages recovery was not available to a plaintiff who had asserted that an employment preference for Alaska residents in public works construction projects violated the federal privileges and immunities clause. On appeal, the state had asserted not only that damages were unavailable, but that it was not a proper defendant to the action. Id. at 204. Yet, rather than agreeing with that assertion, the supreme court held, "because there is no damage remedy, injunctive relief may be regarded as particularly appropriate in cases of this nature." 777 P.2d at 204 n.3. At least implicit in that ruling is an indication that the Alaska Supreme Court does not find the state immune from declaratory judgment actions with respect to alleged constitutional violations. Further, as the Alaska Supreme Court has recognized, "When a party invokes a background rule granting it immunity, stated by neither the courts nor the legislature of Alaska, it would do well to confront how to square that rule with this court's unambiguous summation of the common law of sovereign immunity: 'liability is

the rule, immunity the exception.” Native Village of Eklutna v. Alaska R.R., 87 P.3d 41 (Alaska 2004).¹

For the foregoing reasons, the state's motion to dismiss this action based on sovereign immunity is denied.

II. **The state has not identified other entities whose joinder is needed for a just adjudication of this controversy.**

The state next asserts that the plaintiffs have failed to join under Civil Rule 19 certain necessary parties as defendants in this action. The state asserts that the regional educational attendance areas (REAA's), municipal school districts and the municipalities from which they arise are all necessary defendants to this action. The state notes that “the legislature has delegated comprehensive local control of schools” to these other parties, such that the provision of education is “not only the state’s responsibility, but the responsibility of its school districts.” Def. 2nd Memo. at 6. Because of this legislative delegation, the state asserts that “[s]chool districts and boroughs are indispensable parties defendant because their rights will be impaired if plaintiffs are successful – school districts need to participate in this action because they face a risk that their statutory right to local control of education will be affected if plaintiffs prevail.” Id. Accordingly, the state asserts that in the absence of these additional parties, “complete relief cannot be accorded among those already parties” such that their joinder is required. Civil Rule 19(a).

In opposition, the plaintiffs assert that their case is about “lack of funding,” and that “funding, the gravamen of this lawsuit, comes from the state.” Plaintiffs’ Opp. at

¹ Such a result is further supported by the fact that neither AS 09.50.250 nor AS 09.50.253 expressly authorizes claims against either the state or state employees for alleged state constitutional violations, yet clearly the court is the forum for resolving such allegations.

24. Further, they cite to the Alaska Supreme Court's decision in Macauley v. Hildebrand, 491 P. 2d 120 (Alaska 1971): That case concerned a conflict between a local ordinance and a state statute with respect to education funding. The court held that the state statute controlled, and explained its holding as follows:

The outcome of the local activity test in the case at bar is dictated by Article VII, Section 1 of the Alaska Constitution:

The legislature shall by general law establish and maintain a system of public schools open to all children of the State . . .

This constitutional mandate for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, the section not only requires that the legislature "establish" a school system, but also gives to that body the continuing obligation to "maintain" the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. That the legislature has seen fit to delegate certain educational functions to local school boards in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish this constitutionally mandated state control over education.

491 P. 2d at 122 (footnotes omitted).

Based on the foregoing, the state's motion to require the plaintiffs to add the REAA's and municipal districts as indispensable defendants is denied.

III. All of the named plaintiffs have standing to bring this action, except the school districts lack standing with respect to the due process claim.

The state's third argument raised in this second motion to dismiss is that several of the named plaintiffs lack standing to bring this lawsuit.

Pursuant to the decisions of the Alaska Supreme Court, the school districts lack standing to maintain the due process claim set forth in plaintiffs' complaint. See

Matanuska-Susitna Borough School v. State, 931 P.2d 391 (Alaska 1997). "The purpose of the Alaska due process clause is to protect people from abuses of government, not to protect political subdivisions of the state from the actions of other units of state government." Kenai Peninsula Borough v. DCRA, 751 P. 2d 14, 18 (Alaska 1988). Therefore, the three school district plaintiffs are precluded from maintaining the due process claim in this case. Amendment of the complaint as proposed by the plaintiffs would not remedy this standing deficiency, and therefore that motion is denied.

But as to the districts' claims under the Education Clause of the Alaska constitution, this court finds that the districts do have standing. In the Kenai case cited above, the Alaska Supreme Court reviewed the case law of other states, and indicated its intent to "follow suit" in concluding that due process claims should not be maintainable by political subdivisions. Id. 751 P. 2d at 18. As the plaintiffs here have noted, many other state courts have found that school districts have standing to maintain claims against their state governments under the Education Clauses in those state constitutions. See Plaintiffs' Opp. at 17-18. In accordance with those decisions, the school districts in Alaska should be permitted to maintain their claim that the State of Alaska has violated the Education Clause in Alaska's constitution.

The state also asserts that plaintiffs NEA-Alaska and CEAAC lack standing to bring this action because neither organization "has any cognizable interest in the outcome of the litigation, nor a citizen-taxpayer interest." State's Motion at 14. But the state does acknowledge that "Alaska courts have been relatively generous in finding citizen-taxpayer standing." Id. The state's primary argument is that the inclusion of

these organizations as plaintiffs is unnecessary because schoolchildren and their parents are named plaintiffs in the lawsuit. Id.

“An association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” Alaskans for a Common Language v. Kritz, 3 P. 3d 906, 915 (Alaska 2000).

NEA-Alaska asserts that its members have “a direct economic interest in education funding” as well as a “direct professional interest since their professional goal of providing the highest quality education to the students of Alaska is in part dependent on the resources available.” 2nd Amended Complaint at ¶ 14. Clearly, the public school employee members of NEA-Alaska have at least the requisite “identifiable trifle” of an economic interest in this case, and the interests the association seeks to protect are germane to the purpose of NEA-Alaska. State v. Planned Parenthood of Alaska, 35 P. 3rd 30, 35 (Alaska 2001). Finally, the participation of the organization’s individual members in this lawsuit is not required in this action seeking declaratory relief. Kritz, 3 P.3d at 915; see also Hunt v. Washington State Apple Advertising Comm’n, 432 U.S. 333, 342-345 (1977). Accordingly, NEA-Alaska has standing to remain a named plaintiff in this action.

Similarly, CEAAC meets the three requirements for associational standing to remain a plaintiff in this case. The association’s name, Citizens for the Educational Advancement of Alaska’s Children, Inc., and the asserted purpose of the association is demonstrative in itself of a citizen-taxpayer interest. See 2nd Amended Complaint at

¶¶15, 16. Also, this is a case of public significance, with specific constitutional issues presented in which this plaintiff has a demonstrated adversity of interest to the state sufficient to confer standing as alleged in the complaint. Id. at ¶ 18. See also Trustees for Alaska v. State, 736 P.2d 324, 329 (Alaska 1987). And the individual members of the organization would not be required to participate in this action seeking declaratory relief. Kritz, 3 P. 3d 906, 915. Accordingly, CEAAC also has association standing to be a plaintiff in this action.

Conclusion

For the foregoing reasons, the state's second motion to dismiss is denied, except that this court finds that the school district plaintiffs do not have standing to maintain the due process claim against the state.

Dated this 30th day of November, 2005.

Sharon Gleason
Sharon Gleason
Judge of the Superior Court

11-30-05
I, [Signature]
Clerk of the Court
do hereby certify that the following is a true and correct copy of the original as filed in the court records.

Sato
Slotnick / Straubach
Widdleton
Trickey
Clark