United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-5371 **September Term, 2001**
01cv00439

Filed On: August 9, 2002 [694656]

Gary H. Palm,
Appellant

v.

Roderick R. Paige, Secretary of Education,
Appellee

Consolidated with 02-5010

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Edwards, Sentelle, and Rogers, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See Fed. R. App. P. 36; D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the district court's orders filed September 6, 2001, and December 7, 2001, be affirmed. The district court properly dismissed this action for lack of standing because appellant's allegations do not meet the "irreducible constitutional minimum" requirements for standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotations omitted). None of the injuries appellant alleges, which generally relate to the transfer of decisionmaking authority over accreditation matters within the American Bar Association, constitutes an injury in fact. See Diamond v. Charles, 476 U.S. 54, 66 (1986). Moreover, none of the asserted injuries can fairly be traced to appellee's application of the "separate and independent" regulations to the American Bar Association. Rather, those injuries flow from the American Bar Association's restructuring of its own accreditation process, and therefore are the result of "independent action of [a] third party not before the court." Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42 (1976). The involvement of independent actors in the challenged actions also precludes a finding that the alleged injuries are redressable. Cf. Lujan, 504 U.S. at 571 (rejecting as "entirely conjectural" claim that "non-agency activity" would be affected by "agency activity" plaintiffs sought). Finally, even at the

pleading stage, the allegations in the complaint must meet the requirements for standing. See, e.g., Bristol-Meyers Squibb Co. v. Shalala, 91 F.3d 1493, 1497-99 (D.C. Cir. 1996).

Nor did the district court err in denying leave to amend the complaint. Once the complaint was dismissed, appellant required the court's leave to amend the complaint. See Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (per curiam). Leave was properly denied in this case because the proposed amendment would not have conferred standing. Cf. Confederate Memorial Ass'n, Inc. v. Hines, 995 F.2d 295, 299 (D.C. Cir. 1993) (district court properly denied leave to amend complaint dismissed for failure to state a claim because amendment would not have cured the deficiency).

Appellant also contends for the first time on appeal that as an American Bar Association member, he has an interest in avoiding "increased dues and cutbacks in membership services" resulting from "on-going and future anti-trust violations and violations of other laws" by the Association, and that his interest in "eliminating corruption, conflicts of interest and illegal conduct" in the accreditation process is "equal to aesthetic and recreational interests" that have been deemed sufficient to support standing. Because appellant failed to present these arguments to the district court, the court will not consider them. See District of Columbia v. Air Florida, Inc., 750 F.2d 1077, 1078-79 (D.C. Cir. 1984).

In any event, neither of appellant's new arguments demonstrates standing. Although service cutbacks and increased dues might establish an injury in fact for American Bar Association members like appellant, appellant has failed to demonstrate that these injuries are fairly traceable to appellee's application of its "separate and independent" regulations to the American Bar Association, or that declaring those regulations inapplicable to the American Bar Association would redress the injuries. And appellant offers no reasoning to support the analogy he suggests between his asserted injuries and the aesthetic and recreational interests that may establish standing in environmental cases.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam