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EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PLANS, Inc.,
Plaintiff,

NO. CIV. S-98-0266 FCD PAN

v.

MEMORANDUM AND ORDER

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

CFCD

Defendants.

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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

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1 case of Altman v. Bedford Central School District, 245 F.3d 49
2 (2nd Cir. 2001). After reviewing the Altman decision, the court
3 elected to revisit its prior order regarding plaintiff's taxpayer
4 standing to bring this action. See Order filed Sept. 24, 1999
5 (denying defendants' motion for summary adjudication of the
6 standing issue). At a hearing on April 11, 2001, the court asked
7 the parties to submit supplemental briefing on the issue of
8 taxpayer standing, including a discussion of the Altman case.
9 The court also asked plaintiff to make an offer of proof
10 regarding the expenditure of public funds in support of the
11 Waldorf teaching method at the schools in question. Plaintiff
12 filed its supplemental briefing on April 27, 2001. Defendants
13 filed their supplemental briefing on May 3, 2001. Having
14 reviewed the supplemental briefing, recent case law, and the
15 entire record, the court now vacates a portion of its September
16 24, 1999 order, and grants defendants' motion for summary
17 adjudication regarding taxpayer standing.

18 STANDARD

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

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

17 In the present case, PLANS comprehensively challenges the
18 entire operation of the schools at issue. It argues that it "has
19 identified significant expenditures of tax funds used to operate
20 these schools." See Pltf's Memo re: Standing, filed April 27,
21 2001, at 2. However, as discussed, an expenditure of tax funds
22 for the ordinary costs of operating schools is insufficient for
23 taxpayer standing purposes.

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

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

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

15 Furthermore, PLANS failed to submit an offer of proof
16 identifying any additional measurable appropriations spent solely
17 on the Waldorf method, as requested by the court on April 11,
18 2001. Thus, PLANS has failed to demonstrate that the adoption of
19 the Waldorf method *added any sum at all* to the ordinary cost of
20 operating the schools at issue.

21 In the absence of such a showing, plaintiff's generalized
22 reference to the entire operating budget of the schools in
23 question is insufficient to sustain taxpayer standing. See Cole,
24 228 F.3d at 1100 n.5 (no taxpayer standing where school spends
25 tax funds on ordinary costs that it would incur regardless of
26 challenged activity); Altman, 245 F.3d at 74 (taxpayers'
27 responsibility for "funding the general budget for general school
28 district expenses" was insufficient to sustain taxpayer standing

1 where there was no evidence that purchases of supplies used in
2 challenged activities "were made solely for [such] activities.");
3 Gonzales v. North Township of Lake County, 4 F.3d 1412, 1416 (7th
4 Cir. 1993) (no taxpayer standing where taxpayers challenged
5 township's display of crucifix in park, but park maintenance
6 costs "would be incurred with or without the presence of the
7 crucifix."); see also ACLU-NJ v. Township of Wall, 246 F.3d 258,
8 264 (3rd Cir. 2001) (finding no standing where taxpayers
9 challenged holiday display based on alleged religious elements,
10 where there was "no indication that . . . expenditure
11 attributable to the challenged elements of the display would have
12 been more than the de minimis expenditure that was involved in
13 the Bible reading in Doremus").

14 **2. State Constitution Claims**

15 This action was brought in this court on the basis of
16 federal question jurisdiction. In light of the elimination of
17 plaintiff's sole federal cause of action under the Establishment
18 Clause, the court declines to assume supplemental jurisdiction
19 over plaintiff's remaining claims brought under Article IX,
20 Section 8 and Article XVI, Section 5 of the California
21 Constitution. See Acri v. Varian Associates, Inc., 114 F.3d 999,
22 1000 (9th Cir. 1997) (en banc); Gini v. Las Vegas Metropolitan
23 Police Dept., 40 F.3d 1041, 1046 (9th Cir. 1994) ("[I]n the usual
24 case in which federal-law claims are eliminated before trial, the
25 balance of factors . . . will point toward declining to exercise
26 jurisdiction over the remaining state law claims.") (quoting
27 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