

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BARBARA GRUTTER,

Plaintiff

vs.

LEE BOLLINGER, et al.,

Defendants.

Civil Action No. 97-CV-75928-DT

HON. BERNARD A. FRIEDMAN

OPINION AND ORDER DENYING MOTION TO INTERVENE

This matter is presently before the court on a motion to intervene. Plaintiff and defendants have responded to the motion, and the proposed intervenors have filed a reply. Pursuant to E.D. Mich. LR 7.1(e)(2), the court shall decide the motion without oral argument.

Plaintiff Barbara Grutter has brought this action under 42 U.S.C. § § 1981, 1983 and 2000d on behalf of herself and others similarly situated. Grutter, who is white, alleges that in June 1997 The University of Michigan Law School (hereinafter referred to the "law school") rejected her application for admission because of her race. Grutter alleges that the law school has an admissions policy whereby "students from favored racial groups had a significantly greater chance of admission than students with similar credentials from disfavored racial groups." Complaint, para 20. Plaintiff further alleges that "race was one of the predominant factors . . . used for determining admission" and that this policy is not justified by any compelling state interest. Id. para 23, 24. Plaintiff claims defendants have violated her Fourteenth Amendment right to equal protection and a federal statute

prohibiting racial discrimination by educational institutions receiving federal funds. She seeks damages injunctive and declaratory relief, and attorney fees and costs. She also proposes to represent a class of law school applicants whose applications for admission were evaluated less favorably because of race.

The proposed intervenors are three unincorporated associations and 41 individuals who claim an interest in defending the law school's admissions policy. They describe themselves as

black, Latino/a, Mexican-American, Filipino/a, Asian-American and other students who currently attend the University of Michigan . . . including some who attend the University of Michigan Law School . . . , or who plan to attend the University of Michigan and/or its Law School; applicant organizations are interracial coalitions which actively seek to preserve affirmative action programs at the University of Michigan. All of the applicants have interests in this case which in breadth, depth and urgency exceed the

University's own interests in defending its affirmative action admissions policy. Motion to Intervene, pp. 1-2. The individual proposed intervenors include 21 undergraduate students of various races who currently attend The University of Michigan, Wayne State University, The University of California at Berkeley, or Diablo Valley Community College in Pleasant Hill, California, all of whom plan to apply to the law school for admission; five black students who currently attend Cass Technical High School or Northwestern High School in Detroit and who also plan to apply to the law school for admission; 12 students of various races who currently attend the law school; a paralegal and a Latino graduate student at The University of Texas at Austin who intend to apply to the law school for admission; and a black graduate student at The University of Michigan who is a member of the Defend Affirmative Action Party. Complaint, para 1-41. The three organizations describe themselves as follows:

2

42. United For Equality and Affirmative Action (UEAA) is a proaffirmative action coalition consisting of applicants for intervention, teachers, parents of minor applicants, and other supporters of affirmative action.

43. The Coalition to Defend Affirmative Action By Any Means Necessary (BAMN) is a pro-affirmative action coalition with chapters in California and Michigan. BAMN has engaged in a wide range of activities in defense of affirmative action at the University of Michigan in the 1997-1998 school year. BAMN built the Defend Affirmative Action Party, which has run and elected candidates in student elections in November 1997 and March 1998. BAMN also has taken a leading role in pulling together a coalition of student groups to sponsor days of action in defense of affirmative action on February 24 and April 1, 1998, including demonstrations, rallies, and mass meetings, with more than 500 students participating on February 24.

44. Law Students for Affirmative Action (LSAA) is a pro-affirmative action coalition at the Law School which has devoted itself to mobilizing support for affirmative action at the Law School and the University. LSAA also took a leading role in organizing the campus for the February 24th Day of Action, in contacting student groups on other campuses, and in putting together a well-attended teach-in on that day.

The motion to intervene is governed Fed. R. Civ. P. 24, which states in relevant part as follows:

**(a) Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

**(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: . . . (2) 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

3

whether the intervention will unduly delay or prejudice the adjudication of the rights of the original

parties.

Intervention under Rule 24(a)(2) is a matter of right but requires a showing that the motion is timely and that the proposed intervenors have a significant legal interest which may be impaired by disposition of the case and which is not adequately represented by the existing parties. See Jansen v. City of Cincinnati, 904 F.2d 336, 340 (6th Cir. 1990). Intervention under Rule 24(b) is discretionary, with the court and is appropriate only where the motion is timely, where there is a legal or factual connection with the main case, and where intervention will not unduly delay adjudication of the case or prejudice the rights of the existing parties. Purnell v. City of Akron, 925 F.2d 941, 950 (6th Cir. 1991).

In the present case, the timeliness of the application is not at issue. [1] For present purposes, the court shall also assume, without deciding, that the proposed intervenors have a "significant legal interest" in this case that their ability to protect that interest may be impaired by an adverse ruling in the main case. [2] However, the proposed intervenors have manifestly failed to demonstrate that the existing defendants will fail adequately to protect the intervenors' interest, and

---

[1] The complaint in this matter was filed on December 3, 1997. The motion to intervene was filed on March 26, 1998. Under the court's scheduling order of April 9, 1998, discovery will close in December 1998 and trial will commence in June 1999.

[2] Plaintiff and proposed intervenors devote large portions of their respective briefs to a discussion of the "significant legal interest" and the "impair or impede" prongs of the test for intervention of right. Persuasive and impassioned arguments are made by both sides. However, it is unnecessary to settle those debates in order to resolve the present motion, as the proposed intervenors must in any event demonstrate the inadequacy of representation by existing parties, and no such showing has been made here.

4

the court shall deny the motion for intervention of right on this basis. Further, the court is not persuaded that permissive intervention should be granted under Rule 24(b), because the proposed intervention would significantly expand the scope of the litigation and unduly delay adjudication of the case.

A motion to intervene was made under virtually identical circumstances in Hopwood v. State of Texas, 21 F.3d 603 (5th Cir. 1994). In that case, two unsuccessful white applicants to the University of Texas School of Law challenged the admissions policy as racially discriminatory on the grounds that it gave an unfair advantage to African-American applicants. Two student groups, who supported the law school's affirmative action program, moved to intervene. The district court denied the motion under Rule 24(a) and (b). The Fifth Circuit affirmed because the groups failed to demonstrate that the existing defendants (including the State of Texas, the board of regents, the law school, and various individuals) had a different interest or that they would fail to vigorously defend that interest. The court noted that "proposed intervenors have not demonstrated that the State will not strongly defend its affirmative action program. Nor have the proposed intervenors shown that they have a separate defense of the affirmative action plan that the State has failed to assert." Id. at 606.

In this circuit, the same reasoning defeated a motion to intervene in Hatton v. County Bd. of Educ., 422 F.2d 457 (6th Cir. 1970). In Hatton, parents of school children sought to intervene in a lawsuit brought against a county board of education to compel desegregation of the public schools. The court denied the motion because the proposed intervenors failed to show that the existing defendant was not adequately defending their interests: "The record indicates that the

5

defendants have advanced every reasonable defense to this action, and petitioners have made no allegation of collusion, bad faith, or gross negligence on the part of the Board of Education in defending the suit." Id. at 461.

More recently, a motion to intervene was denied for the same reason in Bradley v. Milliken, 828 F.2d 1 186 (6th Cir. 1987). In Bradley, two organizations and 60 individuals interested in preserving components of a school desegregation plan sought to intervene as plaintiffs on the grounds that the representative of the plaintiff class (the NAACP) was not vigorously pursuing the case. In affirming the denial of the motion to intervene, the court stated:

[E]ven assuming that the proposed intervenors have stated a sufficient interest in this litigation which is likely to be impaired . . . they must also establish that the present class representatives will not adequately protect that interest. This requires "overcom[ing] the presumption of adequacy of representation that arises when the proposed intervenor and a party to the suit . . . have the same ultimate objective." An applicant for intervention fails to meet his burden of demonstrating inadequate representation "when no collusion is shown between the representatives and an opposing party, when the representative does not have or represent an interest adverse to the proposed intervenor, and when the representative has not failed in its fulfillment of his duty."

Id. at 1 192 (citations omitted).

Just as in the above-cited cases, the proposed intervenors in the present case have failed to show that their "ultimate objective" is any different than that of defendants themselves. To the contrary, the proposed intervenors and defendants both seek the preservation of an admissions policy which takes an applicant's race into consideration. Nor have the proposed intervenors shown that the defendants will fail to represent that interest in litigating this case. As the court noted in Hopwood, "where the party whose representation is said to be inadequate is a

6

governmental agency, a much stronger showing of inadequacy is required." 21 F.3d at 605, citing 7 C. Wright and A. Miller, Federal Practice and Procedure § 1909 (1986). The proposed intervenors have made no showing of inadequacy of representation, to say nothing of the "much stronger showing" required in this case. Defendants indicate they "will vigorously defend this case," Response of Defendants to Motion to Intervene, p. 1, and the proposed intervenors have not offered any persuasive reason why the court should doubt this representation.

The court shall deny the motion for permissive intervention for the same reason. Quite simply, the

existing defendants intend to defend the case vigorously, and "petitioners have offered no good reason to add additional lawyers to the roster of lawyers in the case." Bradley, 828 F.2d at 1190-91, quoting the district court's order denying the motion to intervene. Moreover, the proposed intervenors clearly are interested in litigating issues which go far beyond those raised in the present complaint. For example, the proposed intervenors indicate they "have asserted an interest in an admissions program that takes account of gender as well as race" and that they "intend to present evidence challenging the validity of the Law School Admission Test (LSAT) for law school admissions purposes." Motion to Intervene, pp. 20-21. The inclusion of these issues would substantially broaden the scope of, and delay the adjudication of, this case.

For these reasons

IT IS ORDERED that the motion to intervene is denied

Dated: J U L 6 1998 BERNARD A. FRIEDMAN

Detroit, Michigan UNITED STATES DISTRICT JUDGE

Copies To: Patrick Wright, David Kerr, Michael Rosman, Leonard Neihoff,

John Payton, Miranda Massie