IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

C.K.-W., et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:22-cv-00191-MTS
v.	)	
	)	
WENTZVILLE R-IV SCHOOL DISTRICT,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Introduction

Plaintiffs are purported current students of Wentzville R-IV School District (the "District") who have filed suit under 42 U.S.C. § 1983, challenging the District's temporary removal of access to certain books[1] in its school libraries pursuant to District policy and regulations. (*See generally* Doc. 6). They claim that Plaintiff C.K.-W.'s parents wish for her to have access to the Subject Books via the District's libraries. (*See* Doc. 27, p. 1). It is also asserted that Plaintiff D.L. and his parents wish for him to have access to the Subject Books via District libraries. (*Id*., p. 1-2). Plaintiffs seek injunctive and declaratory relief. (Doc. 6, p. 28). Despite essentially acknowledging that the Court would be able to issue a single order enjoining the District from removing access to library books pursuant to its policies and regulations if Plaintiffs prevail in this case (*see* Doc. 27, p. 8), Plaintiffs have nonetheless moved for certification of a proposed class comprised of "current and future students in District schools who use, or will use, a District school

[1] *The Bluest Eye*, by Toni Morrison; *Fun Home: A Family Tragicomic*, by Alison Bechdel; *All Boys Aren't Blue*, by George M. Johnson; *Heavy: An American Memoir*, by Kiese Laymon; *Lawn Boy*, by Jonathan Evison; *Gabi, A Girl in Pieces*, by Isabel Quintero; *Modern Romance: An Investigation*, by Aziz Ansari; and *Invisible Girl: A Novel* by Lisa Jewell (collectively, the "Subject Books").

library to access information" (Doc. 27, p. 2). However, neither the pleadings nor Plaintiffs' Motion for Class Certification (the "Motion") sufficiently establish the propriety or necessity of a class action in this case, and the Court should therefore exercise its broad discretion to decline class certification.

Legal Standard

"The class action serves to conserve the resources of the court and the parties by permitting an issue that may affect every class member to be litigated in an economical fashion." *Johnson v. United States Bank Nat'l Ass'n*, No. 10-4880 (MJD/JJK), 2011 U.S. Dist. LEXIS 144813, at *5-6 (D. Minn. Dec. 15, 2011) (citing *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1979)). Fed. R. Civ. P. 23 governs the certification of classes and requires that the moving party satisfy all of the requirements of Rule 23(a) and at least one of the three requirements set forth under Rule 23(b). "Rule 23 does not set forth a mere pleading standard[—][a] party seeking class certification must affirmatively demonstrate his compliance with the Rule[—]that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis in original). Accordingly, "[t]he propriety of class action status can seldom be determined on the basis of the pleadings alone." *Walker v. World Tire Corp.*, 563 F.2d 918, 921 (8th Cir. 1977). With respect to Rule 23(a) in particular, the trial court must apply a "rigorous analysis" in order to determine whether the class action prerequisites have been met. *Wal-Mart Stores, Inc*. at 350-51 (internal citations and quotations omitted). The trial court is afforded broad, overall discretion in determining the propriety of class certification, subject only to review for abuse. *Day v. Celadon Trucking Servs.*, 827 F.3d 817, 830 (8th Cir. 2016). The party seeking certification bears the burden of showing

that "the class should be certified and that the requirements of Rule 23 are met." *Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994).

Argument

On its face, Plaintiffs' proposed class is overbroad. At issue in this case is the extent to which the District can control access to non-required books in its school libraries (*see* Doc. 6), which presents a unique context under the current plurality standard set forth by the Supreme Court. *See generally, Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (plurality opinion). Thus, the inclusion of prospective class members who may use District libraries to access other forms of "information" (*e.g.*, curriculum materials) is not warranted.

I. CLASS CERTIFICATION SERVES NO USEFUL PURPOSE IN THIS CASE

The class relief Plaintiffs seek is already available to them (if they prevail) in the form of an order enjoining the District from removing access to library books under the current construction of its policies and regulations, and Plaintiffs appear to admit as much (*see* Doc. 27, p. 8). Plaintiffs have not sought damages in this case. (Doc. 6, p. 28). In light of these factors, class certification here would not serve judicial economy or efficiency nor offer any unique relief to Plaintiffs (or the proposed class), but instead needlessly inject the burdens and complexities of a class action into the suit—defeating the Rule's purpose for a class action. Indeed, the district court in *Pico v. Bd. of Educ.*, which was also presented with First Amendment claims arising from the removal of school library books, denied class certification for this very reason. 474 F. Supp. 387, 393 (E.D.N.Y. 1979) (reversed on other grounds). This Court itself has previously held that "[w]hen declaratory and injunctive relief is sought on behalf of a class, and when the benefits of the relief sought will benefit all members of a proposed class, a court may exercise its discretion and decline to certify the class." *Women's Health Ctr., Inc. v. Webster*, 670 F. Supp. 845, 852

(E.D. Mo. 1987); *see also Ihrke v. N. States Power Co.*, 459 F.2d 566, 572 (8th Cir. 1972),[2] *vacated and remanded on other grounds*, 409 U.S. 815 (1972). Accordingly, even assuming *arguendo* that Plaintiffs have otherwise satisfied Rule 23, the Court nonetheless retains discretion to decline certification and it should exercise that discretion here.

II. PLAINTIFFS HAVE NOT SATISFIED RULE 23(a)

Again, Plaintiffs seek to certify a class comprised of "current and future students in District schools who use, or will use, a District school library to access information." (Doc. 27, p. 2). The District currently has approximately 17,000 students enrolled in its schools. (*See* Doc. 6, ¶ 8). Plaintiffs must therefore demonstrate that this proposed class satisfies each of Rule 23(a)'s prerequisites—"(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class."

A. Typicality.

"The typicality requirement of Rule 23(a)(3) obligates the class representative to at least demonstrate that there are other members of the class who have similar grievances." *Wright v. Stone Container Corp.*, 524 F.2d 1058, 1062 (8th Cir. 1975) (plaintiff failed to satisfy Rule 23(a)'s typicality requirement where he could only speculatively and vaguely identify other class members). Here, Plaintiffs generically claim that they are not alone in wanting access to the Subject Books (Doc. 27, p. 2), but fail to show that their position and claims are typical of the District's 17,000 students—*i.e.*, that the District's student population also share similar grievances

[2] "No damages are requested on behalf of the [plaintiffs] or on behalf of the class. The determination of the constitutional question can be made by the Court and the rules and regulations determined to be constitutional or unconstitutional regardless of whether this action is treated as an individual action or as a class action. No useful purpose would be served by permitting this case to proceed as a class action."

regarding the District's book removal and review process. Indeed, the District has reason to believe that there are in fact members of the proposed class who either approve of the District's removal and review policies, and/or do not want the District to subsidize access to the Subject Books—at least one District student and two parents of District students have publicly expressed opposition to one or more of the Subject Books.[3] Federal courts have found a lack of typicality under similar circumstances. *See Ihrke*, 459 F.2d at 572-73 (lack of typicality where it was likely that at least some members of the proposed class would not find the relief sought by plaintiffs to be desirable); *Pico.*, 474 F. Supp. at 393 (plaintiffs' claims were not typical of the proposed class—all of the district's junior and senior high school students—because there was reason to believe that at least some students and parents approved of the district's restrictions on school library books) (reversed on other grounds).

B. Adequacy.

Rule 23(a)(4) requires Plaintiffs to show that they will "fairly and adequately protect the interests of the class." In order to satisfy this burden, Plaintiffs must establish that: "(1) the representatives and their attorneys are able and willing to prosecute the action competently and vigorously; and (2) each representative's interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge." *Beckmann v. CBS, Inc.*, 192 F.R.D. 608, 614 (D. Minn. 2000). Here, Plaintiffs fail to meet this requirement because, again, there is evidence which suggests that at least some of the District's 17,000 students (and their parents) approve of the District's process and/or oppose access to the Subject Books in school libraries. Plaintiffs' Motion simply does not demonstrate that Plaintiffs' goals and viewpoints will not

[3] October 21, 2021 Board Meeting, https://bit.ly/3KpexjY at 28:30-31:33 (last accessed April 7, 2022); December 16, 2021 Board Meeting, https://bit.ly/3LRuH5F at 31:09-33:07 (last accessed April 7, 2022); February 15, 2022 Board Meeting, https://bit.ly/3x84xI1 at 13:20-14:30 (last accessed April 7, 2022).

diverge from the rest of the class, instead relying upon the conclusory assertion that Plaintiffs' interests are not antagonistic to those of the District's 17,000 other students.

III. PLAINTIFFS HAVE NOT SATISFIED RULE 23(b)(2)

Rule 23(b)(2) requires a showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is **appropriate** respecting the class as a whole." (Emphasis added). Here, as previously argued, class action is not appropriate in this case given that the broad-reaching relief sought is already available to Plaintiffs—there is no useful purpose to certifying Plaintiffs' proposed class. *Pico*, 474 F. Supp. at 393 (Rule 23(b)(2) was not satisfied where disposition of student's book removal claims would be equally effective regardless of whether the proposed class was certified) (reversed on other grounds).

Conclusion

For all of the reasons above, the Court should deny Plaintiffs' Motion for Class Certification.

Respectfully submitted,

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