

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RUSSELL F. WALKER,)
)
Plaintiff,)
)
v.) 1:17-CV-78
)
HOKE COUNTY BOARD OF)
ELECTIONS,)
)
Defendant.)

ORDER

The plaintiff, Russell Walker, has filed suit alleging that the system used to elect the Hoke County Board of Commissioners violates the equal protection clauses of the federal and state constitutions. The defendant Hoke County Board of Elections has moved to dismiss for failure to state a claim. Doc. 35. The allegations in the complaint, taken as true, do not plausibly state a claim for relief, and the Court will grant the motion.

According to the complaint, the five members of the Hoke County Board of Commissioners are each elected at-large. Doc. 42 at ¶¶ 8-9. Of the current commissioners, four are non-white. *Id.* at ¶ 12. Hoke County’s population is approximately 51 percent white and 49 percent non-white. *Id.* at ¶ 10. Mr. Walker alleges that the current composition of the Board of Commissioners is due to “racial block voting in the City of Raeford and political organizations deriving their power and influence from several colored Church congregations.” *Id.* at ¶ 15. He also alleges that the Board of Commissioners uses an election system that is a “racial gerrymander.” *Id.* at

¶ 22. The Hoke County Board of Elections is responsible for administering elections for county commissioners. *Id.* at ¶ 3.

Mr. Walker alleges no facts tending to show that the at-large election system was enacted with a discriminatory purpose. Indeed, he does not identify what entity decided that the Hoke County Commissioners would be elected at-large or when that decision was made. In the absence of allegations tending to indicate discriminatory purpose, his Fourteenth Amendment claim of vote dilution is implausible. *See Miller v. Johnson*, 515 U.S. 900, 911 (1995) (noting that the essence of a Fourteenth Amendment vote dilution claim is “that the State has enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities”) (internal citation and quotations omitted).

Mr. Walker does not allege that the election system separates voters into districts; rather, he alleges commissioners are elected at-large. The essence of a racial gerrymandering claim is that states may not use race as the predominant factor in separating voters into districts. *Id.* at 916; *Raleigh Wake Citizens Ass’n v. Wake Cty. Bd. of Elections (RWCA)*, 827 F.3d 333, 352 (4th Cir. 2016). Mr. Walker has not explained how the facts he alleges could support a racial gerrymandering claim.

To the extent Mr. Walker intended to assert a claim under the Voting Rights Act,¹ the facts alleged are inconsistent with a Section 2 claim. Mr. Walker brings a claim on behalf of the white *majority* population, alleging that the non-white population, which is

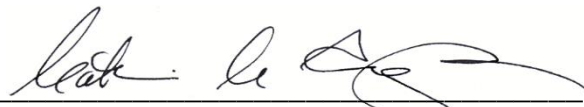
¹ In the complaint, Mr. Walker does not cite the Voting Rights Act. In his brief, he mentions the VRA and cites *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), a VRA case. Doc. 38 at 2, 3-4.

a numerical minority in Hoke County, is able to elect a disproportionate number of non-white Commissioners. A Section 2 claim arises only when a *minority* population is blocked by a majority population from electing the minority's candidates of choice. *See Bartlett v. Strickland*, 556 U.S. 1, 8-9 (2009).²

Wright v. North Carolina, 787 F.3d 256 (4th Cir. 2015) and *RWCA*—the two main opinions Mr. Walker cites³—do not suggest a contrary result. In *Wright* and *RWCA*, citizens challenged the district lines for a county board of commissioners district as a racial gerrymander and challenged the overall redistricting plans for two county boards under the Equal Protection Clause's one-person, one-vote principle. *RWCA*, 827 F.3d at 339, 352.⁴ A one-person, one-vote claim relies on district lines and population deviations, *see id.* at 342; *Wright*, 787 F.3d at 264, not at-large elections with no districts and no population deviations. These two opinions do not support Mr. Walker's claim.

It is **ORDERED AND ADJUDGED** that the defendant Hoke County Board of Elections' motion to dismiss, Doc. 35, is **GRANTED** and this case is **DISMISSED**.

This the 8th day of June, 2017.


UNITED STATES DISTRICT JUDGE

² Section 2 claims have several other requirements, *see, e.g., Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986), but the Court need not discuss them here.

³ Doc. 38 at 2 (citing *RWCA*), 4-5 (citing *Wright*); Doc. 40 at 2-3 (citing *RWCA*), 4 (citing *Wright*); Doc. 42 at pp. 1-2 (citing *RWCA*).

⁴ As noted *supra*, Mr. Walker has not alleged any facts supporting a racial gerrymandering claim.