

CHRISTOPHER E. BOUCHAT,

Plaintiff,

v.

STATE OF MARYLAND,

Defendant.

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IN THE
CIRCUIT COURT
FOR
CARROLL COUNTY
Case No.: 06-C-15-068061

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MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS

In this lawsuit, plaintiff Christopher Bouchat seeks to re-litigate his unsuccessful challenge to the 2012 legislative districting of the State. The plaintiff’s claims must be dismissed for at least four reasons: (1) The Circuit Court for Carroll County does not have subject matter jurisdiction of redistricting challenges; (2) The complaint does not state a claim upon which relief may be granted, but instead asks this court simply to ignore controlling precedent as wrongly decided; (3) The complaint is untimely, having been filed more than two-and-one-half years after the May 1, 2012 deadline set for such actions by the Court of Appeals; and (4) The plaintiff’s claims in this lawsuit are identical to those he raised and litigated in 2012, so his effort to re-try those claims in this Court are barred by *res judicata*.

STATEMENT OF FACTS

Following the 2010 census, the Governor’s Redistricting Advisory Committee convened in March 2011 to develop a districting plan as required by Art. III, § 5 of the Maryland Constitution. *See In re 2012 Legislative Districting*, 436 Md. 121, 128 (2013).

The Governor's plan, introduced as House and Senate Joint Resolution No. 1 in the 2012 Legislative Session of the General Assembly, became effective on February 24, 2012. *Id.* According to procedures promulgated by the Court of Appeals, any challenges to the validity of the plan were required to be filed with the Court of Appeals no later than May 1, 2012. *Id.* at 129. On April 26, 2012, plaintiff Christopher E. Bouchat filed a petition challenging the validity of the plan, alleging that it violated the U.S. Constitution's guarantee of a republican form of government. *Id.* at 138. Other challenges filed after May 1, 2012, were dismissed as untimely. *Id.* at 129 n.6.

Judge Wilner, appointed to act as Special Master by the Court of Appeals, conducted evidentiary hearings, considered the parties' briefs submitted for and against the validity of the plan, and issued a report to the Court of Appeals. Oral argument on the petitions and on exceptions made to the Special Master's report were heard by the Court of Appeals on November 7, 2012. *See In the Matter of 2012 Legislative Districting of the State*, 429 Md. 301 (2012). By its order dated November 9, 2012, the Court of Appeals held that the Governor's plan was consistent with the requirements of the Constitution of the United States and the Constitution of Maryland, and denied all relief sought by the petitioners. *Id.* An opinion explaining the reasons for that decision was issued December 10, 2013. *In re 2012 Legislative Districting*, 436 Md. 121 (2013).

Plaintiff's 2012 Petition

In 2012, the plaintiff challenged the validity of the Governor's plan and Article III, § 3 of the Maryland Constitution, alleging that both were inconsistent with Article IV, § 4 of the U.S. Constitution, which guarantees that each State shall have a republican form of

government.¹ *In re 2012 Legislative Districting*, 436 Md. at 138-39. The plaintiff asserted that the U.S. Constitution is violated when members of the State Senate and House of Delegates are chosen from legislative districts that cross county lines. *Id.* These arguments were rejected by the Court of Appeals as “without merit.” *Id.* at 144.

Plaintiff’s 2015 Complaint

The complaint filed in this Court alleges that the 2012 districting scheme, because it includes districts that cross county lines, denies the plaintiff’s right to a republican form of government as guaranteed by Article IV, § 4 of the U.S. Constitution. *See* Complaint, ¶¶ 7-9. The complaint argues that the results of the 2014 elections are evidence of purportedly unconstitutional “discrimination” by voters in one county against candidates from another and that such discrimination constitutes a denial of the plaintiff’s voting rights. *Id.* Finally, the complaint asserts that the U.S. Supreme Court has misinterpreted Article IV’s “guarantee clause” and urges this Court to decline to follow the Supreme Court’s holdings. *Id.* at ¶¶ 12-17.

STANDARD OF REVIEW

Motion to Dismiss

“The grant of a motion to dismiss is proper if the complaint does not disclose, on its face, a legally sufficient cause of action.” *Lubore v. RPM Associates*, 109 Md. App. 312, 322 (1966) (quoting *Hrehorovich v. Harbor Hosp. Ctr.*, 93 Md. App. 772, 784

¹ Article IV, § 4 of the Constitution of the United States provides: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”

(1992)). A court may rule on a *res judicata* defense raised in a motion to dismiss if the defense “clearly appears on the face of the complaint.” *Savary v. Cody Towing and Recovery, Inc.*, 2011 WL 337345, *2, Civ. No. DKC 10-2159 (D. Md. Jan. 31, 2011) (ruling on motion to dismiss under Fed. R. Civ. P. 12(b)(6) and citing cases) (citations and internal quotation marks omitted); *see also Cochran v. Griffith Energy Services, Inc.*, 426 Md. 134 (2012) (affirming dismissal of a complaint on *res judicata* grounds pursuant to a motion to dismiss).

ARGUMENT

I. THIS COURT LACKS JURISDICTION OF CHALLENGES TO THE LEGISLATIVE DISTRICTING OF THE STATE UNDER ARTICLE III, § 5 OF THE MARYLAND CONSTITUTION

The duty to create and adopt a plan for the legislative districts of the State after each decennial census is set forth in Article III, § 5 of the Maryland Constitution. That section also provides a means by which a registered voter may seek judicial review of the enacted plan. In relevant part, § 5 provides:

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.

Md. Const., Art. III, §5 (2003 Repl. Vol. & 2014 Supp.).

A special statutory remedy, such as Md. Const. Art. III, § 5, is presumed to be an exclusive remedy. The Court of Appeals explains that,

Where there exists a special statutory remedy for the resolution of a particular matter, as well as an ordinary action

at law or in equity, whether the special statutory remedy is exclusive, and preempts resort to the ordinary civil action, is basically a question of legislative intent. . . [A]bsent a legislative intent to the contrary, it will usually be deemed that the the Legislature intended the special statutory remedy to be exclusive.

White v. Prince George's County, Maryland, 282 Md. 641, 649 (1978) (citing cases); *see also Veydt v. Lincoln Nat'l Life Ins.*, 94 Md. App. 1, 4-5 (1992) (exclusive statutory remedy required dismissal of common law tort claim not brought in accordance with statute). Similarly, "where a statute authorizes or permits a person or agency to take a certain type of action in a particular manner, such manner becomes a mandatory limitation, and the action must be taken in conformity with it." *Lamb v. Hammond*, 308 Md. 286, 309 (1987) (quoting *Office & Professional Employee Int'l Union v. Mass Transit Admin.*, 295 Md. 88, 96 (1982)).

Because judicial review of legislative districting plans has been specially provided for in § 5, that remedy must be regarded as exclusive. Section 5's procedure establishes original jurisdiction in the Court of Appeals, not in the Circuit Court for Carroll County. Accordingly, this Court lacks subject matter jurisdiction of the complaint.

II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The plaintiff urges this Court to reject as wrongly decided various decisions of the United States Supreme Court interpreting Article IV, § 4 of the U.S. Constitution and to adopt instead the plaintiff's view of these provisions. *See* Complaint, ¶¶ 12-17. Those decisions are of course binding on this Court and authoritatively interpret the meaning of the U.S Constitution. *See Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137 (1803). In

consequence, the plaintiff's request that this Court reject the holdings of the U.S. Supreme Court fails to state a claim for relief that this Court may provide.

III. THE COMPLAINT IS UNTIMELY

The Court of Appeals ordered that any challenge to the legislative districting plan adopted for the State must be filed on or before May 1, 2012. *In re 2012 Legislative Districting*, 436 Md. at 128-29. Challenges filed beyond that deadline were dismissed as untimely. *Id.* at 129 n.6. Plaintiff's January 2015 complaint, filed more than two-and-one-half years after the May 1, 2012 deadline, must therefore be dismissed for the same reason.

IV. PLAINTIFF'S CLAIMS ARE BARRED BY RES JUDICATA

Res judicata "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Cochran*, 426 Md. at 140 (internal quotation marks omitted). A party establishes *res judicata* by demonstrating three elements: (1) the parties in the present action are the same or in privity with the parties in the earlier action; (2) the claims at issue in the present action are identical to those determined in the previous action or could have been raised and determined in the previous action; and (3) there was a final judgment on the merits in the previous action. *Id.*

All three elements are present here. The plaintiff was a named party in the 2012 redistricting litigation. His 2015 complaint concerns the identical subject matter—the 2012 legislative districting plan—that was litigated in 2012 and, in fact, even presses the same legal theory that was rejected as without merit in the previous action. Finally, the Court of Appeals order of November 9, 2012, denying all relief requested by the petitioners (including Mr. Bouchat), represents a final judgment on the merits in the earlier case. *See* 429 Md. 301.

The plaintiff’s purported reliance on “new evidence” to re-litigate his case misconstrues the judgment of the Court of Appeals and is irrelevant to the question of claim preclusion. First, it is clear that in the 2012 litigation the Court of Appeals rejected the plaintiff’s legal theory as without merit, regardless of any evidence showing a lack of electoral success for Republican party candidates or a tendency for voters to prefer candidates from the voter’s own county. *In re 2012 Legislative Districting*, 436 Md. at 140 (referencing Special Master’s conclusion that U.S. Const., Article IV, § 4 does not “create a Federal Constitutional basis for judicial relief.”). The Court’s observation that Mr. Bouchat had not carried his burden to demonstrate the invalidity of the districting plan (*see id.* at 143-44) was not an offer to revisit his failed legal theories after the 2014 elections. Even if the recent election results did show that candidates have a harder time gaining support from voters of a different county, such a finding would not support invalidation of cross-county legislative districts.

Second, and more importantly, even assuming that the 2014 elections could be viewed as giving evidentiary support for the plaintiff's argument, the preclusive effect of the prior judgment still bars any re-litigation of plaintiff's challenge to the districting plan. *See, e.g., Serna v. Holder*, 559 Fed. Appx. 234, 238 (4th. Cir. 2014); *Mbongo v. JP Morgan Chase Bank*, 2014 WL 3845443, Civ. No. PWG-14-1620 (D. Md. Aug. 4, 2014) (additional evidence allegedly supporting plaintiff's allegations did not alter preclusive effect of prior judgment based on the same underlying transaction).

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss should be granted and the plaintiff's complaint dismissed with prejudice.

Respectfully submitted,

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