

2014

**Citizens for Responsible Charter Schools, LLC, a Utah Limited Liability Corporation, Plaintiff/Appellant v. Martell Menlove in His Official Capacity as Superintendent of the Utah State Office of Education and State School Board; And Jenefer Youngfield, in Her Official Capacity as School Construction and Facilities Safety Specialist Utah State Office of Education, Defendants/Appellees**

Utah Court of Appeals

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Appellate No. 20140398-CA

## IN THE UTAH COURT OF APPEALS

Citizens for Responsible Charter Schools,	)	Case No. 20140398-CA
LLC, a Utah Limited Liability	)	
Corporation,	)	
	)	Dist. Court No. 1040500176
Plaintiff/Appellant	)	
	)	
v.	)	
	)	
MARTELL MENLOVE in his official	)	
capacity as Superintendent of the Utah	)	
State Office of Education and State School	)	
Board; and JENEFER YOUNGFIELD, in	)	
her official capacity as School	)	
Construction and Facilities Safety	)	
Specialist Utah State Office of Education,	)	
	)	
Defendants/Appellees	)	
	)	
	)	

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## OPENING BRIEF

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UTAH APPELLATE COURTS

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ALL PARTIES TO THE PROCEEDING IN THE COURT BELOW

CITIZENS FOR RESPONSIBLE CHARTER SCHOOLS, LLC, Plaintiff/Appellant

MARTELL MENLOVE in his official capacity as Superintendent of the Utah State Office of Education and State School Board, Defendant/Appellee

JENEFER YOUNGFIELD, in her official capacity as School Construction and Facilities Safety Specialist Utah State Office of Education, Defendant/Appellee

DIXIE MONTESSORI ACADEMY, Intervenor below, Defendant/Appellee

BOYER DIXIE, LC, Intervenor below, Defendant/Appellee

## TABLE OF CONTENTS

### TABLE OF AUTHORITIES

JURISDICTION	i
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	5
SUMMARY OF THE ARGUMENTS	9
ARGUMENT	10
I. The District Court erred by ruling that Citizens for Responsible Charter Schools, LLC lacked standing to proceed in this case	10
I.a. Plaintiff Citizens for Responsible Charter Schools, LLC has traditional standing	10
I.b. Plaintiff Citizens for Responsible Charter Schools, LLC also has alternative, public interest standing	13
II. The District Court erred by dismissing this case on Defendants' motion filed one day prior to the hearing and to which Plaintiff was not given time or opportunity to respond	16
III. The District Court erred by dismissing the case without allowing a proper party in interest to be joined or substituted	19
CONCLUSION	22

## TABLE OF AUTHORITIES

<u>Anderson v. Dean Witter Reynolds, Inc.</u> , 841 P.2d 742 (Utah Ct.App.1992)	1
<u>Brunson v. Bank of New York Mellon</u> , 2012 UT App 222, 286 P.3d 934	2,10,17,18
<u>Carlton v. Brown</u> , 2014 UT 6, 323 P.3d 571	20
<u>Crookston v. Fire Insurance Exchange</u> , 817 P.2d 789 (Utah 1991)	17
<u>Gregory v. Shurtleff</u> , 2013 UT 18, 299 P.3d 1098	14
<u>Hudgens v. Prosper, Inc.</u> , 2010 UT 68, ¶ 15, 243 P.3d 1275	3
<u>Intermountain Physical Med. Associates v. Micro-Dex Corp.</u> , 739 P.2d 1131 (Utah Ct. App. 1987)	10,19,22
<u>Jenkins v. Swan</u> , 675 P.2d 1145 (Utah 1983)	11,14
<u>Jenkins v. State</u> , 585 P.2d 442, 443 (Utah 1978)	14
<u>Mackey v. Cannon</u> , 2000 UT App 36, ¶ 9, 996 P.2d 1081	1
<u>Magna Water Co. v. Strawberry Water Users Ass'n</u> , 2012 UT App 184, 285 P.3d 1	13,14,15
<u>Russell Packard Dev., Inc. v. Carson</u> , 2005 UT 14, ¶ 3, 108 P.3d 741.	1
<u>Utah Chapter of Sierra Club v. Utah Air Quality Bd.</u> , 2006 UT 74,11 148 P.3d 960, 967	10,11,12
<u>Utah Rest. Assoc. v. Davis County Bd. of Health</u> , 709 P.2d 1159 (Utah 1985)	10
Utah R. Civ. P. 7	9,16
Utah R. Civ. P. 12(b)(6)	1
Utah R. Civ. P. 15(a)	10
Utah R. Civ. P. 17	10,17
Utah R. Civ. P. 19	10
Utah Code Ann. §§ 53a-20-101	7,13
Utah Code Ann. § 78A-3-102	1
Utah Admin. Code r. 277-471-1	7,8,13

## JURISDICTION

The court has jurisdiction under Utah Code Annotated § 78A-3-102.

## ISSUES PRESENTED FOR REVIEW

### Issue 1.

Whether the District Court erred by ruling that Citizens for Responsible Charter Schools, LLC lacked standing to proceed and consequently dismissed the case.

### Standard of Review

The propriety of a trial court's decision to grant a motion to dismiss under rule 12(b)(6) is a question of law and is reviewed for correctness. Mackey v. Cannon, 2000 UT App 36, ¶ 9, 996 P.2d 1081 (citation and internal quotation marks omitted). When reviewing the grant of such a motion, the court accepts the factual allegations in the complaint as true and interprets those facts and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party.” Russell Packard Dev., Inc. v. Carson, 2005 UT 14, ¶ 3, 108 P.3d 741. The propriety of the district court's dismissal for lack of standing on the basis that Plaintiff is not a real party in interest is likewise reviewed for correctness. Anderson v. Dean Witter Reynolds, Inc., 841 P.2d 742, 744–45 (Utah Ct.App.1992).

### Where Preserved

A Temporary Restraining Order Hearing was held on April 11, 2014 at which the court asked Plaintiff to address Defendants’ motion filed the day before to dismiss on grounds that Plaintiff lacked standing. ROA 987. Plaintiff argued that it had standing and stated, inter alia, that Plaintiff LLC “was formed by two owners who have an interest in”

the case, that the owners live in the geographical area in dispute, and that the Plaintiff LLC is located in the geographical area in dispute. ROA 987, p. 13, ll. 1-8.

The court found that Plaintiff lacks standing under the traditional approach. ROA 987, p. 43, ll. 23-24. The court further stated, “It just seems to me that I can stop with my analysis that the plaintiff has not achieved the first step in determining whether it has – well, the first step is, is I don’t find this LLC has a really personal interest and therefore it lacks standing.” ROA 987, p. 43, ll. 2-6.

### **Issue 2.**

Whether the District Court erred by dismissing this case on Defendants’ motion filed one day prior to the hearing and to which Plaintiff was not given time or opportunity to respond.

### **Standard of Review**

An appellant asserting that the trial court violated rule 7 of the Utah Rules of Civil Procedure by ruling without giving time for a response must demonstrate on appeal that there is a reasonable likelihood that the error affected the outcome of the proceedings. Brunson v. Bank of New York Mellon, 2012 UT App 222, 286 P.3d 934, 935.

### **Where Preserved**

The complaint and ex parte motion for temporary restraining order and preliminary injunction were filed on April 2, 2014. ROA at 14 and 17. The next day, April 3, 2014, Plaintiff filed its Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction. ROA at 319. That same day, the Temporary Restraining Order Hearing was set for April 11, 2014. On April 9, Defendants



filed oppositions to the motion for temporary restraining order, ROA 421. On April 10, Defendants filed Opposition to Temporary Restraining Order and Additional Points of Argument. ROA at 982.

At the April 11, 2014 Temporary Restraining Order Hearing at which the court asked Plaintiff to address Defendants' motion served on Plaintiff the day before to dismiss on grounds that Plaintiff lacked standing, Plaintiff stated, "[This is] indicative of the due process. The only reason that we didn't have the luxury of exploring every possible contingency was we were dealing with the notice given at seven, eight o'clock at night for action to be taken the following day." ROA at p. 20, ll. 7 – 11.

### **Issue 3.**

Whether the District Court erred by dismissing the case without allowing a proper party in interest to be joined or substituted after the court determined that Plaintiff was not a real party in interest.

### **Standard of Review**

A district court's denial of leave to amend is reviewed for an abuse of discretion. Hudgens v. Prosper, Inc., 2010 UT 68, ¶ 15, 243 P.3d 1275.

### **Where Preserved**

At the April 11, 2014 Temporary Restraining Order Hearing at which the court asked Plaintiff to address Defendants' motion filed the day before to dismiss on grounds that Plaintiff lacked standing, Plaintiff stated,

I'm willing to do a simple amendment. It solves that problem and it doesn't change anything substantive. It doesn't change one bit of the pleading. So I don't know the harm, or the essence of the LLC issue being hugely critical.

That said, I am willing to amend the complaint to add Gary Davis, who is the manager of Citizens for Responsible Charter Schools, as a named plaintiff; as an individual...I've got the document here. I'm prepared to file an amended complaint...Also, as I mentioned, there has not been an answer filed. So...I don't even need leave of the court. I can file an amendment.

ROA 987, p. 13, l. 19 – p.14, l. 19.

Plaintiff further stated,

I'd like to amend...it's a simple fix. The defendants, all counsel at the table know who is involved. It's the same people who are involved in the LLC. It seems that we would be creating such a minor, technical violation, that can be remedied. I've got it right here. I've got the amended complaint that I prepared prior to coming here. I've got a second motion for temporary restraining order. I've got that prepared...[A]gain...that's indicative of the due process. The only reason that we didn't have the luxury of exploring every possible contingency was we were dealing with the notice given at seven, eight o'clock at night for action to be taken the following day.

ROA 987, p.19, l. 22 – p. 20, l. 11.

Plaintiff further stated,

I don't believe anybody is damaged by a simple amendment of the complaint to name an individual. I mean, it should be obvious to everyone around this issue that there are real people that are affected by this...but the way to fix this is just to add an individual and go forward from there.

ROA 987, p. 20, ll. 15 – 21.

The court ruled, "I don't find this LLC has a really personal interest and therefore it lacks standing. ROA 987, p. 44, ll. 5 – 6. As to Plaintiff's many requests throughout the hearing, the court stated

If there's no standing, then this court lacks jurisdiction, which means I have no ability to make a ruling. So the idea of amending this complaint, I can't. That doesn't make sense to me. If there's no standing, there's no jurisdiction and the complaint needs to be dismissed.

ROA 987, p. 44, ll. 9 – 13.

The court further stated

I understand your arguments that let's, you know, give you fifteen minutes to file an amended complaint. I don't think that – if I rule immediately, which I am, that there's no standing, I have no jurisdiction. The idea of amending a complaint that has already I've ruled there's no standing here, I don't think it's procedurally correct.

ROA 987, p 44, ll. 14 – 19.

#### STATEMENT OF THE CASE

This case concerns a citizen's group's challenge to the construction of a school in the group's members' neighborhood. The subject site is located at the end of a short street and is shaped by two waterways, one of them the historic Mill Creek of Washington City, into a peninsula of land. ROA at 14, p.3. The only access to the property is by turning from the main road Fairway Drive onto 650 West and proceeding into the property. Id. The subject property is boarded on the east with cliffs in excess of 100 feet. Id.

Plaintiffs learned that a planning commission meeting would be held on November 20, 2013 to discuss a lot split that was a precursor to the charter school being built. Id. Representatives from the developer met with city employees in the planning and zoning department and presented detailed site plans, traffic flow patterns and building renderings. Id at p. 4. After a discussion of the proposed project and public comment, the planning commission denied the project citing traffic and safety concerns. Id.

The developer took the matter to the City council and in the process it was determined that the planning commission was the appropriate body to render a decision. Id. Another planning commission meeting was held on January 2, 2014. At this meeting the developer sent a letter to City staff stating that they were withdrawing their

application and that the school was looking into a different site. ROA at 14, p.3. The planning commission proceeded with the meeting as outlined in the agenda. Id. After hearing from the property owner and public comment, the planning commission again denied the project based on traffic and safety concerns. Id.

On or about March 5, 2014, the developer on behalf of the school made application with the State of Utah for a state project number, the equivalent of a building permit issued by the state. Id. Plaintiffs were provided no notice of the application to the state and have not been allowed to participate in the permit evaluation process, despite the considerable impact to their property values and safety. Id. at p. 5. As part of the state project number request, the developer provided a traffic impact study (“TIS”) prepared by Horrocks Consulting. Id. The TIS makes many findings, among them that the school has an enrollment of 410, with no plans for expansion. Id. however, the DMA charter application submitted to the USOE, specifically the State Charter School Board, states an initial enrollment of 410 students with an ultimate enrollment of 800. Id.

The DMA board minutes of March 5, 2014 lists a current enrollment of 450 students and references an onsite Pre-K, program. Id. The two closest charter schools in the county George Washington Academy and VISTA have both exceeded by twice their first year enrollment due to the economic realities of operating a charter school. Id. Having learned of the TIS and the incongruity with the DMA plans set forth in the charter school application, Plaintiffs through counsel and community resident Jason Velez contacted Defendant Youngfield with the residents’ concerns. ROA at 14, p. 4.

On March 18, 2014, Defendant Youngfield responded to Mr. Velez's concerns by informing him that Plaintiffs were not a designated entity for purposes of addressing the application process and that his information was not considered official. *Id.* Washington City commissioned a traffic study that raised serious concerns with the developer's TIS relied upon by the Defendant. *Id.*

Washington City has commissioned a TIS rebuttal that calls into question many if not all of the assumptions made in the developer's TIS. *Id.* On April 1, 2014, counsel for the Plaintiffs received a forwarded email from Washington City, whereby Defendant Youngfield indicated that she was going to issue a project number on April 2, 2014 despite the fact that the city on two separate occasions had previously denied the project and had provided a rebuttal TIS report that presented many challenges to the TIS provided by the developer. *Id.* at p. 6.

On April 2, 2014, Plaintiff filed the complaint in this case asking the district court to enter a judgment declaring that the State System of Public Education and the School Construction Chapter, Utah Code Ann. §§ 53-20-101 et seq., and its implementing rules and regulations, Utah Admin. Code r. 277-471-1 et seq., and the practices and policies of the Utah State Office of Education, as applied to residents of the state of Utah and municipalities, including Plaintiff, desiring to enjoy the rights of safety, property and happiness, are unconstitutional in violation of the Due Process, of the Fourteenth Amendment, as well as the Inherent and Inalienable Rights, Due Process, and Open Courts Clauses of the Utah Constitution; Preliminarily and permanently enjoin Defendants from enforcing Utah Code Ann. §§ 53a-20-101 et seq., and Utah Admin.

Code r. 277-471-1 et seq., in a manner that residents and municipalities, including Plaintiff, have the opportunity to notice, be given an opportunity to participate and seek redress of the agency actions, or otherwise subjecting residents and municipalities, including Plaintiff, to loss of property and safety rights. ROA at 14.

The next day, April 3, 2014, Plaintiff filed its Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction. ROA at 319. That same day, the Temporary Restraining Order Hearing was set for April 11, 2014. On April 9, Defendant Boyer Dixie, LC filed an opposition to the motion for temporary restraining order, ROA 421. On April 10, Defendants filed Opposition to Temporary Restraining Order and Additional Points of Argument. ROA at 982. On April 10, 2014 Plaintiff was served with Defendants' opposition which argued that Plaintiff lacked standing and that the case should therefore be dismissed.

At the April 11, 2014 Temporary Restraining Order Hearing at which the court asked Plaintiff to address Defendants' motion served on Plaintiff the day before to dismiss on grounds that Plaintiff lacked standing, Plaintiff stated, "The only reason that we didn't have the luxury of exploring every possible contingency was we were dealing with the notice given at seven, eight o'clock at night for action to be taken the following day." ROA at p. 20, ll. 7 – 11.

At the hearing Plaintiff argued that Plaintiff had standing and asked the court several times to allow Plaintiff to amend the complaint in order to include individual Plaintiffs in order to cure any deficiencies in Plaintiff's standing. ROA at 987.

At the end of the hearing, the court stated, “I don’t find this LLC has a really personal interest and therefore it lacks standing. ROA 987, p. 44, ll. 5 – 6. As to Plaintiff’s many requests throughout the hearing, the court stated

If there’s no standing, then this court lacks jurisdiction, which means I have no ability to make a ruling. So the idea of amending this complaint, I can’t. That doesn’t make sense to me. If there’s no standing, there’s no jurisdiction and the complaint needs to be dismissed.

ROA 987, p. 44, ll. 9 – 13.

Plaintiff consequently filed the notice of this appeal May, 6, 2014. ROA at 988.

### SUMMARY OF THE ARGUMENTS

**Argument I:** The District Court erred by ruling that Citizens for Responsible Charter Schools, LLC lacked standing to proceed in this case. Plaintiff Citizens for Responsible Charter Schools, LLC has traditional standing because it showed in the court below that its individual members have standing and the participation of the individual members is not necessary to the resolution of the case. Citizens for Responsible Charter Schools, LLC also meets the requirements of alternative, public interest standing because it showed in the court below that it is an appropriate party raising issues of significant public importance.

**Argument II:** The District Court erred by dismissing this case on Defendants’ motion filed one day prior to the hearing and to which Plaintiff was not given time or opportunity to respond. The dismissal was a violation of rule 7 of the Utah Rules of Civil Procedure as the district court ruled without giving time for a response, and the error

affected the outcome of the proceedings. Brunson v. Bank of New York Mellon, 2012 UT App 222, 286 P.3d 934, 935.

**Argument III:** The District Court erred by dismissing the case without allowing Plaintiff to file an amended complaint so that a proper party in interest could be joined or substituted. Under Rules 17(a) and 19(a) of the Utah Rules of Civil Procedure, the trial court should make every effort to insure that the proceeding adjudicates the rights of those necessary and intended to be before the court. In conjunction with this basic concept is the requirement in Utah R.Civ.P. 15(a) which states that leave shall be freely given to amend a pleading when justice so requires. Intermountain Physical Med. Associates v. Micro-Dex Corp., 739 P.2d 1131, 1132-33 (Utah Ct. App. 1987).

#### ARGUMENT

**I. The District Court erred by ruling that Citizens for Responsible Charter Schools, LLC lacked standing to proceed in this case**

**a. Plaintiff Citizens for Responsible Charter Schools, LLC has traditional standing**

An association has traditional standing if individual members have standing and the participation of the individual members is not necessary to the resolution of the case. Utah Chapter of Sierra Club v. Utah Air Quality Bd., 2006 UT 74, ¶21, 148 P.3d 960, 967 (citing, Utah Rest. Assoc. v. Davis County Bd. of Health, 709 P.2d 1159, 1163 (Utah 1985)). There is no threshold number of affected members that an association must have as a prerequisite to standing. Id. at ¶ 34.

Under the traditional test, often referred to as the “distinct and palpable injury” requirement, the party must assert that it has been or will be “adversely affected by the



challenged actions”; that a causal relationship exists “between the injury to the party, the challenged actions and the relief requested”; and, the relief requested must be “substantially likely to redress the injury claimed.” Sierra Club 2006 UT 74, ¶19 (citing Jenkins v. Swan, 675 P.2d 1145, 1150 (Utah 1983)).

The Utah Supreme Court held that the Utah Chapter of Sierra Club had traditional standing to challenge the granting of a permit to the Sevier Power Company. *Id.* at ¶ 34. The Sierra Club met the personal adverse affects requirement by alleging that two of its members either live or recreate near the site of the plant, and alleged injuries that are particular to those members. *Id.* at ¶ 28; The causation requirement was satisfied because there was a plausible connection between their injuries and the order authorizing the plant. *Id.* at ¶ 32. The redressability requirement was met because the requested relief would remedy the alleged injury. *Id.* at ¶ 33. In addition, the court found without comment that the members’ individual participation was not essential to the resolution of the case. *Id.* at ¶ 21.

In this case Plaintiffs have more than sufficiently alleged that its members have been or will be adversely affected by the challenged actions; that a causal relationship exists between the injury, the challenged actions, and the relief requested; and that the relief requested is substantially likely to redress the injury claimed.

First, as in Sierra Club, Plaintiffs’ Complaint has met the personal adverse affects requirement by alleging that its members live near the site of the unwarranted development, and by alleging injuries that are particular to those members. Thus, the Complaint alleges in relevant part that

Plaintiffs are residents of Washington City, Utah, living in or proximate to 650 W and Fairway Dr, or the approximate address of the subject property or “site.” Plaintiffs are affected residents whose safety and welfare are being threatened by the proposed development of a charter school in their neighborhood.

Complaint, ¶ 1.

At all times, Plaintiffs have resided within 300 feet of the subject property.

Id. at ¶ 2.

Plaintiffs’ Complaint further alleged in relevant part

Plaintiffs are harmed by statutes and regulations that result in their municipalities losing any control to address the traffic and safety concerns presented by the school.

Id. at ¶ 40.

Plaintiffs have had their right to due process through the city planning process usurped by the charter school siting regime enforced by the USOE and its agents.

Id. at ¶ 41.

Plaintiffs stand to suffer loss of property value in excess of \$50,000 per lot/home in the affected area.

Id. at ¶ 42.

Plaintiff’s right to public and traffic safety are threatened by the inability to address their concerns or challenge the administrative action.

Id. at ¶ 43.

The causation requirement is satisfied in this case, as it was in Sierra Club, because there is a plausible connection between Plaintiff’s members’ injuries and the building of the school in a location that impacts Plaintiffs’ property rights and values and in such a way that deprives Plaintiffs of all due process rights.

As to the redressability, Plaintiffs seek a declaration that Utah Code Ann. §§ 53-20-101 et seq., and its implementing rules and regulations, Utah Admin. Code r. 277-471-1 et seq., and the relevant practices and policies of the Utah State Office of Education are unconstitutional in violation of the Due Process, of the Fourteenth Amendment, as well as the Inherent and Inalienable Rights, Due Process, and Open Courts Clauses of the Utah Constitution. Plaintiffs further seek to enjoin Defendants from enforcing Utah Code Ann. §§ 53a-20-101 et seq., and Utah Admin. Code r. 277-471-1 et seq., in a manner that residents and municipalities, including Plaintiff, have the opportunity to notice, be given an opportunity to participate and seek redress of the agency actions, or otherwise subjecting residents and municipalities, including Plaintiff, to loss of property and safety rights. Thus, the requested relief would remedy the alleged injury.

Finally, the members' individual participation is not essential to the resolution of the case. Plaintiff CITIZENS FOR RESPONSIBLE CHARTER SCHOOLS, LLC therefore has traditional standing.

**b. Plaintiff Citizens for Responsible Charter Schools, LLC also has alternative, public interest standing**

While Plaintiff Citizens for Responsible Charter Schools, LLC has satisfied the traditional test and thus has standing thereunder, it also has standing under Utah's alternative standing test. Hawaii law provides an alternative means by which a party can prove standing—by showing that it is an appropriate party raising issues of significant public importance. Magna Water Co. v. Strawberry Water Users Ass'n, 2012 UT App 184, 285 P.3d 1 (overturning lower court's finding that objectors had no standing to file

objection to State Engineer's proposed determination and recommendation supporting recapture and reuse of water); see also, Utah Chapter of Sierra Club, 2006 UT 74 at ¶ 35; Gregory v. Shurtleff, 2013 UT 18, 299 P.3d 1098, 1110, (holding that Plaintiff's satisfied the requirements of the public-interest standing doctrine with respect to a state constitutional challenge to enjoin the enforcement of a law).

"Unlike the federal system, the judicial power of the state of Utah is not constitutionally restricted by the language of Article III of the United States Constitution requiring 'cases' and 'controversies,' since no similar requirement exists in the Utah Constitution." Jenkins v. Swan, 675 P.2d 1145, 1149 (Utah 1983). While it is "the usual rule that one must be personally adversely affected before he has standing to prosecute an action .... it is also true this Court may grant standing where matters of great public interest and societal impact are concerned." Jenkins v. State, 585 P.2d 442, 443 (Utah 1978).

The public importance inquiry "requires the court to determine not only that the issues are of a sufficient weight but also that they are not more appropriately addressed by another branch of government pursuant to the political process." Magna Water Co. 2012 UT App 184 at ¶ 16.

The party must first establish that it is an appropriate party to raise the issue in the dispute before the court by demonstrating that it has the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions and that the issues are unlikely to be raised if the party is denied standing. Sierra Club, 2006 UT 74 at ¶ 36. If the party is an appropriate party, the court then considers whether the

party is asserting issues of sufficient public importance to balance the absence of the traditional standing criteria. Id. at ¶ 41. If so, the party has standing. Id.

The Court in Sierra Club found that the Sierra Club was an appropriate party because “[t]he Sierra Club and its members have an interest in ensuring that the construction and the operation of the plant comply with all applicable state and federal environmental laws as well as with state administrative procedures, thus preventing any needless and unlawful pollution or other environmental destruction [and], as an entity focused on protecting the environment, the Sierra Club has the interest and expertise necessary to investigate and review all relevant legal and factual questions relating to the plant. Id. at ¶ 42.

As to the public importance requirement, the Court found the issues in the Sierra Club case sufficiently important to warrant granting standing given the plant's proximity to homes and recreational areas, and that the Utah Division of Air Quality must comply with all applicable state and federal laws. Id. at ¶ 44. The Magna Water court similarly addressed the public importance ground for standing.

Addressing the prong as to “whether the issues are unlikely to be raised if the party is denied standing” in Magna Water Co. the court noted that the record did not “provide any indication that other parties with an interest in this matter will raise that issue” 2012 UT App 184 at ¶ 15.

In this case, Citizens for Responsible Charter Schools, LLC and its members have an interest in ensuring that the issuance of a state project number (building permit) comply with all applicable state and federal laws as well as with state administrative

procedures.

As an entity focused on challenging the statutory and regulatory regime of the State of Utah for locating and constructing charter schools, Citizens for Responsible Charter Schools, LLC has the interest and expertise necessary to investigate and review all relevant legal and factual questions relating to the issues in this case. Moreover, no other parties with an interest in this matter have raised the issues Plaintiffs have raised in this case. Plaintiff Citizens for Responsible Charter Schools, LLC thus has standing under the alternative standing test.

Because Plaintiff has standing under both the traditional test and the alternative standing test, Plaintiff asks this court to reverse the lower court's dismissal of the complaint.

**II. The District Court erred by dismissing this case on Defendants' motion filed one day prior to the hearing and to which Plaintiff was not given time or opportunity to respond**

Utah R. Civ. P. 7 provides that

All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within 14 days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within 7 days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition.

U.R.C.P. 7.

An appellant asserting that the district court violated rule 7 of the Utah Rules of Civil Procedure by ruling without giving time for a response must demonstrate on appeal that there is a reasonable likelihood that the error affected the outcome of the

proceedings. Brunson v. Bank of New York Mellon, 2012 UT App 222, ¶ 3, 286 P.3d 934, 935.

The Brunson court noted that “in Crookston v. Fire Insurance Exchange, 817 P.2d 789[, 796] (Utah 1991), the Utah Supreme Court held that violation of notice provisions for a hearing on a summary judgment motion did not prevent the trial court from considering the motion, but a grant of the motion would be void unless the violation constituted harmless error.” Id. Harmless error is “an error that is sufficiently inconsequential that we conclude there is no reasonable likelihood that the error affected the outcome of the proceedings.” Id.

In this case, the complaint and ex parte motion for temporary restraining order and preliminary injunction were filed on April 2, 2014. ROA at 14 and 17. The next day, April 3, 2014, Plaintiff filed its Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction. ROA at 319. That same day, the Temporary Restraining Order Hearing was set for April 11, 2014. On April 9, Defendants filed oppositions to the motion for temporary restraining order, ROA 421. On April 10, Defendants filed Opposition to Temporary Restraining Order and Additional Points of Argument. ROA at 982.

At the April 11, 2014 Temporary Restraining Order Hearing at which the court asked Plaintiff to address Defendants’ motion served on Plaintiff the day before to dismiss on grounds that Plaintiff lacked standing, Plaintiff stated, “[This is] indicative of the due process. The only reason that we didn’t have the luxury of exploring every

possible contingency was we were dealing with the notice given at seven, eight o'clock at night for action to be taken the following day." ROA at p. 20, ll. 7 – 11.

The court found that Plaintiff lacks standing under the traditional approach. ROA 987, p. 43, ll23-24. The court further stated, "It just seems to me that I can stop with my analysis that the plaintiff has not achieved the first step in determining whether it has – well, the first step is, is I don't find this LLC has a really personal interest and therefore it lacks standing." ROA 987, p. 43, ll. 2-6.

As discussed above, Plaintiff Citizens for Responsible Charter Schools, LLC has traditional standing because its individual members have standing and the participation of the individual members is not necessary to the resolution of the case. Citizens for Responsible Charter Schools, LLC also meets the requirements of alternative, public interest standing because it is an appropriate party raising issues of significant public importance. Therefore Plaintiff has demonstrated a reasonable likelihood that the error affected the outcome of the proceedings. Brunson, 2012 UT App 222, ¶ 3, 286 P.3d at 935.

Because Plaintiff has demonstrated a reasonable likelihood that the error affected the outcome of the proceedings, the violation of Utah R. Civ. P. 7 was not harmless error. Plaintiff therefore asks this court to reverse the court's dismissal of the complaint.



### **III. The District Court erred by dismissing the case without allowing a proper party in interest to be joined or substituted**

Even if the trial court was correct in finding that Plaintiff lacked standing, It nevertheless erred by dismissing the case without allowing Plaintiff to file an amended complaint to cure the defect.

Utah R. Civ. P. 17 provides that,

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest

U.R.C.P. 17

The Court of Appeals has stated that

A plain reading of Rules 17(a) and 19(a) reveals that the trial court should make every effort to insure that the proceeding adjudicates the rights of those necessary and intended to be before the court. In conjunction with this basic concept is the requirement in Utah R.Civ.P. 15(a) which states that leave shall be freely given to amend a pleading when justice so requires. This admonition is given in the sentence which declares that subsequent amendments to pleadings may be made only by leave of court or by written consent of the adverse party.

Intermountain Physical Med. Associates v. Micro-Dex Corp., 739 P.2d 1131, 1132-33 (Utah Ct. App. 1987).

The Utah Supreme Court has reversed the lower court's dismissal on standing grounds of a plaintiff's complaint because the district court prevented the plaintiff who was seeking to overturn the adoption of his children from joining the adoptive parents as necessary parties in his case when it denied the plaintiff's Motion for Leave to File

Second Amended Petition. Carlton v. Brown, 2014 UT 6, ¶¶ 31-34, 323 P.3d 571, 580-81. The Carlton court stated “despite the fact that we agree with the district court's conclusion that Mr. Carlton lacks standing to assert the constitutional claims as they are presently pled, we nevertheless reverse its decision to dismiss those claims because we conclude that the district court erroneously denied Mr. Carlton's Motion for Leave to File Second Amended Petition.” Id. at ¶ 33.

The court noted that the plaintiff “correctly notes that, under rule 15(a) of the Utah Rules of Civil Procedure, ‘leave [to amend] shall be freely given when justice so requires.’” Id. at ¶ 34. The court concluded that “pursuant to rule 15(a), the district court should have granted [the plaintiff] leave to amend” and accordingly reversed the district court's denial of the motion, reversed the district court's dismissal, and remanded the case with the instruction that the district court grant the plaintiff leave to amend his petition. Id. Moreover, in applying the abuse of discretion standard, the court noted that it would “overturn ... only if the denial of the motion exceed[s] the limits of reasonability.” Id. at ¶ 13.

In this case, the district court indicated early in the April 11, 2014 Temporary Restraining Order Hearing that it was inclined to dismiss the complaint on grounds that Plaintiff lacked standing. Plaintiff made many requests throughout the hearing that it be allowed to amend the complaint to include parties which would cure the court's perceived lack of standing.

At the hearing, Plaintiff stated,

I'm willing to do a simple amendment. It solves that problem and it doesn't change anything substantive. It doesn't change one bit of the pleading. So I don't know the harm, or the essence of the LLC issue being hugely critical. That said, I am willing to amend the complaint to add Gary Davis, who is the manager of Citizens for Responsible Charter Schools, as a named plaintiff; as an individual...I've got the document here. I'm prepared to file an amended complaint...Also, as I mentioned, there has not been an answer filed. So...I don't even need leave of the court. I can file an amendment.

ROA 987, p. 13, l. 19 – p.14, l. 19.

Plaintiff further stated,

I'd like to amend...it's a simple fix. The defendants, all counsel at the table know who is involved. It's the same people who are involved in the LLC. It seems that we would be creating such a minor, technical violation, that can be remedied. I've got it right here. I've got the amended complaint that I prepared prior to coming here. I've got a second motion for temporary restraining order. I've got that prepared...[A]gain...that's indicative of the due process. The only reason that we didn't have the luxury of exploring every possible contingency was we were dealing with the notice given at seven, eight o'clock at night for action to be taken the following day.

ROA 987, p.19, l. 22 – p. 20, l. 11.

Plaintiff further stated,

I don't believe anybody is damaged by a simple amendment of the complaint to name an individual. I mean, it should be obvious to everyone around this issue that there are real people that are affected by this...but the way to fix this is just to add an individual and go forward from there.

ROA 987, p. 20, 15 – 21.

The court ruled, "I don't find this LLC has a really personal interest and therefore it lacks standing. ROA 987, p. 44, ll. 5 – 6. As to Plaintiff's many requests throughout the hearing, the court stated

If there's no standing, then this court lacks jurisdiction, which means I have no ability to make a ruling. So the idea of amending this complaint, I can't.

That doesn't make sense to me. If there's no standing, there's no jurisdiction and the complaint needs to be dismissed.

ROA 987, p. 44, ll. 9 – 13.

The court further stated

I understand your arguments that let's, you know, give you fifteen minutes to file an amended complaint. I don't think that – if I rule immediately, which I am, that there's no standing, I have no jurisdiction. The idea of amending a complaint that has already I've ruled there's no standing here, I don't think it's procedurally correct.

ROA 987, p 44, ll. 14 – 19.

The district court failed under Under Rules 17(a) and 19(a) of the Utah Rules of Civil Procedure to make every effort to insure that the proceeding adjudicates the rights of those necessary and intended to be before the court as well as the requirement in Utah R.Civ.P. 15(a) which states that leave shall be freely given to amend a pleading when justice so requires. Intermountain Physical Med. Associates, 739 P.2d at 1132-33.

The District Court therefore erred by dismissing the case without allowing Plaintiff to file an amended complaint so that a proper party in interest could be joined or substituted. Plaintiff therefore asks the court to reverse the district court's order dismissing the complaint.


#### CONCLUSION

The District Court erred by ruling that Citizens for Responsible Charter Schools, LLC lacked standing to proceed in this case. Plaintiff has traditional standing because it showed in the court below that its individual members have standing and the participation of the individual members is not necessary to the resolution of the case. Plaintiff also

meets the requirements of alternative, public interest standing because it showed in the court below that it is an appropriate party raising issues of significant public importance. The District Court similarly erred by dismissing this case on Defendants' motion filed one day prior to the hearing and to which Plaintiff was not given time or opportunity to respond in violation of URCP Rule 7. Finally, the District Court erred by dismissing the case without allowing Plaintiff to file an amended complaint so that a proper party in interest could be joined or substituted under URCP Rules 15(a), 17(a), and 19(a). Plaintiff therefore asks the court to reverse the district court's order dismissing the complaint.

No Addendum is necessary under URAP Rule 24 (a)(11).

DATED this 6<sup>th</sup> day of October, 2014.

  
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JASON VELEZ  
Attorneys for Petitioner/Appellee

## CERTIFICATE OF SERVICE

I hereby certify that I conveyed a two copies of the foregoing, including a CD in PDF format, this 6<sup>th</sup> day of October, 2014, to the following recipient by the following means:

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\_\_\_\_\_  
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