

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF MISSOURI
 EASTERN DIVISION

FILED

APR 6 - 1983

CRATON LIDDELL, et al.,
 Plaintiffs,

v.

THE BOARD OF EDUCATION
 OF THE CITY OF ST. LOUIS,
 STATE OF MISSOURI, et al.,
 Defendants.

EYVON MENDENHALL, CLERK
 U. S. DISTRICT COURT
 E. DISTRICT OF MO.

No. 72-100C(4)

MEMORANDUM

This matter is before the Court on:

(a) the motion to object and to intervene as party
 plaintiffs, H(2161)83, dated March 2, 1983; and

(b) a subsequent request for hearing on that motion,
 H(2207)83, dated March 23, 1983.

Several parties responded to this motion. See H(2185)83, dated
 March 9, 1983 (certain St. Louis County school districts'
 opposition to the requested intervention); H(2199)83, dated March
 18, 1983 (City of St. Louis' support of the requested
 intervention); H(2227)83, dated March 31, 1983 (City Board's,
 Caldwell's, and Liddell's joint opposition to requested
 intervention); H(2230)83, dated March 31, 1983 (Liddell's
 separate opposition to requested intervention).

After several parties filed an "Agreement in
 Principle," movants sought leave to intervene as plaintiffs and

to object to the "proposed settlement."¹ Movants are the North St. Louis Parents and Citizens for Quality Education (an unincorporated association), William Upchurch, Vivian Ali, and Dorothy Robins. The named individuals are alleged to be members of the association, parents of children attending St. Louis City schools, residents of North St. Louis, and black members of the Caldwell class.

With regard to the request for leave to object and the belated request for hearing, the Court has permitted comment on the "Agreement in Principle" by any and all members of the public. See Order H(2159)83, dated March 2, 1983. In accordance with that order, movants will be granted leave to object to the "Agreement in Principle," and their objections, as expressed in H(2161)83, will be considered as a public comment filed in compliance with Order H(2159)83. The Court finds no good cause to have a hearing on this motion. Rule 7, Rules of the United States District Court for the Eastern Judicial District of Missouri; Rose Barge Line, Inc. v. Hicks, 421 F.2d 163, 164 (8th Cir. 1970).

¹The "Agreement in Principle" was certain parties' statement constituting the basis for a "detailed implementation plan" which the parties drafted in an effort to resolve amicably the pending 12(c) liability phase of this litigation. The "Agreement in Principle" was not a proposed settlement agreement. The parties filed a 78-page "detailed implementation plan" with a 270-page appendix, entitled "Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools." At this point, several parties have adopted that "detailed implementation plan" as a settlement agreement for this phase of the case. That "settlement agreement," and other parties' positions on it, are presently under the Court's consideration.

Additionally, movants seek leave to intervene as parties plaintiff

in order to protect those interests adversely affected by the proposed Settlement, which interests involve questions of law and fact which are common to the main action including but not limited to the question of the effect of the proposed settlement on the quality of education in north St. Louis city.

In support of their motion, movants assert that their efforts to communicate their concerns to present litigants have been "unavailing," that they are "not adequately represented by the current class representative, the NAACP," and that their application for intervention is timely. Movants did not submit any pleading or supporting affidavits with the motion, nor did movants inform the Court whether or not they would adopt prior pleadings and proceedings in this case.

Rule 24(c) of the Federal Rules of Civil Procedure requires that a "pleading setting forth the claim or defense for which intervention is sought" accompany a motion for intervention. A failure to comply with this requirement may constitute grounds for denying a motion to intervene. Gabauer v. Woodcock, 425 F.Supp. 1, 3 (E.D. Mo. 1976), rev'd in part and aff'd in part on other grounds, 594 F.2d 662 (8th Cir.), cert. denied, 444 U.S. 841 (1979). In this instance, however, the Court will look beyond this technical noncompliance with the Federal Rules of Civil Procedure and address the merits of the motion to intervene.

Although not explicitly stating the basis for intervention, movants seem to rely on the intervention provisions of Fed. R. Civ. P. 24(b)(2):

Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The timeliness of this motion to intervene more than ten years after the litigation began is open to question. Beyond this, the Court looks to all the circumstances of this litigation to determine whether or not the intervention will "unduly delay or prejudice the adjudication of the rights of the original parties." See Stadin v. Union Electric Co., 309 F.2d 912, 920 (8th Cir.), cert. denied, 373 U.S. 915 (1962).

The Court has before it numerous parties to this litigation:

UNITED STATES

STATE OF MISSOURI, the State Board of Education
and its members, the Commissioner
of Education and the State
Treasurer

ST. LOUIS COUNTY government defendants

CITY OF ST. LOUIS

BOARD OF EDUCATION OF THE
CITY OF ST. LOUIS

NAACP through Caldwell plaintiffs

MINNIE LIDDELL, et al., who initiated this litigation

TWENTY-THREE ST. LOUIS
COUNTY SCHOOL DISTRICTS plus the Special School District
AMICUS CURIAE SHULAMITH SIMON on behalf of the public
interest

In view of the foregoing, this Court finds that would-be intervenors' interests are adequately represented herein. What this case does not need is the addition of more parties. There are over thirty now.

Beyond these litigants, the Court has appointed several monitoring and advisory committees that may invite, analyze, respond to, and report on citizen queries and suggestions pertaining to any of the three desegregation plans implemented at present. These committees are the Desegregation Monitoring and Advisory Committee for the intradistrict desegregation plan; the Coordinating Committee for the 12(a) voluntary interdistrict plan; the Metropolitan Coordinating Committee for the 12(b) vocational education plan; and the Committee on Quality Education for the non-integrated public schools in the City of St. Louis.

Unless duly elected officials, the City Board, the United States, the State of Missouri defendants, the City of St. Louis, the court-appointed amicus curiae, and two plaintiff classes can be deemed to represent citizens, then the addition of parties to this case must go on ad infinitum. Justice is not served by injecting a plethora of parties into this litigation now in its twelfth year.

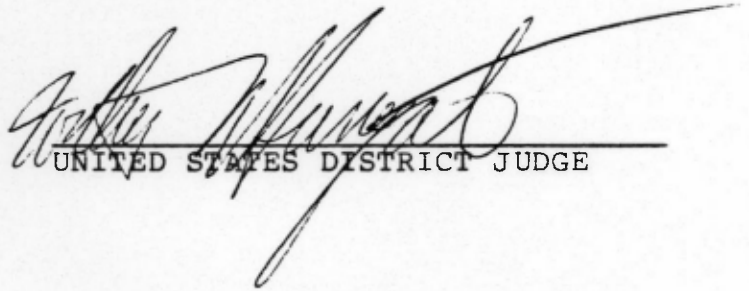
In consideration of the countless elected and appointed persons and private citizens presenting views to this Court, in light of the prolonged history of this litigation at both the trial and appellate court levels, and in view of the recent rigors of discovery, preparation for trial, and round-the-clock negotiating efforts, the Court is not convinced that movants' interests are not adequately represented or that their efforts to communicate with either the litigants or the committees are "unavailing." Rather, under the circumstances, the Court deems these unsubstantiated assertions to evince dissatisfaction with the differences between what movants want and the results of this litigation. That a remedy different from that proposed by movants is suggested by the parties or adopted by the Court does not mean movants' interests are not represented. See U. S. v. Perry County Board of Education, 567 F.2d 277, 280 n.4 (5th Cir. 1978)(affirming denial of parents' motion to intervene in school desegregation case). As long as the Court is satisfied that movants have an opportunity to present their views and that their interests, e.g., in quality education, are considered by the parties,² then intervention may be denied. See

²Both the summary in section IV and the voluminous appendix to the "detailed implementation plan," the activities of the Committee on Quality Education, see, e.g., H(2093)83, dated February 10, 1983, and various implemented programs, see, e.g., H(1142)82, dated July 13, 1982, demonstrate the parties' and the Court's concern with quality education. Notably, the City of St. Louis has pronounced that as a party, it "has participated in this case . . . to speak for the interests of all its residents -- those who are students and parents, and those many who are not." H(2234)83 at 2, dated April 1, 1983.

U. S. v. Marion County School District, 590 F.2d 146 (5th Cir. 1978); Penick v. Columbus Education Association, 574 F.2d 889 (1978).

At present, this phase of the case may be resolved through proceedings directed to the "detailed implementation plan" submitted as a settlement agreement by some parties, or through hearings regarding the 12(c) liability of various parties. Movants' intervention as parties plaintiff would "unduly delay or prejudice the adjudication of the rights of the original parties" and will be denied.

Dated this 6th day of April, 1983.


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

H(2270)83

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Defendants.

No. 72-100C(4)

*Northside
Parents*

ORDER

A memorandum dated this day is hereby incorporated into
and made a part of this order.

IT IS HEREBY ORDERED that the motion to object, H(2161)83,
be and the same is granted, and the objections expressed in H(2161)83
shall be considered public comment filed in accordance with order H(2159)83
dated March 2, 1983.

IT IS HEREBY FURTHER ORDERED that the motion to intervene as
parties plaintiff, H(2161)83, be and the same is denied.

IT IS HEREBY FURTHER ORDERED that the request for attorneys'
fees and costs, H(2161)83, be and the same is denied.

IT IS HEREBY FURTHER ORDERED that the request for a hearing,
H(2207)83, be and the same is denied.

Dated this 6th day of April, 1983.


UNITED STATES DISTRICT JUDGE