

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

REBECCA YOUNG, ELIZABETH H. )  
YOUNG and JAMES L. YOUNG, )

Plaintiffs, )

v. )

RED CLAY CONSOLIDATED )  
SCHOOL DISTRICT and BOARD OF )  
ELECTIONS FOR NEW CASTLE )  
COUNTY, )

Defendants. )

C.A. No. 10847-VCL

**VERIFIED SUPPLEMENTAL AND AMENDED COMPLAINT AND  
PETITION FOR WRIT OF CERTIORARI<sup>1</sup>**

Introduction

1. Plaintiffs, residents of Red Clay Consolidated School District (“Red Clay”), bring this action to prevent Red Clay from imposing a tax increase purportedly approved by a February 24, 2015 referendum in the school district. The claim for injunctive relief arises from Red Clay’s actions, including violations of state and federal law, which deprived opponents of the tax increase of the fair election to which they were entitled. Plaintiffs ask this Court to preliminarily and permanently enjoin Red Clay and all persons acting in concert with it from levying the

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<sup>1</sup> Exhibit G to this document is a redlined document showing the changes from the original Complaint and Petition for Writ of Certiorari.

increased tax until and unless a new referendum is fairly conducted and the tax increase is approved by the district's voters.

2. Plaintiffs also ask this Court to determine on writ of certiorari that the Board of Elections for New Castle County ("Board") committed errors of law when it considered certification of the results of the referendum and when it certified those results.

3. As detailed below, Red Clay deprived opponents of the tax increase of a fair election by using its governmental power to increase the number of likely tax increase supporters who voted and to decrease the number of likely opponents who voted. As a result of this and other violations of law by Red Clay, a majority of the referendum voters voted for the tax increase.

4. The taxes purportedly approved by the referendum could not be levied without certification by the Board, which held a meeting on March 10, 2015 to decide whether to certify the results. The Board was aware at that time of facts that, as detailed below, required a denial of certification. However, it erroneously believed it could not consider those facts, so it did not. As a result, the Board certified the election results.

5. Unless this Court grants relief, the increased tax will be levied. Plaintiffs do not ask this Court to rule on whether Red Clay needs a tax increase in order to provide an adequate education for its children. Under our system of government,

and the statutes enacted by the General Assembly, the residents of Red Clay, and they alone, have the right and power to decide whether there should be a tax increase. Some residents may agree with a decision to increase the tax rate. Others may disagree. But it is essential that the election by which citizens make that decision be fair and in material compliance with the law. In a democracy, that value is paramount.

### Parties

6. Plaintiff Rebecca Young is a citizen of Delaware and a resident of Red Clay Consolidated School District (“Red Clay”). She owns her home in Red Clay.

7. Plaintiff Elizabeth H. Young is a citizen of Delaware and a resident of Red Clay. She is 88 years of age and has a disability that severely limits her mobility.

8. Plaintiff James L. Young is a citizen of Delaware and a resident of Red Clay. He is 90 years of age and has a disability that severely limits his mobility.

9. Defendant Board of Elections is a tribunal of the State of Delaware established pursuant to 15 *Del. C.* § 202.

10. Defendant Red Clay is a school district of the State of Delaware established pursuant to 14 *Del. C.*, ch. 10.

### Jurisdiction

11. This Court has jurisdiction of the claim for injunctive relief pursuant to 10 *Del. C.* § 341 because it is equitable in nature.

12. This Court has jurisdiction of the writ of certiorari under its clean up jurisdiction.

### Facts

13. Red Clay is prohibited by 14 Del. C. §§ 1902-1903 from levying an increased rate of school tax on property in the district unless the residents of the district voting in a referendum approve the tax increase.

14. The Red Clay Board of Education proposed a tax increase to be imposed starting in fiscal 2016, and held a referendum on the proposed increase on February 24, 2015. If the proposed tax increase is implemented, RCCSD tax payers will pay approximately \$15 million in additional taxes during the tax year beginning July 1, 2015.

15. As a government body obligated by law to follow its residents' wishes as expressed in a referendum, and as the government body required by statute to host the referendum in its buildings, Red Clay is required to act neutrally in connection with any referendum held to determine whether the school tax rate may be increased.

16. Red Clay may not apply different rules to proponents of the tax increase than it applies to opponents of the tax increase, and it violates its obligation of neutrality when it acts to favor approval of the tax increase and disfavor rejection of the tax increase.

17. Red Clay may not take any action in violation of Delaware law for the purpose of increasing the percentage of residents likely to favor the tax increase who vote or decreasing the percentage of eligible voters likely to oppose the tax increase who vote, or to otherwise increase the likelihood that a proposed tax increase will be approved by the voters.

18. Red Clay may not violate 6 *Del. C.* § 4504 by taking actions intended to make it difficult for elderly or disabled citizens to vote.

19. Red Clay may not violate 14 *Del. C.* § 1087 and 15 *Del. C.* §§ 4933, 4942 by permitting or engaging in electioneering in the schools it provides as referendum polling places.

20. Patti Nash is an employee of RCCSD who acted as a spokesperson for the school district with respect to the referendum on several occasions. For example, she spoke to a television reporter for a segment about the Red Clay referendum that was broadcast on NBC10 on April 9, 2015.

21. Ms. Nash explained why RCCSD took the actions it did to support passage of the referendum. She told the reporter “We would not have had the money to pay those teachers” and that “We had a lot at stake.”

22. RCCSD has twenty-eight public schools other than charter schools. On the day of the referendum it held events at all twenty-eight schools that were expected

to attract parents to those school buildings, which were also serving as polling places for the referendum.

23. Ms. Nash told the NBC10 television reporter that those events “are get-out the vote events” and that “they are parent events that are open to every parent.”

24. When the reporter asked her whether people without children could go to the events, she said “I don’t know that they would have a desire to come to family bingo night.”

25. In using its school buildings and its staff to conduct those twenty-eight events, Red Clay intended that the events would bring parents to the schools during the referendum. Red Clay wanted parents to vote in the referendum because it believed that the parents, or most of them, would vote for the passage of the tax increase. It expected that parents would vote for passage of the tax increase at a higher rate than other eligible voters.

26. Ms. Nash told the television reporter that RCCSD paid for pizza and drinks for the school events on the day of the referendum and that it was done to encourage families with school children to attend events at the schools during the referendum.

27. In the past, when a school district had purchased pizza for referendum day events, the Delaware Commissioner of Elections, who is an ex officio member of the Board of Elections for New Castle County, advised that that was not

permissible under the state election law. On information and belief, the Commissioner and her staff believed that notification was sufficient to prevent such activity by school districts in connection with future tax referenda.

28. RCCSD controls the use of its school building, the parking lots adjacent to those buildings on school property, and the ground surrounding those schools.

29. Red Clay caused the following to occur:

- a. Empty school buses were parked in the handicap parking spaces in front of schools dissuading, or making it impossible for, people with mobility disabilities (who tend to be older on average than people without mobility disabilities ) from voting. Red Clay did this because it is generally believed that older people, who do not have children in the schools, are more likely to vote against education tax increases than the parents of school children; Red Clay leadership told the General Assembly Joint Finance Committee that proposed legislation would result in senior citizens turning out in large numbers to vote against the proposed tax increase. Plaintiffs, who drove twice to a Red Clay school on the day of the referendum for the purpose of voting against the proposed tax increase, were unable to do so because of the parking obstruction. They could not park their car near the school, Elizabeth Young and James Young were physically unable to get to

the school from the distant location where they would have had to have parked, and their daughter, Rebecca Young, was not comfortable leaving them alone in the car in order to vote by herself.

- b. Red Clay scheduled school events, such as family fun nights, that successfully drew parents of school children (who tend to support education tax increases at a greater rate than the elderly) to the schools that were being used as polling places. This filled the parking lots near the schools, making it hard for the elderly to park nearby, and gave the false impression to the unknowing that the voting lines were long, thereby dissuading them from voting unless they had other reasons to go into the school, such as for a family fun night with their school age children. Red Clay has characterized the events it conducted at the schools on the night of the referendum as “get out the vote activities.” (See Exhibit A, second unnumbered page). But they were not neutral get out the vote activities – they were designed to get out the vote of only the residents most likely to support the tax increase.
- c. Red Clay did not send notices of the referendum to all residents of the district. Instead, it drew the parents and guardians of Red Clay students to the schools in the manner described above and by sending letters to them six days before the referendum urging them to come to



the polls “at any Red Clay school and cast a vote for your child’s future”. (See Exhibit B hereto.) Red Clay did this because it expected the percentage of parents and guardians who favored the tax increase to be greater than the percentage of other eligible voters who favored it.

- d. For the same reason, the Red Clay’s Superintendent sent a “SchoolMessenger notification” shortly before the referendum “to remind parents to vote.” (See Exhibit B, second unnumbered page.)
- e. When the election was being conducted, persons entering Baltz School, a Red Clay polling place, were met with signs telling them to vote for the referendum. On information and belief, that occurred at other Red Clay polling places as well.
- f. Persons entering A.I. DuPont Middle School at the time of the election were met by two parents stationed at desks by the door telling them that if they did not vote for the tax increase their children would not have after-school activities. On information and belief, that occurred at other Red Clay polling places as well.
- g. Principals at Red Clay schools directed staff to remove from school property signs urging residents to vote against the tax increase, while leaving in place signs urging residents to vote for the tax increase.

- h. Students at one or more Red Clay schools were invited to pizza/dance parties and given a check off card entitling them to pizza only if their parents voted.
  - i. Eighteen year olds at McKean High School were called out of class to vote; poll workers at A.I. DuPont High School stopped students in the school hallway to ask their ages and to tell them about voting if they were 18 years of age. On information and belief, students at non-public high schools weren't treated similarly.
30. In order to send parents and guardians the messages referred to in Paragraphs 29(c) and (d) hereof, RCCSD used student information that it obtained as a school district. The names and addresses of all parents and guardians of RCCSD students are not available to the public.
31. By conducting get out the vote activities directed only at the group of adults expected to support the referendum, permitting its schools to be used for illegal electioneering in support of the referendum and using school property and staff in a manner that made it difficult and, in some cases, impossible for the elderly and others who did not have business in the schools to vote, RCCSD increased the percentage of referendum voters who voted for the tax increase.
32. The Superintendent of RCCSD expressed pride in “the Referendum campaign we ran” in support of the proposed tax increase. See Exhibit A,

unnumbered page 1. He also acknowledged that RCCSD had planned get out the vote activities “for every referendum” in the past. *Id.*, unnumbered page 2.

33. RCCSD allowed a political action committee, Friends of Red Clay Referendum PAC, whose purpose was to support approval of RCCSD tax referenda to use school property. The committee’s registration information with the Department of Elections gives its physical address as 1502 Spruce Avenue, Wilmington. See Exhibit E, first page. That address is also the address of a RCCSD school, Baltz Elementary, and the RCCSD administrative offices.

34. RCCSD permitted the Friends of Red Clay Referendum PAC to use the RCCSD computers and email system. A November 20, 2014 email from the president of the PAC to the Delaware Commissioner of Elections seeking a waiver of fines assessed against the PAC by the Department of Elections was sent from a RCCSD email address and the sender of that email identified himself as “Financial Analyst Red Clay School District.” See Exhibit E, fourth and fifth pages.

35. If RCCSD is permitted to collect and retain the tax increase, purportedly approved by the February 24, 2015 referendum, it will in future referenda engage in activities similar to those challenged in this action.

36. RCCSD has approximately 165,000 adult residents who could have voted in the referendum. The result of the referendum probably would have been different if RCCSD had conducted a neutral get-out the vote campaign rather than a

campaign designed to favor approval of the tax increase, or if it had not conducted any get-out the vote campaign, or if it had not made it difficult for the elderly to vote.

37. The probable effect of RCCSD's actions on the result of the referendum can be seen by comparing that result to the result of a the tax increase referendum conducted the same day in the Christina School District, which is adjacent to RCCSD and has slightly more eligible voters. Christina School District did not target get-out the vote activities to parents while omitting the other eligible voters. It proposed two tax increases, and both were resoundingly defeated—one by a vote of 6,076 against the increase and 2,119 for it, and the other by a vote of 6,348 against and 1,826 against.

38. As a result of Red Clay's actions favoring approval of the referendum, some of which are described above, the number of votes favoring the tax increase exceeded the number of votes opposing the tax increase by 6,395 to 5,515. The vote tally could not entitle Red Clay to levy the additional tax unless it was certified by the Board of Elections.

39. In deciding whether to certify the referendum results, the Board knowingly and intentionally disregarded substantial evidence of Red Clay's efforts to skew the vote.

40. On and after the day of the referendum, the Department of Elections for New Castle County (“Department”) received complaints about the lack of parking for voting, illegal parking, the removal of strategically placed signs opposing the tax increase (but not signs favoring the tax increase), “robo calls” from a principal to parents urging parents to vote in support of the tax increase, people entering a polling place being met by parents stationed there telling them that if they did not vote for the tax increase their children would not have after-school activities, and potential voters being given a form that would entitle their children to pizza, but only after the form was checked to show that the parent had voted.

41. The Department notified the Board of these complaints before the meeting at which the Board certified the election results. (See Exhibit C.) Although the Department was sufficiently concerned about complaints to advise the Board that it would be contacting the Attorney General to request that the Department of Justice investigate, it disregarded them when it recommended that the Board certify. (See Exhibit C, ninth and tenth unnumbered pages).

42. The Board determined not to consider the Department’s concerns or the information the Department supplied in deciding whether to certify the election results.

43. Evidence showing that the facts set forth in paragraph 20 hereof are true, that Red Clay had violated Delaware anti-discrimination and electioneering law,

and that Red Clay had prejudiced the rights of the opponents was presented to the Board when it met to decide whether to certify the election results.

44. On March 7, 2015 Plaintiff Rebecca Young wrote her State Senator, Karen Peterson, expressing concern about the referendum process, describing her two unsuccessful attempts to park close enough to North Star Elementary School so that she and her parents could vote. She told Senator Peterson that “access was impossible.

45. Prior to the March 10, 2015 Board of Elections meeting, approximately 40 other people wrote or called Senator Peterson and her office describing problems they perceived with the referendum process and their attempts to vote.

46. Senator Peterson presented that information in writing to the Board of Elections at its March 10, 2015 meeting. She also made an oral presentation regarding problems with the referendum at the Board’s March 10, 2015 meeting and asking the Board not to certify the results. A copy of Senator Peterson’s remarks is attached hereto as Exhibit F.

47. The Board knowingly and intentionally disregarded the evidence of Red Clay’s interference with a fair election process because it believed that doing so was outside its authority. According to the draft minutes of the March 10, 2015 meeting posted on the Department’s website, the President of the Board stated that “the Board’s authority is to certify the accuracy of the results presented, and that is

the only basis of their authority.” (Exhibit D hereto, ¶ 7) (available at <https://egov.delaware.gov/pmc/Event/Details/26733>, last visited March 25, 2015).

48. Having rejected consideration of relevant evidence showing that the election was conducted in an unfair and improper manner, the Board certified the referendum. As a result, unless this Court grants relief, the tax rate levied on all taxable real property in Red Clay will increase on July 1, 2015.

It is RCCSD’s position that it was entitled to act as alleged above because it needs more funds than it expected to receive from taxpayers under the tax rate in effect at the present time. RCCSD’s superintendent has criticized the referenda system as an ineffective way to fund education. People of good will can have different views on whether the RCCSD tax rate should increase and on whether the referenda system as an ineffective way to fund education. But as long as the referenda system remains the law, RCCSD is not entitled to circumvent the law by using governmental resources to obtain the result desired by its administrators.

49. Plaintiffs lack an adequate remedy at law.

### **Count I** (Injunctive Relief)

50. Plaintiffs incorporate herein by reference paragraphs 1 through 49 hereof as if set forth at length.

51. Red Clay is a government agency created by the State of Delaware. It is not a private citizen, a political party or a registered political action committee, such as the Friends of Red Clay, which were entitled to work for a specific result in a referendum. Red Clay's actions supporting its desired outcome of the referendum were impermissible official governmental actions.

52. By using its governmental power to make it difficult for elderly and disabled residents to vote, in violation of 6 *Del. C.* § 4504, to permit and encourage electioneering in support of the tax increase, notwithstanding the prohibition of electioneering established by 14 *Del. C.* § 1087 and 15 *Del. C.* §§ 4933, 4942, and to direct get-out-the vote tactics only to the segment of the population expected to support the tax increase, Red Clay created an election process permeated by unfairness.

53. By interfering with the rights of plaintiffs and the other residents who did not support the tax increase, and by depriving them of an equal chance to prevail in the referendum, Red Clay rendered resulted in the election process fundamentally unfair.

54. Red Clay thereby violated plaintiff's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution and their right to a free and equal election under Article I, § 3 of the Delaware Constitution.



55. Plaintiffs are entitled to relief under 42 *U.S.C.* § 1983 and Article I, § 9 of the Delaware Constitution, including injunctions barring imposition of the tax increase until and unless it is approved by a referendum that is conducted fairly.

**Count II**  
**(Writ of Certiorari)**

56. Plaintiffs incorporate herein by reference paragraphs 1 through 55 hereof as if set forth at length.

57. This Court has discretion to exercise jurisdiction over Plaintiffs' Petition for Writ of Certiorari because it has jurisdiction over the claim for injunctive relief and exercising jurisdiction on the writ of certiorari will enable the Court to resolve the whole controversy and give complete and final relief. Consideration of the writ of certiorari together with the claim for injunctive relief will promote judicial efficiency, avoid multiple suits and redundant costs, eliminate the possibility of inconsistent results and enable the granting of complete relief in one action.

58. The Board of Elections was required by 14 *Del. C.* §1083(b) to present a certification of the results of the referendum to the Superintendent of Red Clay following the election, and the tax increase voted upon during the referendum could not be imposed on real property located in Red Clay absent certification by the Board that the increase had been approved by the referendum.

59. The statutes establishing and governing the Board do not state what it is to consider when deciding whether to certify the results of an election. But “certify” is commonly understood to state officially that something is true, accurate, or of a satisfactory standard. The result of an election process cannot be said to be true, accurate, or of a satisfactory standard if the government actions in connection with the election violated the law and resulted in a fundamentally unfair election process.

60. The General Assembly is presumed not to intend an absurd result when it enacts a statute. Interpreting the statutory certification provision to require only an arithmetic exercise that disregards the governmental violations of law rendering the election process unfair would violate that presumption.

61. The record of the Board’s certification shows that it committed an error of law when it determined that it had only the authority to consider the accuracy of the vote totals, and that it committed an error of law when it certified the result notwithstanding Red Clay’s having skewing the vote totals.

62. This Court should issue a writ of certiorari to the Board of Elections, review the record of the certification of the referendum results, and find that the Board committed legal error.

Wherefore, Plaintiffs request this Court to:

1. Preliminarily and permanently enjoin RCCSD and all persons acting in concert with it from levying the tax increase voted upon in the February 24, 2015 referendum;
2. Direct RCCSD to refund to its tax payers all payments of the increased tax paid by them if the tax increase is imposed;
3. Permanently enjoin Red Clay from taking any actions favoring one side in future tax increase referenda;
4. Issue a writ of certiorari to the Board of Elections directing it to deliver a copy of the full record of the Red Clay tax referendum certification by the Board to the Register in Chancery;
5. Rule that the Board committed errors of law in determining its authority and in certifying the result of the referendum; and
6. Grant Plaintiffs their attorneys' fees, costs of suit and such other relief as the Court finds just and proper.

/s/ Richard H. Morse

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