

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**TWO RIVERS PUBLIC CHARTER
SCHOOL, *et al.*,**

Plaintiffs,

v.

ROBERT WEILER, JR., *et al.*,

Defendants.

Civil Action No. 2015 CA 009512 B

**Civil II, Calendar No. 7
Judge Jeanette J. Clark**

**Next Court Event:
Initial Conference
March 11, 2016, 9:30 AM**

**DEFENDANT LARRY CIRIGNANO'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant LARRY CIRIGNANO ("Cirignano"), pursuant SCR Civil 12(b)(1) and (6), moves the Court for entry of an order dismissing Plaintiffs' Complaint, with prejudice, on the grounds that: (1) Plaintiffs have no standing to bring this suit, depriving this Court of subject matter jurisdiction to hear it, and (2) Plaintiffs fail to state a claim upon which relief can be granted.

ORAL HEARING REQUESTED

Cirignano requests an oral hearing on this motion.

RULE 12-I(a) CERTIFICATE

Prior to filing this motion, and in accordance with SCR Civil 12-I(a), Cirignano's counsel conferred with counsel for Plaintiffs. Despite diligent efforts, Cirignano's counsel could not obtain Plaintiffs' consent to the relief requested in this motion.

DATED this February 5, 2016

Respectfully submitted:

/s/ Mathew D. Staver

Mathew D. Staver (DC 439315)

Horatio G. Mihet (Fla. 26581)[†]

/s/ Roger K. Gannam

Roger K. Gannam (Fla. 240450)[†]

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Attorneys for Defendant Larry Cirignano

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed through the Court's authorized eFiling system, which will provide a courtesy copy to Chambers and effect eService upon the following parties or counsel of record:

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Defendant, pro se

DATED this February 5, 2016

/s/ Roger K. Gannam

Roger K. Gannam

Attorney for Defendant Larry Cirignano

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**[PROPOSED] ORDER GRANTING
DEFENDANT LARRY CIRIGNANO'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

This case is before the Court on Defendant Larry Cirignano's Motion to Dismiss Plaintiffs' Complaint. The Court, having considered the motion and all papers filed in support and in opposition, having heard the argument of counsel, and being otherwise fully advised, it is hereby,

ORDERED:

1. The motion is **GRANTED**.
2. Plaintiffs' Complaint is dismissed in its entirety, with prejudice.

DONE AND ORDERED in Washington, DC this ____ day of _____, 2016.

JEANETTE J. CLARK
SUPERIOR COURT JUDGE

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
LARRY CIRIGNANO'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant LARRY CIRIGNANO ("Cirignano"), pursuant to SCR Civil 12-I(e), submits this memorandum of points and authorities in support of his Motion to Dismiss Plaintiffs' Complaint (the "Cirignano Motion") under SCR Civil 12(b)(1) and (6).

PRELIMINARY STATEMENT

Cirignano, pursuant to SCR Civil 12(b)(1), moves for dismissal of Plaintiffs' Complaint because Plaintiffs lack standing to bring this suit, and therefore, this Court lacks jurisdiction to hear Plaintiffs' claims. In support of this ground for dismissal, Cirignano incorporates herein by this reference the Memorandum of Points and Authorities in Support of Defendant Ruby Nicdao's Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction (the "Nicdao Jurisdiction Memorandum"), filed January 29, 2016, in its entirety. Because the standing analysis focuses on the nature and status of Plaintiffs, and not the conduct of any Defendant, the Nicdao Jurisdiction Memorandum supports Cirignano's instant motion to dismiss with equal force and effect.

Pursuant to SCR Civil 12(b)(6), Cirigano also moves for dismissal of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. In support of this ground for dismissal, Cirigano incorporates herein by this reference his Memorandum of Points and Authorities in Support of Defendant Larry Cirigano's Special Motion to Dismiss Plaintiffs' Complaint (the "Cirigano Memorandum"), filed February 1, 2016, in its entirety. Whereas the Cirigano Memorandum demonstrates that Plaintiffs cannot show a likelihood of success on the merits of their claims (Cirigano Mem. at 4-6), it is precisely because Plaintiffs fail to state a claim upon which relief can be granted that they are unable to succeed on the merits.

Set forth below are supplemental points and authorities in support of Cirigano's Motion to Dismiss Plaintiffs' Complaint.

ARGUMENT

As demonstrated in the Nicdao Jurisdiction Memorandum, Plaintiffs cannot establish standing to assert claims on behalf of students or parents. (Nicdao Jurisdiction Mem. at 5-10.) "It is no small matter for an organization to assert the right to sue, not on behalf of itself, but on behalf of others. . . . [S]uch a right requires the representational relationship to be a strong one, in order to ensure the fidelity of the organization to those for whom it claims to speak." *Friends of Tilden Park, Inc. v. D.C.*, 806 A.2d 1201, 1209 (D.C. 2002). Utterly failing to identify any source of authority, Plaintiffs presume to speak for *every* student and parent on their rolls in seeking to judicially blot out constitutionally protected expression on public ways, *outside* their school buildings. Founding such a right to sue on the mere fact of enrollment would render any associational or third-party standing analysis a meaningless exercise.¹

¹ Though not referring to the third-party standing doctrine by name, the Nicdao Jurisdiction Memorandum disposes of any such basis for Plaintiffs' purported standing in the course of its associational standing analysis. Citing to *Smith v. Jefferson County Board of School*

CONCLUSION

For all of the foregoing reasons, the Cirignano Motion should be granted, and Plaintiffs' claims dismissed, with prejudice, as to Cirignano.

DATED this February 5, 2016

Respectfully submitted:

/s/ Mathew D. Staver

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Commissioners, 641 F.3d 197 (6th Cir. 2011), the memorandum correctly argues that “Plaintiffs are unable to establish that the students and parents cannot assert these claims on their own behalf.” (Nicdao Jurisdiction Mem. at 9.) Such failure by Plaintiffs eliminates the doctrine of third-party standing from consideration. *See Riverside Hosp. v. D.C. Dept. of Health*, 944 A.2d 1098, 1105 (“[T]he litigant must demonstrate ‘some hindrance to the third party’s ability to protect his or her own interests.’” (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991))).

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