

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:17-CV-78

RUSSELL F. WALKER,)
)
 Plaintiff,)
)
 vs.)
)
 NORTH CAROLINA BOARD OF)
 ELECTIONS and HOKE COUNTY)
 BOARD OF ELECTIONS,)
)
 Defendants.)

**HOKE COUNTY
BOARD OF ELECTIONS'
REPLY BRIEF**

Defendant the Hoke County Board of Elections submits this reply brief in support of its Motion to Dismiss Plaintiff’s Complaint.

Plaintiff’s Response in Opposition [D.E. 38] reinforces that Plaintiff is not entitled to relief here. Plaintiff’s Complaint does not “set forth a novel legal theory.” *Wright v. North Carolina*, 787 F.3d 256, 263 (4th Cir. 2015). Rather, Plaintiff alleges a vote-dilution claim that his allegations simply do not—and cannot—support as a matter of law.

Plaintiff’s Response Brief reaffirms that his purported vote-dilution claim is based solely on disproportionate representation:

The fact that in Hoke County there are approximately 50% white voters and one white commissioner out of five (20%), is a conclusive “result” that voter dilution has occurred. *Walker does not need to show anything more.*

...

Well when a 50% population white county elects 20% white members on a Board of Commissioners, *then this fact alone shows a lack of Equal Protection voter dilution result.*

Pl.’s Resp. Opp’n at 1–2, 4 (emphasis added).

The law is well-established that an allegation of “disproportionate” representation by itself cannot support a vote-dilution claim. *Washington v. Finlay*, 664 F.2d 913, 919–20 (4th Cir. 1981) (“Disproportionate representation and consistent electoral defeat, though traceable to the challenged system, do not alone constitute impermissible dilution.”). Rather, plaintiff must show that “the voting potential of a racial minority has been minimized or cancelled out, or the political strength of such a group adversely affected.” *Id.* at 919 (citation, quotations, and alterations omitted). Plaintiff’s allegations show nothing of the sort.¹

Because there is no merit to Plaintiff’s claim of vote dilution, the Hoke County Board of Elections respectfully asks the Court to dismiss Plaintiff’s Complaint in its entirety.

¹ Plaintiff refers to the Fourth’s Circuit’s opinion in *Raleigh Wake Citizens Ass’n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 337 (4th Cir. 2016), in which the court recognized that the right to vote can be denied by a dilution of the weight of a citizen’s vote. That case, however, addressed the issue of population deviations between electoral districts. *See id.* at 340–42. Population deviations are irrelevant to Hoke County’s *at-large* election system. For the record, Plaintiff mistakenly states that Mr. Schauer was counsel for the defendants in the *Raleigh Wake Citizens* litigation. While that point is irrelevant to this litigation, it was Mr. Marshall who was counsel in that case.

Respectfully submitted, this the 8th day of May, 2017.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been filed with the Clerk of Court using the CM/ECF system, which pursuant to Local Civil Rule 5.3(b), constitutes service on counsel of record, and a copy has been deposited in the U.S. Mail, first-class postage prepaid, addressed as follows: RUSSELL F. WALKER, 176 QUEWHIFFLE ROAD, ABERDEEN, NC 28315.

This the 8th day of May, 2017.

/s/ Craig D. Schauer
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