IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MARK CORBETT, Plaintiff, v. CHESTER REGISTER, ROCKY CROSBY, BO CORBETT, FLORENCE STATEN, and RICHARD HENDLEY, Defendants.	)	CIVIL ACTION FILE No. 7:16-cv-00116-WLS

BRIEF IN SUPPORT OF MOTION TO DISMISS

Plaintiff Mark Corbett filed a "Petition for Writ of Mandamus" (hereafter "Complaint" or "Plaintiff's Complaint") against the five members of the Echols County Board of Education seeking an order requiring the Defendants to remedy a disparity in the populations of the residency districts from which each member qualifies for election to the Board. He alleges that the population disparity violates the Equal Protection Clause and state law.

Plaintiff cannot be provided with the relief he seeks because (1) the United States Supreme Court has previously held that an Equal Protection Clause violation is not stated where members qualify from malapportioned election districts but are elected at-large; and (2) Plaintiff may not bring an action seeking an order of

mandamus against a local board of education or its members where there is not only no specific duty on the part of the official or officials to take the action requested, but also where the Board of Education has, under Georgia law, no power or authority to alter the act of the Georgia General Assembly which provides for the election of the Board of Education's members. Finally, the basis for Plaintiff's state law claim is a statute that is, on its face, inapplicable to the Echols County Board of Education. Accordingly, Defendants moves to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

For purposes of this motion, the relevant facts are that the Echols County Board of Education consists of 5 members. *Plaintiff's Complaint* ¶ 8. In order to be eligible for a seat on the Board of Education, a candidate must be a resident of the education district from which he offers for election. 1968 Ga. L. 3514. According to the 2000 Census, the voting age population of each education district was as follows:

Education District No. 1 (Wright's Chapel):	1,403
Education District No. 2 (Statenville):	732
Education District No. 3 (Enterprise/Tarver):	54
Education District No. 4 (Mayday):	304
Education District No. 5 (Howell):	161

Id.; *Plaintiff's Complaint* ¶ 9. The education districts were created by an act of the Georgia General Assembly in 1968, and correspond to the territory of the five

Georgia Militia Districts within Echols County. 1968 Ga. L. 3514.[1] Although candidates for the Board of Education must be a resident of the education district for which seat they are seeking, all members are elected "at-large" by all voters in Echols County. *Id.*

STANDARD OF REVIEW

This Motion to Dismiss is filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Such motions are subject to the standard of review set forth in two decisions of the United States Supreme Court: *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In *Bell Atlantic*, the Supreme Court altered the standard for reviewing a motion to dismiss. That decision overturned the fifty year old test of "no set of facts" established in *Conley v. Gibson*, 355 U.S. 41 (1957), and announced a standard that "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation," as the Court has described it more recently in *Iqbal*. Quoting further from *Bell Atlantic*, the Court in *Iqbal* explained that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citations omitted). And those factual allegations, accepted as true, must state a "plausible" claim, meaning that they

[1] For the Court's convenience, Defendants have attached a copy of this local legislation to the Brief as Exhibit A.

must suggest more than the "sheer possibility" but less than the probability of a viable claim.

For purposes of this Motion, it is important to note that the Court in *Iqbal* emphasized that district courts need not accept legal conclusions as true.[2] The Court rejected, for example, allegations in the complaint attempting to state a claim of constitutional discrimination that the defendants "'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement 'as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.'" *Id*. at 669. According to the Court, such an allegation is a "formulaic recitation of the elements" of a constitutional claim and need not be assumed true.

To survive a motion to dismiss applying the *Bell Atlantic* and *Iqbal* standard, therefore, it is not sufficient for Plaintiff merely to make conclusory recitations of the elements of a claim.

ARGUMENT AND CITATION OF AUTHORITY

I. The System for Electing Members of the Echols County Board of Education Does Not Violate The Equal Protection Clause.

Plaintiff's Complaint does not support a claim that the election of the Echols County Board of Education violates the Equal Protection Clause of the Fourteenth

[2] Thus, to the extent Plaintiff's Complaint in ¶ 12 implies that Board of Education members are not elected "at-large" by all voters in Echols County, that assertion is a conclusion of law that is not supported by the Act of the General Assembly cited in the Statement of Facts, *supra*.

Amendment. While the population of each election district may vary widely, that variation is irrelevant to the "One Person, One Vote" principle of the Equal Protection Clause because all members of the Board of Education are elected by the voters of the entire county.

In *Dallas County, Alabama v. Reese*, 421 U.S. 477 (1975), the Supreme Court addressed a virtually identical election system to that Plaintiff challenges here. In *Reese*, the four members of a county commission were elected through countywide balloting, but each member was required to be elected from one of four residency districts. *Reese*, 421 U.S. at 477. The populations of the four residency district varied widely, ranging from 6,209 to 27, 379, with the largest district containing about one-half of the county's population. *Id* at 478, n.3. The Supreme Court rejected the constitutional challenge, explaining that "Because the districts in the present plan are used 'merely as the basis of residence for candidates, not for voting or representation,' . . . each commissioner represents the citizens of the **entire county** and not merely those of the district in which he resides." *Id*.at 480 (citations omitted)(emphasis added).

The Echols County Board of Education utilizes that same system for electing its members. Just as in *Reese*, the education districts in Echols County are used "merely as the basis of residence for candidates, not for voting or representation." Plaintiff cannot maintain an action under the allegations of the Complaint based on variances in population of the education districts from which members qualify but

are not elected. Therefore, Plaintiff's Complaint alleging an Equal Protection Clause violation must be dismissed.

II. Plaintiff's Complaint Fails To State A Claim for the Mandamus Relief Requested

Plaintiff's Complaint seeks an order of mandamus "requiring that the Echols County Board of Education take immediate action to remedy the disparity in voting districts in accordance with the 'One Person, One Vote' principle." *Plaintiff's Complaint* ¶ 20. Under Georgia law, O.C.G.A. § 9-6-20, much like federal law,[3] mandamus is an extraordinary remedy which is rare and unusual and has exacting requirements:

> The right to the extraordinary writ exists only when the person seeking it has a **clear legal right** to have the **particular act** performed. The duty which the complainant seeks to have enforced must be a **duty arising by law**, either expressly or by necessary implication; and the law must not only authorize the act be done, but **must require** its performance.

Lansford v. Cook, 252 Ga. 414, 414-15 (1984) (internal citations omitted) (emphasis added).

As shown in Section I above, federal constitutional law does **not require** members of a local governing body to qualify from districts that comply with One

[3] See 28 U.S.C. § 1361; *United States v. Salmona*, 810 F.3d 806, 811 (11th Cir. 2016), ("Mandamus relief is appropriate only when: (1) there is no other adequate remedy and (2) the 'plaintiff has a clear right to the relief requested' (in other words, the defendant must have 'a clear duty to act'). Put another way, 'a writ of mandamus is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty.'")(citations omitted).

Person-One Vote principles. Thus, boards of education have no duty to perform the act Plaintiff demands nor does Plaintiff have a clear right to have such an act performed. In addition, the Board of Education has no authority, ability or duty to determine its voting districts, as that power exclusively resides with the Georgia General Assembly. Under the Georgia Constitution, "Each school system shall be under the management and control of a board of education, **the members of which shall be elected as provided by law**." GA CONST. Art. 8, Sec. 2, Para 2. (emphasis added). In the case of the Echols County Board of Education, the law providing for the election of the members of the Board is a local act passed by the Georgia General Assembly in 1968. 1968 Ga. L. 3514. It provides for a five-member Board of Education, the five education districts from which each candidate must reside to qualify for that seat, and for the members to be elected by all voters of Echols County.

Because the Defendants have no authority or duty to provide the relief sought by Plaintiff, Plaintiff's Complaint must be dismissed.

III. O.C.G.A. § 20-2-52.1(a) Is Inapplicable To The Echols County Board Of Education

Plaintiff's only other asserted basis for this action is his claim that "Pursuant to Ga. Code. Ann., § 20-2-52.1(a), members of a Board of Education are to be elected from districts of ". . . approximately equal population." *Plaintiff's Complaint* ¶ 15. However, that code section contains no such requirement for

boards of education in Georgia, and is simply a cherry-picked phrase from a statute that is facially inapplicable to the Echols County Board of Education. The entirety of O.C.G.A. § 20-2-52.1(a) reads:

> On and after January 1, 2015, in counties in which there is being collected a homestead option sales and use tax pursuant to Article 2A of Chapter 8 of Title 48 and a county sales and use tax for educational purposes pursuant to Part 2 of Article 3 of Chapter 8 of Title 48 **and the county board of education consists of more than seven members**, such county boards of education shall comply with this Code section. Such county boards of education shall consist of seven members elected from separate single-member districts of approximately equal population. The number of members may be reduced to less than seven members by local legislation, but such members shall be elected from separate single-member districts of approximately equal population.

(emphasis added). As discussed above, the Echols County Board of Education consists of five members, and only boards of education consisting of more than seven members must comply with the statute.

Since the statute by its terms is inapplicable to Defendants, O.C.G.A. § 20-2-52.1(a) provides no basis for the relief sought by Plaintiff. Therefore, this case must be dismissed as to this claim.

CONCLUSION

The system of electing members to the Echols County Board of Education is constitutional and Defendants have no authority to provide the relief sought by Plaintiff, even if ordered to do so by a Court. Furthermore, state law does not require members of the five-member Echols County Board of Education to be

elected from "districts of approximately equal population." Therefore, Plaintiff's Complaint must be dismissed.

Respectfully submitted, this 30th day of June, 2016.

HARBEN, HARTLEY & HAWKINS, LLP

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FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

MARK CORBETT,	)	
	)	CIVIL ACTION FILE
Plaintiff,	)	NO. 7:16-cv-00116-WLS
	)	
v.	)	
	)	
CHESTER REGISTER, *et al.*,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, I electronically filed the *Brief in Support of Motion to Dismiss* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney of record:

This is to certify that I have this day served the *Brief in Support of Motion to Dismiss* upon the following counsel of record by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to:

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