

Hier v. Town Sch. Dist. of Fair Haven, No. 640-8-08 Rdcv (Cohen, J., Feb. 2, 2009)

[The text of this Vermont trial court opinion is unofficial. It has been reformatted from the original. The accuracy of the text and the accompanying data included in the Vermont trial court opinion database is not guaranteed.]

**STATE OF VERMONT
RUTLAND COUNTY**

CURTIS HIER)	Rutland Superior Court
)	Docket No. 640-8-08 Rdcv
Plaintiff,)	
)	
v.)	
)	
TOWN SCHOOL DISTRICT OF FAIR HAVEN)	
Defendant,)	
)	
and)	
)	
VERMONT SCHOOL BOARDS ASSOCIATION)	
)	
Intervenor)	

DECISION ON DEFENDANT’S MOTION TO DISMISS

This matter came before the Court on defendant Town School District of Fair Haven’s Motion to Dismiss, pursuant to V.R.C.P. 12(b)(6), filed on September 5, 2008. Plaintiff Curtis Hier filed a Response on September 25, 2008. Plaintiff also filed an Amended Complaint on October 22, 2008. Defendant filed a supplemental Memorandum in support of its motion to dismiss on October 31, 2008. Hearings were held on October 20, 2008, and January 6, 2009.

Plaintiff Curtis Hier is represented by Paul Gillies, Esq. Defendant Town School District of Fair Haven is represented by Jeffrey S. Marlin, Esq. Intervenor Vermont School Boards Association is represented by Bernard D. Lambek, Esq.

In its Motion to Dismiss, defendant Town School District of Fair Haven argues that plaintiff Curtis Hier's complaint must be dismissed because (1) plaintiff has no standing to seek the requested declaratory relief, and (2) plaintiff has failed to state a claim upon which relief can be granted. The Court need not address the second argument, as the standing requirement is dispositive.

Background

Plaintiff Curtis Hier filed an Amended Complaint on October 22, 2008. According to the complaint, Mr. Hier is a taxpayer, voter, and landowner in the Town School District of Fair Haven, in the County of Rutland. Mr. Hier is also a social studies teacher at Fair Haven High School who is interested in issues relating to education finance, governance, and policy.

According to the complaint, the School Board has proposed, and the voters of the district have approved, a school district budget to pay for the costs of education in the district. Among the items of expenditure in the budget is the sum of \$1,800 in fees to the Vermont School Boards Association (VSBA). The VSBA provides services to support school boards, including offering draft policies, seminar, legal and administrative advice, and lobbying in the interests of school boards in the legislature.

According to the complaint, an unknown portion of the \$1,800 included in the Fair Haven school budget provided to VSBA goes to funding the lobbying function by the organization. Mr. Hier alleges in the complaint that lobbying the legislature is not within the authority of the Fair Haven School Board or the Fair Haven School District through hired lobbyists. Mr. Hier further alleges that paying an organization to lobby on behalf of the board or district, when that organization does not necessarily represent the

view of the voters of Fair Haven School District is acting beyond the authority of the law.

Mr. Hier prays (1) for a declaration of the rights of the school board to spend public money on lobbying efforts by a private organization representing school boards before the General Assembly, and (2) Costs and other relief as the Court deems appropriate.

Discussion

The doctrine of standing represents a core constitutional and prudential commitment to judicial restraint. It has been long recognized that “standing and the separation of powers doctrine are wedded together.” *Brady v. Dean*, 173 Vt. 542, 543 (2001) (mem.).

Vermont has adopted the constitutional and prudential components of the standing doctrine enunciated by the United States Supreme Court. *Schievella v. Department of Taxes*, 171 Vt. 591, 592 (2000) (mem.). The constitutional component of the standing doctrine requires plaintiffs to demonstrate an injury in fact, a causal link between the injury and the challenged provision, and redressability. *Id.*

Mr. Hier argues that he has standing to bring suit because he is a taxpayer, voter, and landowner in the Town School District of Fair Haven, and because he is a social studies teacher at Fair Haven High School who is interested in issues relating to education finance, governance, and policy. The only injury that Mr. Hier has alleged is that his taxpayer money is being wasted – an unknown portion of the \$1,800 included in the Fair Haven school budget provided to VSBA goes to funding the lobbying function of the organization. Although Mr. Hier alleges that lobbying the legislature through hired lobbyists is not within the authority of the Fair Haven School Board or the Fair Haven

School District, he has not alleged the violation of any specific law.

Mr. Hier's status as a taxpayer does not automatically confer standing, for it has been established that the payment of taxes is generally not enough to establish standing to challenge an action taken by the government. *Hein v. Freedom From Religion Foundation, Inc.* 127 S.Ct. 2553, 2559 (2007). Mr. Hier may not argue that an allegedly illegal governmental expenditure caused him injury in the form of economic harm as an individual taxpayer. See *Id.* If every taxpayer could sue to challenge any government expenditure, the courts would cease to function as courts of law and would be cast in the role of general complaint bureaus. *Id.*

Furthermore, Mr. Hier's interest in education finance, governance, and policy as a social studies teacher at Fair Haven High School does not confer standing. "A plaintiff raising only a generally available grievance about government-claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large-does not state an Article III case or controversy." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-574 (1992).

Because Mr. Hier has not alleged an injury in fact, a causal link between the injury and the challenged provision, and redressability, he does not have standing to bring suit. See *Schievella*, 171 Vt. at 592.

ORDER

Defendant Town School District of Fair Haven's Motion to Dismiss, pursuant to V.R.C.P. 12(b)(6), filed on September 5, 2008, is GRANTED.

Dated at Rutland, Vermont this _____ day of _____, 2009.

Hon. William Cohen
Superior Court Judge