

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DELAWAREANS FOR)
EDUCATIONAL OPPORTUNITY)
and NAACP DELAWARE STATE)
CONFERENCE OF BRANCHES,)

Plaintiffs,)

v.)

C.A. No. 2018-0029-JTL

JOHN CARNEY, SUSAN BUNTING,)
KENNETH A. SIMPLER, SUSAN)
DURHAM, BRIAN MAXWELL¹ and)
GINA JENNINGS,)

Defendants.)

**DEFENDANT J. BRIAN MAXWELL’S OPENING BRIEF IN SUPPORT
OF HIS MOTION TO DISMISS THE VERIFIED COMPLAINT**

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Dated: April 13, 2018

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NATURE AND STAGE OF THE PROCEEDING

Plaintiffs, Delawareans For Educational Opportunity and NAACP Delaware State Conference of Branches (“Plaintiffs”), filed this civil action on January 16, 2018, alleging a violation of Article X, § 1 of the Delaware Constitution and seeking permanent injunctive relief.² Defendant J. Brian Maxwell, chief financial officer for New Castle County, Delaware (“Maxwell”), is one of six defendants named in the Complaint. Maxwell submits this Opening Brief in support of his Motion to Dismiss Count III of the Complaint (“Motion”) for lack of subject matter jurisdiction pursuant to Court of Chancery Rule 12(b)(1), and Counts I, II and III for failure to state a claim for which relief can be granted pursuant to Court of Chancery Rule 12(b)(6).

² C.A. No. 2018-0029-JTL (“Complaint”).

STATEMENT OF FACTS³

Article X, § 1 of the Delaware Constitution of 1897 (the “Education Clause”) provides that the “General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools.”⁴ The Plaintiffs allege that the Education Clause creates a constitutional right for every school-age child in Delaware to attend free public schools that provide a meaningful opportunity to obtain an adequate education.⁵ The Complaint further alleges that the state of Delaware (“State”) is obligated to provide each local school district with the financial resources needed to provide all children with a meaningful opportunity to obtain an adequate education, the flexibility to use those resources most appropriately, and that the State must do so in an equitable manner.⁶ The Complaint names the State’s governor, secretary of education, and treasurer as defendants, and also the finance directors for each of the State’s three counties.⁷ The Complaint does not allege that any of the three county finance directors are obligated to comply with the Education Clause.

³ All well-pleaded factual allegations in the complaint are accepted as true. *See generally, infra* Section II.A (discussing standard of review).

⁴ Del. Const. art. X, § 1 (emphasis supplied).

⁵ Complaint ¶ 24.

⁶ *Id.* ¶ 26.

⁷ *Id.* ¶¶ 14-19.

According to the Complaint, there are three sources of funding for public schools in the State: state, federal and local. In fiscal year 2016, the State provided 60% of the \$2,066,368,730 spent on public schools in Delaware, while local districts provided 31%.⁸ State funding consists primarily of Division I,⁹ Division II, and Division III funding.¹⁰ Chapter 17 of Title 14 of the *Delaware Code* provides the legal basis for each of the three types of Division Funding that the *State* provides to school districts.¹¹ Division I monies pay for school district personnel; and Division II monies pay for energy, materials and other school costs.¹² According to the Plaintiffs, these sources of funding discriminate against poorer districts and are not sufficient to comply with the Education Clause.¹³ More specifically, Plaintiffs allege that the State sends more Division I funds per student to schools with wealthier students than to schools with low income students;¹⁴ and

⁸ *Id.* ¶ 27.

⁹ Any capitalized term not defined herein shall have the meaning ascribed to it in the Complaint.

¹⁰ *Id.* ¶ 28 (collectively, “Division Funding”).

¹¹ *See generally id.* ¶¶ 28-49.

¹² *Id.* ¶ 28.

¹³ *See generally id.* ¶¶ 27-49.

¹⁴ *E.g., id.* ¶¶ 34-35, 38.

that the State allocates Division II funds without regard for the extra needs of Disadvantaged Students.¹⁵

Division III funding, referred to as “equalization funding,” supplements Division I and Division II funding.¹⁶ The purpose of Division III funding is to compensate for the different abilities of local school districts to raise additional funds through real estate taxes.¹⁷ According to Plaintiffs, Division III funding is not currently fulfilling that purpose.¹⁸

Maxwell is the chief financial officer for New Castle County (“County”).¹⁹ He is named as a defendant only in his official capacity.²⁰ Paragraph 18 of the Complaint alleges “[h]e is responsible for the collection of taxes due to New Castle County and the school districts located therein.”²¹ This is the only paragraph in Plaintiff’s 55-page Complaint that identifies Maxwell and connects him with an asserted legal obligation.

¹⁵ *Id.* ¶ 42.

¹⁶ *Id.* ¶ 28.

¹⁷ 14 *Del. C.* § 1707.

¹⁸ Complaint ¶ 28.

¹⁹ *Id.* ¶ 18.

²⁰ *Id.* ¶ 20.

²¹ *Id.*

In the “Property Reassessment”²² section of the Complaint, Plaintiffs allege that the lack of a reassessment (“General Reassessment”) “compound[s] the problems with state funding.”²³ Plaintiffs allege that “the local funding for education that is derived from local real estate taxes is reduced and stagnant because it is based on an assessment of real estate done in the last century.”²⁴

Paragraphs 52 through 54 of the Complaint state:

52. Delaware law, 9 *Del. C.* § 8306(a), requires that each property be assessed for tax purposes at its “true value in money.” Nevertheless, property assessments are based on the value of property in 1987 (Kent County), 1983 (New Castle County) and 1974 (Sussex County).

53. The result of the failure to reassess property values is that the recognized value of the underlying tax base in each school district has remained flat for decades while the costs of running those school districts have risen substantially because of inflation and other factors.²⁵

54. This means that the school districts must regularly seek approval of tax rate increases from local voters—a costly endeavor that often fails. The burden on the local districts resulting from the failure to provide for regular reassessment adds to the problems caused by the deficiencies in the state funding system.²⁶

²² See generally *id.* ¶¶ 51-54.

²³ *Id.* ¶ 51.

²⁴ *Id.*

²⁵ *Id.* ¶¶ 52-53.

²⁶ *Id.* ¶ 54.

While the Complaint contains allegations relative to a General Reassessment, it fails to allege that Maxwell has the authority to order a General Reassessment. The remainder of the allegations of the Complaint (paragraphs 55 through 171) do not address the lack of a General Reassessment in the County, or an alleged failure to comply with 9 *Del. C.* § 8306(a).

In summary, Plaintiffs’ objectives are twofold—they want more overall funds provided to the school districts; and they want a redistribution of school funds to assure that Disadvantaged Students are provided an opportunity to obtain an adequate education.²⁷ The Plaintiffs do not allege, however, that Maxwell has the authority to: (1) raise taxes; (2) order a General Reassessment; (3) increase the amount of Division I funds; (4) increase the amount of Division II funds; (5) increase the amount of Division III funds; or (6) reallocate Division Funding among the school districts.

²⁷ *See, e.g., id.* ¶ 7 (“Delaware . . . must increase funding and restructure its policies for the education of Disadvantaged Students in order to comply with its constitution”).

QUESTIONS PRESENTED

Whether this Court has jurisdiction over Count III where Plaintiffs have an adequate remedy at law pursuant to the common law writ of mandamus or the Declaratory Judgment Act.

Whether Count III fails to state a claim upon which relief may be granted where Maxwell lacks the authority to order a General Reassessment of properties within the County and where Plaintiffs fail to allege a sufficient nexus and factual basis between a General Reassessment of properties in the County and the violation of the Education Clause.

Whether Counts I and Counts II should be dismissed as against Maxwell because Plaintiffs fail to allege that Maxwell is obligated to comply with the Education Clause.

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER COUNT III.

A. Standard of Review.

The Court of Chancery will dismiss an action under Rule 12(b)(1) if it appears from the record that the Court does not have subject matter jurisdiction over the claim. Plaintiffs have the burden of establishing this Court's jurisdiction.²⁸

B. The Plaintiffs have an adequate remedy at law for Count III.

The Court of Chancery is a court of limited jurisdiction. “As Delaware’s Constitutional court of equity, the Court of Chancery can acquire subject matter jurisdiction over a cause in only three ways, namely, if: (1) one or more of the plaintiff’s claims for relief is equitable in character, (2) the plaintiff requests relief that is equitable in nature, or (3) subject matter jurisdiction is conferred by statute.”²⁹ “Chancery jurisdiction is not conferred by the incantation of magic words.”³⁰ The mere fact that a complaint contains a prayer for an equitable remedy

²⁸ *E.g., Pitts v. City of Wilmington*, 2009 WL 1204492, at *5 (Del. Ch. Apr. 27, 2009).

²⁹ *Candlewood Timber Group, LLC v. Pan Am. Energy, LLC*, 859 A.2d 989, 997 (2004) (footnotes omitted); *Christiana Town Ctr. LLC v. New Castle Cnty.*, 2003 WL 21314499 (Del. Ch. June 6, 2003).

³⁰ *McMahon v. New Castle Assocs.*, 532 A.2d 601, 603 (Del. Ch.1987).

does not conclude the jurisdictional analysis. The Court must look beyond the remedies nominally being sought, and realistically assess the nature of the wrong alleged and the remedy available to determine whether a legal remedy is available and fully adequate.³¹

The Complaint alleges only that the “Plaintiffs lack an adequate remedy at law.”³² With respect to Count III, however, Plaintiffs have an adequate remedy at law. In Count III, Plaintiffs seek an “order that will require compliance with 9 *Del. C.* § 8306(a).”³³ When the object of a claim for relief is “to compel the performance of an obligation arising out of official station or imposed by law upon the respondent, the remedy lies in the common law action for mandamus.”³⁴ Therefore, assuming *arguendo* that the Plaintiffs are correct on a factual and legal basis that Maxwell is in violation of a Delaware statute, and that Maxwell has the authority to cure that violation, the relief sought by Plaintiffs is available in the form of a writ of mandamus.³⁵

³¹ *Candlewood Timber Group*, 859 A.2d at 997.

³² Complaint ¶ 172.

³³ *Id.* ¶ 189.

³⁴ *Capital Educators Ass’n v. Camper*, 320 A.2d 782, 786 (Del. Ch. 1974).

³⁵ Maxwell reserves all his rights as to the merits of Count III, and as discussed below in Section II.B, *infra* pp. 13-16, disputes that he is the correct party defendant with respect to Count III, or that he has the authority to order a General Reassessment.

The Superior Court has jurisdiction over a writ of mandamus proceeding.³⁶ The courts have viewed an action for the issuance of writ of mandamus as an adequate remedy at law, and a remedy that deprives the Chancery Court of equity jurisdiction.³⁷

Plaintiffs have a second adequate legal remedy. The Declaratory Judgment Act provides a mechanism for the Plaintiff to seek a ruling that Maxwell is not complying with 9 *Del. C.* § 8306(a).³⁸ The Superior Court has the power to issue a declaration concerning 9 *Del. C.* § 8306(a),³⁹ and this remedy precludes equity jurisdiction.

³⁶ 10 *Del. C.* § 564.

³⁷ *Capital Educators Ass'n v. Camper*, 320 A.2d 782, 786 (Del. Ch. 1974) (Teachers' Association complaint for preliminary injunction to enjoin Board of Education from refusing to negotiate in good faith on a new teachers' contract was dismissed for lack of jurisdiction because Board's obligation to confer in good faith is found in Title 14 and the Association can obtain relief in Superior Court); *Harden v. Eastern States Pub. Serv. Co.*, 122 A. 705 (Del. Ch. 1923) (defendant's demurrer to bill in equity seeking accounting sustained in part because the legal remedy of mandamus was available to stockholders); *Sabo v. Williams*, 303 A.2d 696 (Del. Ch. 1973) (policeman's action seeking a declaratory judgment that he was eligible for a pension was dismissed for lack of jurisdiction because his right to a pension, if one existed, arose under Delaware statutes and the Code of the City of Wilmington, and an adequate remedy at law existed in the form of a mandamus action).

³⁸ 10 *Del. C.* §§ 6501-13.

³⁹ 10 *Del. C.* § 6501.

In *Christiana Town Ctr. LLC v. New Castle Cnty.*,⁴⁰ the plaintiff sought a preliminary and permanent injunction prohibiting the County from applying the Unified Development Code (“UDC”) “clean hands” provision against it. The Court reviewed the complaint and determined that the plaintiff, in substance, sought a declaration as to the meaning and scope of the UDC clean hands provision, and that the Declaratory Judgment Act provided a remedy at law.⁴¹ In response to the plaintiff’s argument that the County would disregard such a judgment of the Superior Court, the Court reasoned that “the County will respect any decision rendered by any competent court of this State,”⁴² and dismissed the injunction action. Similarly, here, Plaintiffs may seek from the Superior Court a declaratory judgment that Maxwell is not complying with 9 *Del. C.* § 8306(a).

Because Plaintiffs have two adequate remedies at law, Count III should be dismissed for lack of jurisdiction.⁴³

⁴⁰ 2003 WL 21314499 (Del. Ch. June 6, 2003).

⁴¹ *Id.* at *4 & n.18 (citing 10 *Del. C.* § 6501-13).

⁴² *Id.* at *4.

⁴³ This argument does not concede that this Court has subject matter jurisdiction over Counts I and II. Because these counts are directed to the State, and because Maxwell has independent grounds to dismiss Counts I and II, *see infra* Section III, neither the Motion nor this brief addresses the question of this Court’s jurisdiction regarding Counts I and II. *See also Christiana Town Ctr.*, 2003 WL 21314499, at *3 (objection to Chancery Court’s subject matter jurisdiction cannot be waived by a party).

II. COUNT III SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AGAINST MAXWELL.

A. Standard of Review.

In considering a motion to dismiss for failure to state a claim, the Court accepts all well-pleaded factual allegations as true; even vague allegations are considered well-pleaded if they give the opposing party notice of the claim. The Court must draw all reasonable inferences in favor of the non-moving party and dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.⁴⁴

This Court has stated:

An injunction operates to remedy a specific wrong. This Court is empowered to provide injunctive relief only where it will serve to remedy the specific harms complained of. For that reason, the complaint must reveal a logical relationship or “nexus” between the alleged wrong and the requested remedy. Absent some factual basis from which one could conclude that the requested injunctive relief would remedy the alleged wrong, this Court will not grant a mandatory injunction or other form of coercive relief.⁴⁵

⁴⁴ *Young v. Red Clay Consol. School Dist.*, 122 A.3d 784, 796 (Del. Ch. 2015).

⁴⁵ *Cantor Fitzgerald L.P. v. Cantor*, 1999 WL 413394, at *3 (Del. Ch. June 15, 1999) (quoting *McCoy v. Taylor*, 1998 WL 842322, at *3 (Del. Ch. Nov. 12, 1998)).

B. Count III fails to state a claim against Maxwell concerning general reassessment.

The Plaintiffs criticize the County’s assessment process: “the local funding for education that is derived from local real estate taxes is reduced and stagnant because it is based on an assessment of real estate done in the last century.”⁴⁶ Plaintiffs also reference this Court’s 2017 decision in *Young v. Red Clay Consol. School Dist.*, which criticized the County’s use of a base year system from 1983.⁴⁷

Count III alleges:

185. Delaware law, 9 *Del. C.* § 8306(a), requires that each property be assessed for tax purposes at its “true value in money.”

186. Nevertheless, taxes are being collected based on property assessments conducted in 1987 (Kent County), 1983 (New Castle County) and 1974 (Sussex County).

187. This failure to collect the appropriate amount of property taxes for schools results in less tax revenue available for schools.

188. This under-collection harms Disadvantaged Students by reducing the resources available for their education.

189. Plaintiffs are entitled to an order that will require compliance with 9 *Del. C.* § 8306(a).⁴⁸

⁴⁶ Complaint ¶ 51.

⁴⁷ 159 A.3d 713, 720-22 (Del. Ch. 2017) (“*Red Clay III*”).

⁴⁸ Complaint ¶¶ 185-189.

In several respects, Count III fails to allege a sufficient nexus between the asserted violation of 9 *Del. C.* § 8306(a) and the request for General Reassessment, which Plaintiffs phrase as “an order that will require compliance with 9 *Del. C.* § 8306(a).” The Complaint alleges only that Maxwell “is responsible for the collection of taxes.”⁴⁹ 9 *Del. C.* § 8306(a) addresses assessment, not collection. There is a substantive distinction between the two concepts. Properties within the County are assessed; thereafter, a school tax rate is established by the school district.⁵⁰ Then, the County issues tax bills based upon a combination of the assessed value of the property and the school tax rates.⁵¹ Although the Complaint does not allege that Maxwell is not collecting taxes, there is an implicit allegation that the County should conduct a General Reassessment so that each property in the County is valued at its current value.⁵² Yet, Plaintiffs fail to allege that Maxwell has the authority or financial wherewithal to implement a General Reassessment.

⁴⁹ *Id.* ¶ 20.

⁵⁰ *See generally* 14 *Del. C.* § 1902(a).

⁵¹ 9 *Del. C.* § 8602(b). There is also a county tax component to the tax bill; however, that component is not germane to the Complaint and Maxwell’s Motion.

⁵² *See generally* Complaint ¶¶ 51-54.

This Court analyzed a somewhat analogous situation in its first 2015 decision in *Young v. Red Clay Consol. School Dist.*⁵³ In *Red Clay I*, the plaintiffs, who were residents of the Red Clay school district, sought this Court’s review as to whether the Board of Elections considered alleged violations of election laws before it certified the result of the referendum. The Board of Elections moved to dismiss the action.⁵⁴ The Board of Elections argued that it did not have the authority to review the alleged election violations when it certified the results of a vote on a referendum to increase property taxes.⁵⁵ After careful review of the applicable law, this Court determined that the Board of Elections did not have the authority to investigate and rule on the alleged election violations, and dismissed the Board as a party.⁵⁶ In the matter *sub judice*, Plaintiffs fail to allege that Maxwell has the authority to order a General Reassessment.

The legal deficiency in Count III is further highlighted in the language of paragraph 189, which provides: “Plaintiffs are entitled to an order that will require compliance with 9 *Del. C.* § 8306(a).⁵⁷ Plaintiffs strategically neglect to identify the actor or actors they believe have the authority to “comply” with 9 *Del. C.* §

⁵³ 2015 WL 5853762 (Del. Ch. Oct. 2, 2015) (“*Red Clay I*”).

⁵⁴ The action was initiated by a writ of certiorari. *Red Clay I*, at *1.

⁵⁵ *Id.*

⁵⁶ *Id.* at *8-13.

⁵⁷ Complaint ¶ 189.

8306(a). In the context of Count III's request for injunctive relief, Plaintiffs are required to provide a "plain statement"⁵⁸ of why they are entitled to that relief, and why Maxwell is the appropriate party defendant.⁵⁹ Because they have failed to do so, Count III should be dismissed as against Maxwell.

⁵⁸ Ct. Ch. R. 8(a).

⁵⁹ *See Cantor Fitzgerald L.P.*, 1999 WL 413394, at *3 (complaint must allege sufficient nexus between alleged wrong and party defendant).

C. The Plaintiffs have failed to allege a sufficient nexus and factual basis between their request for a General Reassessment and the State’s compliance with the Education Clause.

Plaintiffs seek to obtain State compliance with the Education Clause by substantially increasing the amount of “financial resources”⁶⁰ for school districts generally, and for certain school districts in particular. For the reasons discussed below, the legal standard of *Cantor Fitzgerald* is not satisfied, and Count III should be dismissed because the Plaintiffs fail to allege that a General Reassessment will substantially increase the aggregate financial resources for school districts or Disadvantaged Students.

According to Plaintiffs, this action is not about a few dollars; it is about millions or billions of dollars. Over two billion dollars are spent annually on public schools in Delaware.⁶¹ The fiscal year 2018 Division Funding budget is over one billion dollars.⁶² Most of that budgeted amount, \$987,745,000 (89%) is Division I funding.⁶³ In the past several years, the State has implemented various funding cuts in the amount of 26 million dollars, 27.7 million dollars, 10.4 million dollars, and 8.4 million dollars.⁶⁴ Plaintiffs also reference the *Red Clay III* decision

⁶⁰ Complaint ¶ 26.

⁶¹ *Id.* ¶ 27.

⁶² *Id.* ¶ 29.

⁶³ *Id.*

⁶⁴ *Id.* ¶¶ 164-167.

in which the challenged Red Clay consolidated school district referendum sought to generate a total of \$18 million over three years.⁶⁵ The Complaint identifies the Red Clay school district as a district that needs more funding.⁶⁶

In contradistinction to these large and specifically alleged dollar amounts, the Complaint does not allege the magnitude of increase in local taxes that a General Reassessment would generate; that a General Reassessment would significantly reallocate Division III Funds to districts with more Disadvantaged Students; or that the increase in local taxes would significantly assist the State's ability to comply with the Education Clause.

The Complaint alleges only that:

[T]here was a misalignment of equalization dollars because of the lack of real property reassessment.⁶⁷

[T]he local funding for education that is derived from local real estate taxes is reduced and stagnant because [of a failure to generally reassess].⁶⁸

[T]axes are being collected based on property assessments conducted in [1983, which] . . . results in less tax revenue available for schools.⁶⁹

⁶⁵ 159 A.3d at 727.

⁶⁶ Complaint ¶ 4(f).

⁶⁷ *Id.* ¶ 49.

⁶⁸ *Id.* ¶ 51.

⁶⁹ *Id.* ¶¶ 186-87.

Viewing these allegations favorably to the Plaintiffs, the Complaint alleges that a General Reassessment will result in increased revenue from what the Plaintiffs refer to as “local real estate taxes.”⁷⁰ The Complaint does not, however, allege the magnitude of the alleged increase revenue, or that the overall school funding will significantly increase. *Cantor Fitzgerald* requires the Plaintiffs to allege a nexus or factual basis for the court to conclude that General Reassessment will remedy the alleged violation of the Education Clause.⁷¹ Because of the Plaintiffs’ failure to allege a nexus between the relief they request (a General Reassessment), and the alleged wrong (a violation of the Education Clause), Count III should be dismissed.

In the context of these pleading requirements, the *Delaware Code* places severe restrictions upon Plaintiffs’ ability to allege an overall significant increase in funding resources. If a General Reassessment occurs, the tax rate for each school district must be adjusted so that the maximum possible tax increase is capped at 10%.⁷² In the fiscal year after the fiscal year in which the 10% increase occurs, if the school district desires to again raise the tax rate, the district must call

⁷⁰ *Id.* ¶ 51. These taxes are “taxes for school purposes upon the assessed value of all taxable real estate.” 14 *Del. C.* § 1902(a).

⁷¹ *Cantor Fitzgerald*, 1999 WL 413394, at *3 (“Absent some factual basis from which one could conclude that the requested injunctive relief would remedy the alleged wrong, this Court will not grant a mandatory injunction or other form of coercive relief”).

⁷² *Red Clay III*, 159 A.3d at 722 n.31 (discussing various sections of Title 14).

a special election or a referendum.⁷³ Therefore, pursuant to chapter 19 of Title 14 of the *Delaware Code*, a General Reassessment, at best, may increase local school property tax revenue only by ten percent. By comparison, the referendum discussed in the *Red Clay III* decision raised local taxes by approximately 20% per year⁷⁴ -- twice the percentage increase that Title 14 permits if a General Reassessment occurs.

The *Delaware Code* imposes further restrictions upon the overall impact of a General Reassessment with respect to the amount of financial resources that are available for school districts. Plaintiffs must factor in the arithmetic formulas provided by Chapter 17 of Title 14. An increase in local school property tax revenue will result in a reduction of State funding required by Chapter 17.⁷⁵ This reduction in State funding is the result of a complex formula that pegs state funding for districts to two indices. One of those indices is the ability index. The ability index is the aggregate property value in a school district.⁷⁶ As the ability index rises, the amount of Division III funds decreases by operation of law.⁷⁷

⁷³ See *id.* at 762 n.338 (discussing generally 14 *Del. C.* § 1903 and the referendum process).

⁷⁴ *Id.* at 727.

⁷⁵ *Id.* at 724.

⁷⁶ See generally *id.* at 723 n.36 (discussing the arithmetic operation of 14 *Del. C.* § 1707).

⁷⁷ *Id.*

Therefore, if the aggregate property value in a school district increases as a result of a General Reassessment or inflation, the amount of Division III funds will decrease.

In summary, Plaintiffs criticize the current funding structure of the *Delaware Code* and the various reductions in State funding to school districts. The repeated theme of the Complaint is that the State is obligated to provide all students with a meaningful opportunity to obtain an adequate education and to apportion funds equitably.⁷⁸ While Plaintiffs also allege that the lack of a General Reassessment “compound[s]” that State funding structure,⁷⁹ there are no affirmative allegations concerning the relief sought with respect to Maxwell. Plaintiffs timidly allege that the lack of a General Reassessment results in “less tax revenue [being] available for schools.”⁸⁰ However, they fail to allege that a General Reassessment will solve or significantly assist the State in addressing the funding deficiencies alleged or that a General Reassessment will substantially increase overall funding available to the schools. Absent allegations containing this “factual basis”,⁸¹ Count III should be dismissed because it fails to plainly allege that the relief requested will

⁷⁸ See Complaint ¶¶ 1, 4, 5, 8, 24, 26, 92 and 175.

⁷⁹ *Id.* ¶51.

⁸⁰ *Id.* ¶187.

⁸¹ *Cantor Fitzgerald*, 1999 WL 413394, at *3.

significantly contribute to a State funding scheme that will provide a meaningful opportunity for all students to obtain an adequate education.

III. COUNTS I AND II FAIL TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED AGAINST MAXWELL.

This Court should dismiss each of Counts I and II against Maxwell, as neither count states a claim against Maxwell upon which relief can be granted.

Count I alleges:

[The] defendants are failing to provide the education required by the Education Clause, and there is an existing and continuing constitutional violation.”⁸²

The Complaint alleges only that he “is responsible for the collection of taxes due to New Castle County and the school districts located therein.”⁸³ The Complaint does not allege even that Maxwell has an obligation to comply with the Education Clause. Therefore, Count I should be dismissed against Maxwell as a matter of law.⁸⁴

Count II alleges:

Delaware’s system for funding schools is unconstitutional because it places an unreasonably heavy burden on taxpayers residing in school districts with low property values to provide sufficient resources to children in those districts. Plaintiffs are entitled to an order that will

⁸² Complaint ¶ 179.

⁸³ *Id.* ¶ 20.

⁸⁴ *See generally Red Clay I*, 2015 WL 5853762, at *8-13 (discussed *supra* Section II.B, p. 15) (Board of Elections dismissed as a party because it did not have authority to review alleged violations of election laws).

require that Delaware cease its violation and meet its constitutional obligations.⁸⁵

Similarly, Count II fails to state a claim against Maxwell. Plaintiffs fail to allege that Maxwell has any constitutional obligation with respect to the Education Clause. Count II does not refer to the “defendants;” it asserts that “Plaintiffs are entitled to an order that will require that Delaware cease its violation.”⁸⁶ Plaintiffs’ use of the word “its” as opposed to “their” signifies that the alleged responsible actor in Count II is the State, and not the County. Therefore, Count II should be dismissed against Maxwell as a matter of law.

⁸⁵ Complaint, ¶¶ 183-84.

⁸⁶ *Id.* ¶ 184 (emphasis added).

CONCLUSION

For the foregoing reasons, Maxwell respectfully requests that this Court: (1) dismiss Count III of the Complaint against him for lack of subject matter jurisdiction; or in the alternative, for failing to state a claim for which relief can be granted; and (2) dismiss Counts I and II of the Complaint against him for failing to state a claim for which relief can be granted.

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