

IN THE SUPERIOR COURT OF PIKE COUNTY
STATE OF GEORGIA

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PIKE COUNTY, GA 30295

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BY: 
CAROLYN WILLIAMS, CLERK

ROBERT E. ADAMS, JR., et al.,)
)
Petitioners,)
)
vs.)
)
WALTER JAMES "JIM" BROOKS,)
)
Respondent.)

CIVIL ACTION FILE
NO. 2013CV-038

ORDER

Petitioners initiated this action by filing an Application for Leave to file an Information in the Nature of Quo Warranto in challenge to Respondent's title to the public office of District 4 representative on the Pike County Board of Education (hereafter "Pike County School Board"). This Court granted leave to file the Information on February 6, 2013, and Petitioners filed said Information on the same day, alleging that Respondent is not qualified to hold the office of District 4 representative because he does not reside in the district. Petitioners assert that Respondent does not meet the residency requirement under O.C.G.A. § 20-2-51(a) which prohibits individuals from seeking a school board office for a district in which the individual does not reside.

Analysis of Law and Facts

On motion for summary judgment, the applicable standard is:

"To prevail at summary judgment under O.C.G.A. 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter

of law. O.C.G.A. 9-11-56(c). A defendant may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case...[T]he burden on the moving party may be discharged by pointing out by reference to the affidavits, depositions and other documents in the record that there is an absence of evidence to support the nonmoving party's case. If the moving party discharges this burden, the nonmoving party cannot rest on its pleadings, but rather must point to specific evidence giving rise to a triable issue.”¹

The Court makes the following findings of facts, which are based on those facts stipulated to by the parties, said stipulations having been filed with the Court on May 8, 2013:

1. The election districts used in the 2012 general and runoff elections for Pike County School Board were those approved in 2002;²
2. Under the 2002 districts, Defendant's residence at 1602 Smyrna Church Road, Molena, was situated in District 4;
3. The election districts recently were redrawn in 2012 by the Georgia General Assembly as Act No. 308 and approved by the Assembly and signed by the Governor on February 27, 2012;
4. The U.S. Department of Justice (hereafter "D.O.J.") received General Assembly

¹ Alfred v. Right Stuff Food Stores, Inc., 241 Ga. App. 338, 525 S.E.2d 717 (1999) *citing* Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991).

² Ga. L. 2002, p. 5502.

Act No. 308 for preclearance on April 17, 2012;

5. Qualifying for candidates seeking election to the Pike County School Board was May 23 - 25, 2012;

6. The U.S. D.O.J. indicated by letter dated June 15, 2012 that it did not object to General Assembly Act No. 308;

7. The letter referenced above was received by the Pike County School officials prior to the date of the July 31, 2012 primary election but after ballots had been printed and mailed out to certain voters;

8. Respondent qualified for a runoff election after the primary election and won the August 21, 2012 runoff election for the District 4 seat on the Pike County School board.

9. Under the 2012 map showing the new district boundary lines, Respondent's residence is located in District 5.

Based on the evidence in the record, the Court further finds that Petitioners each are United States citizens and residents and are interested citizens and registered voters of Pike County; that Petitioners obtained leave to file the Information in the Nature of Quo Warranto; and that General Assembly Act No. 308 was validly enacted by the legislature and signed by the Governor on February 27, 2012.

There are no genuine issues of fact remaining, only questions of law. The issue for determination is whether Respondent was validly elected so as to be qualified to represent District 4 on the Pike County School Board.

Petitioners have legal standing to bring this action because they are citizens and residents

of the United States, and are interested citizens and registered voters in Pike County.³ Further, [a]ny citizen and taxpayer of a community may challenge the qualifications of a public official to hold office in that community."⁴ Petitioners properly obtained leave of Court pursuant to O.C.G.A. § 9-6-60 prior to filing their Information in this action. The quo warranto procedure is the proper procedure by which Petitioner's may challenge Respondent's title to his seat on the school board.⁵ A school board member is a public officer within the meaning of O.C.G.A. § 9-6-60.⁶

The counties of this state reapportion districts for local elected offices every 10 years following the decennial census. Pike County's school district map last was reapportioned in 2002 following the 2000 census, and the current map was based on the 2010 census. The current map was enacted by local act, signed by the Governor on February 27, 2012.

Under the federal Voting Rights Act, this state and its subdivisions were required to submit to Section 5 preclearance any changes to voting procedures and requirements. The usual manner by which such laws were to be submitted for clearance was by submission to the D.O.J. for administrative approval. This was the case here.

Reapportionment plans are not "effective as law," despite having been duly enacted by the

³ White v. Miller, 235 Ga. 192 (1973).

⁴ Highsmith v. Clark, 245 Ga. 158 (1980).

⁵ Bonner v. State, 4 Ga. 472 (1849); Sweat v. Barnhill, 170 Ga. 545 (1930); Ritchie v. Barker, 216 Ga. 194 (1960); Anderson v. Flake, 270 Ga. 141 (1998).

⁶ Stanford v. Lynch, 147 Ga. 518 (1918).

state, until the plans are submitted for and receive clearance.⁷ During the pendency of the preclearance process, voting procedures are "frozen."⁸ Once the plan receives clearance, it becomes effective law under both the above-cited law and under O.C.G.A. § 1-3-4(b) which states "local legislation ... intended to have the effect of law will become effective immediately upon approval by the governor or upon becoming law without his approval." Here, the law became effective immediately upon receiving D.O.J. clearance on June 15, 2012.

Respondent's qualification which occurred prior to the reapportionment map receiving clearance became void immediately upon receiving clearance because the 2002 law under which he qualified was effectively repealed. Under O.C.G.A. § 45-2-1(6), persons are ineligible to hold civil office when those persons "have not been inhabitants of the state, county, district, or circuit for the period required by the Constitution and laws of this state." The law establishing the Pike County School Board as an elected body was approved April 18, 1967 and provides:

"Candidates may not offer for election to the board from any district other than that district in which their legal residence lies . . . **No person shall be eligible to represent a district unless he has been a resident of the district from which he offers as a candidate for at least one year immediately preceding the date of the election.** In the event a member moves his residence from the district he represents, his place on the board shall immediately become vacant."⁹ (Emphasis added)

⁷ Ramos v. Koebig, 638 F.2d 838, 844 (1981).

⁸ Reno v. Bossier Parish School Board, 520 U.S. 471, 117 S. Ct. 1491 (1997).

⁹ Ga. L. 1967, p. 3152, 3153.

Nothing in the subsequent amendments to this law, including the most recent amendment by General Assembly Act No. 308, repeals or replaces this residency requirement. As a result of the district map's clearance by D.O.J., Respondent did not meet this residency requirement such as to be eligible to seek and hold office for District 4 of the Pike County School Board.

It has been the law in Georgia for nearly 90 years that "[a] vacancy may be caused either by failure to elect the officer, the failure of the officer to qualify after his election, **or his disqualification after both election and qualification.**"¹⁰ (Emphasis added). As applied here, Respondent was disqualified after his qualification and by this Order is declared disqualified to hold office, now several months after his election.

O.C.G.A § 45-5-1(a)(5) states that all offices shall be vacant when "the incumbent ceas[es] to be a resident of the state or of the county, circuit, or district for which he was elected." Based on the above findings and stipulations of fact, the Court therefore declares that Respondent is not a resident of District 4, the seat for which Respondent was elected.

Respondent's arguments in opposition to Petitioners' action are unavailing and unsupported by the evidence in the record. Respondent gives no legal reasoning for why the 2002 map was appropriate for use in the 2012 election. Rather, Respondent merely agrees with this Court that the 2012 map was not effective as law until clearance was granted by the D.O.J. Respondent cites no law, nor can this Court find any, that supports the use of repealed district maps in elections.

Respondent's argument that the language of O.C.G.A. § 20-2-51(a) ("[n]o person **shall be** eligible for election ... who is not a resident of the school district in which that person seeks

¹⁰ Odom v. Jones, 176 Ga. 147, 167 S.E. 304 (1932) *citing* Cason v. Harn, 161 Ga. 366, 131 S.E. 88 (1925).

election") (emphasis added) does not prohibit Respondent from representing a district in which he does not reside is wholly unconvincing. Under both the above-cited statute and under local legislation governing the Pike County School Board, Respondent is not now qualified to represent District 4, and was not on July 31 or August 21, 2012 qualified to seek election to represent District 4.

Respondent agrees with this Court that Respondent is not that class of elected officials embraced by the language in General Assembly Act 308 that would be exempt from the district changes, because at the time of redistricting Respondent was not an elected member of the school board. Respondent gives no compelling reason why this Court should interpret the law so as to expand the class of persons exempted from the effect of the Act's redistricting.

Respondent's other arguments equally are unconvincing and unavailing on this Court.


Based on the above analysis of law and fact, the Court finds that the Petitioners have succeeded in proving that Respondent was ineligible to seek election to the Pike County School Board for the District 4 seat at the time of the primary elections on July 31, 2012 and the runoff election on August 21, 2012 and currently is disqualified to serve as representative for District 4 on the Pike County School Board. Therefore, Petitioners' motion for summary judgment is GRANTED and the Court hereby declares the office of District 4 representative on the Pike County School Board VACANT. Respondent's motion for summary judgment is therefor Denied.

The Court is not unmindful that this ruling will result in removing from office a citizen who offered himself up for election to serve his community as a member of the school board. In reaching its decision, the Court finds no wrongdoing whatsoever on the part of the Respondent

who cannot be faulted for his acts in this matter. In the end, the Court must apply the law as it finds it to be, and the Court finds that the legislature in enacting the 2012 legislation intended for the citizens of District 4 to be represented on the school board by a resident of their district.

Finally, the Court feels compelled to note that this needless litigation arises solely as the result of the application of the outdated preclearance provisions of the Voting Rights Act which the Supreme Court of this country has ruled are no longer applicable to Pike County.¹¹

SO ORDERED AND ADJUDGED, this 28 day of August 2013.


TOMMY R. HANKINSON
JUDGE, SUPERIOR COURT
PIKE COUNTY
GRIFFIN JUDICIAL CIRCUIT

¹¹See *Shelby County v. Holder*, 133 S. Ct. 2612 (2013)