IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PARENT PLAINTIFF LAKESHA DOE,
et. al. PLAINTIFFS

v. CASE NO. 4:15-cv000623 DPM

MICHAEL POORE, in his official capacity as
Superintendent of the Little Rock School District,
in his Official Capacity DEFENDANT

Plaintiffs' Memorandum In Support of Reconsideration and Other Relief

Plaintiffs respectfully request that the Court reconsider its dismissal of their racial discrimination and freedom of expression claims. The Court's Order does not address "all the facts" [Order at 3], or "the full weight of the facts." [Order at 30] Error is due, in part, to the failure to apply governing precedent, the failure to confront reasonable legal arguments, and reliance on distinguishable precedent. The Order [at 28-30] introduces multiple matters arising after the filing of the motion to dismiss and supporting brief, as well as Plaintiffs' response to the motion and brief; chooses the detail in which to present those matters; and then [a] applies the plausibility standard to those matters, ruling against Plaintiffs, and [b] denies Plaintiffs the opportunity to file amendments regarding these matters, all without the opportunity for Plaintiffs' involvement. The decision cited by the Court does not support or justify this "process."

Plaintiffs request that the Court after reconsideration : [a] deny dismissal of their racial discrimination claims based upon the takeover of the LRSD and the removal of the LRSD School Board; [b] deny dismissal of the freedom of expression claims of Mrs. Joy

Springer and Dr. Jim Ross; [c] revise the Final Scheduling Order by providing a deadline for Plaintiffs' filing of a further amendment addressing the addition of charter school seats raised by the Court [see Rule 16(b)(1), (b)(4),Fed.R.Civ.Pro.]; [d] allow Plaintiffs to file only the text of the amendment, as authorized in Local Rule 5.5(e); [e] after filing of the amendment, and any appropriate submissions by the State Defendants and Plaintiffs, deny dismissal of the charter school racial discrimination claim.

Plaintiffs emphasize that they do not waive their right to appeal the dismissal of their Thirteenth Amendment claim.

A. Racial Discrimination Claims [Other than Regarding Charter Schools]

1. Introduction

Success on Plaintiffs' racial discrimination claims requires, ultimately, a showing of racial effect (impact) and racial intent (purpose). Washington v. Davis, 426 U.S. 229, 238-244 (1976); Village of Arlington Heights v. Metropolitan Housing Development Authority, 429 U.S. 252, 264-65 (1977). Plaintiff must establish, at minimum, that "a discriminatory purpose has been a motivating factor in the decision . . . . " Arlington Heights, 429 U.S. At 265-66. The Order accepts, in applying the plausibility standard, that there are racial effects. [Order at 2-3, 19] The adverse effects of the challenged actions affected Mrs. Springer, as a School Board member, her three African American colleagues, and African American and other black students and parents -- "more than the city's white population." [Order at 2, 19] The Order concludes, however, that Plaintiffs failed to satisfy the plausibility pleading standard with regard to racial intent (purpose). [At 24] The Court errs, the principal reason for error being that the Order does not address "all the facts."

Preliminarily, Plaintiffs note that the analysis in the paragraph beginning "First, racial effect" [#6 at 19-20] is incomplete. The Washington v. Davis opinion states that at times racial effect "may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is difficult to explain on nonracial grounds." [426 U.S. at 242]. As noted in the Order [at 20], the same point is made in Arlington Heights , 429 U.S. at 266 ("a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action . . ."). This Court rules that this is not such a case [Order at 20]; plaintiffs do not disagree. However, this does not render the racial effects in this case irrelevant. Washington v. Davis also states [426 U.S. at 242]: "Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious discrimination forbidden by the Constitution." Arlington Heights is to the same effect [429 U.S. at 266]; see also Clients' Council v. Pierce, 711 F.2d 1406, 1409 (8thCir. 1983) (citing Supreme Court authority). Consistent with these decisions, Plaintiffs rely on racial effect as one relevant factor.

A central premise in the Court's rejection of these racial discrimination claims as not plausible appears at pages 21 and 24 of the Order. At page 21, the Court refers to "a group of citizens with strong policy views . . .wanting a turn at putting their views into practice." At 24, the court alludes to: ". . . public officials pursuing their competing policy agendas – with varying success depending on who had the votes"; to "ideas and elections hav[ing] consequences for public policy"; and to ". . . State [Board] actions show[ing] representative government pursuing divisive but not unconstitutional policy." In sum, the Court rules that the racial effects are best explained as the consequence of a choice, in good faith, among "competing [lawful] policy agendas." Therefore, the claim of

"purposeful, invidious discrimination . . . is not a plausible conclusion." This analysis is also incomplete.

The Court recognizes a Plaintiff counter-contention, namely that their allegations and argument actually show bad faith in the takeover process probative of racial intent. The Order provides: "[Plaintiffs] say that former Superintendent Dexter Suggs was in cahoots with the State Board and various white civic leaders. Here's the story Plaintiffs tell." [# 6 at 7] However, the Order neither sets forth all of the allegations pertinent to this contention, nor confronts the argument made by Plaintiffs based upon a complete factual picture drawn from the Amended Complaint and other materials provided by the parties. [Order at 1 ("public records and documents")] See Clients' Council v. Pierce, 711 F.2d 1406, 1409 (8thCir. 1983) (Court "must . . . [examine]" the "totality of the relevant facts" [citing four Supreme Court decisions]).

2. The Factual Picture; "In Cahoots"

On July 10, 2014, the State Board of Education classified six LRSD schools as being in academic distress. [#6-1 at 112; Order at 9-10] By letter of July 14, 2014, ADE provided notice of this action to Superintendent Suggs. [#6, Amended Complaint Exh. 2]

On October 14, 2014, the State Board Special Committee on Academic Distress conducted a "work session" to discuss the LRSD schools identified as meeting the academic distress definition. The speakers during this session included Superintendent Suggs and six of the seven members of the LRSD Board of School Directors [School Board]. [#6 at 198; Order at 11] The Order omits the following two sentences of Paragraph 198: "While speaking during this session Superintendent Suggs made multiple statements intended to lead to the actions ultimately taken by the State Board,

his continuation as the superintendent, takeover of the district, and ouster of the entire LRSD School Board. State Board members did not ask questions to probe the basis, if any, for Dr. Suggs' statements." Paragraph 198 continues: "The Special Committee determined that LRSD representatives should return to the Committee after three months to report on progress in implementing the LRSD's plans for the six (6) schools." [Order at 11 ("The Committee agreed to reconvene in three months to get a report on LRSD's progress in fixing the six schools.")]

Paragraphs 205 and 206 of the Amended Complaint provide:

205. On November 30, 2014, Member Jay Barth of the State Board of Education affirmed in an e-mail the following language:

He [Barth] believes that what Dexter is proposing, where the LRSD maintains control of the transportation and food services and then outsources the curriculum/student achievement services is probably a Conversion Charter model. See Attachment to Complaint. [Exhibit 4].

206. Dexter Suggs did not inform the LRSD School Board members of his bad faith, back room deal-making.

The Order's reference to these two paragraphs is limited to the following: "A few days later, State Board member Jay Barth, in an e-mail, affirmed his interest in charter schools and his understanding that what Superintendent Suggs was proposing for LRSD looked like a `Conversion Charter' model. No. 6-1 at 19." [Order at 12] The Order omits mention of paragraph 206. These paragraphs and this omission are significant. This is six weeks after the Superintendent and six of seven LRSD School Board members met with the State Board Committee, a meeting ending with the requirement that LRSD return in three months "to report on progress in implementing the LRSD's plans for the six (6) schools." [#6 at 198] Yet, a State Board member knows that the Superintendent is

"proposing" that some outside entity takeover responsibility for "curriculum/student achievement services" in schools, six schools, all schools, not specified. No allegation or document provided the Court suggests that this proposal was the plan which the LRSD was implementing as of October 14, 2014. Moreover, the Superintendent did not inform Mrs. Springer or other School Board members of this deal-making. Section 6-13-620(2) of the Arkansas Code provides that it is the School Board which has the power and the duty to "[d]etermine the direction of the school district; . . ."

"In early January 2015, LRSD reported its progress to the State Board. [# 6 at Para. 207] At the meeting, Superintendent Suggs made several comments `intended to lead to state takeover of the LRSD and ouster of the entire LRSD School Board[.]' No. 6 at para. 207. The State Board members didn't question Suggs on the basis for his statements. " [Order at 12]

"[On January 8, 2015], the Commissioner of Education told Superintendent Suggs and the LRSD Board by letter that the State Board planned to hold a meeting [on January 28, 2015] to discuss whether to invoke any of the actions authorized by Ark. Code Ann. Sec. 6-15-430 for schools in academic distress. No. 6 at para. 209; No. 6-1 at 112. The cited code section is the takeover statute." [Order at 12-13]

On January 28, 2015, during the meeting, "Superintendent Suggs `again made statements intended to lead to state takeover of the LRSD and ouster of the entire school board.' No. 6 at para. 219." [Order at 14] The Order omits mention of the following additional sentence in Paragraph 219: "Again, no State Board member questioned or disputed the basis for his statement." The State Board ultimately approved at this meeting, by a 5 to 4 vote, a takeover of the LRSD, including removal of all School Board

members, along with "ret[ention] [of] Superintendent Suggs on an interim basis under the Commissioner's authority. No. 6 at para. 223." [Order at 14-15]

Paragraph 235 of the Amended Complaint states: "On January 29, 2015, Superintendent Dexter Suggs held a news conference. He stated during this event that the takeover was 'something positive.'" The Order omits mention of this important factual allegation.

"A few months after the takeover, Superintendent Suggs, who's black, was fired after it was discovered that he plagiarized his dissertation." [Order at 15]

The portion of Member Barth's e-mail traffic concerning Superintendent Suggs' undisclosed dealings warrants further discussion. Of course, as the Order states [at 14], Mr. Barth later offered a motion, defeated 5 to 4, for an approach to the LRSD not involving takeover. Member Barth also voted against Ms. Saviers' subsequent successful motion. These facts do not render irrelevant Plaintiffs' reliance on Mr. Barth's knowledge of the Suggs' position. The e-mail traffic also shows knowledge of Superintendent Suggs' view by a private citizen who, with Mr. Barth's approval, is free to share it with two or three other private citizens and the citizen's " key troop." [#6 Exh. 4, 11-30-2014 at 4.c] It is a "reasonable [inference] from [these facts as to Mr. Barth and other persons]" [Order at 3] that other State Board members were also aware by the time of the January 2015 meetings that Superintendent Suggs was not operating in a straightforward manner, consistent with the authority of the School Board. Absent depositions and testimony, Plaintiffs and the Court can not know the full picture.

The fore-going 10 paragraphs deal with those aspects of Plaintiffs' " in cahoots" contention which emerge from factual allegations in the Amended Complaint and other

materials specifically related to Superintendent Suggs. They set forth, alone, powerful support for the occurrence of a rigged, bad faith process. Scenario was ---- earlier academic dishonesty by Mr. Suggs; statements detrimental to position of LRSD School Board at three meetings; no State Board member questioning or probing; a Suggs' proposal contrary to plan of LRSD School Board; School Board empowered to determine District's direction; as of November 30, 2014, a State Board member knows of Suggs' proposal; it will be disseminated to many people; Superintendent Suggs does not inform LRSD School Board of his communicating a proposal diverging from School Board's plan; Superintendent Suggs, promptly, describes takeover, which included ouster of full School Board, as "something positive"; State Board majority retains Mr. Suggs in position of superintendent.

The Order omits mention of multiple allegations supportive of the "in cahoots" argument. The following content of Bell Atlantic Corporation v. Twombly bears emphasis [at 556]: "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations."

3. Other Allegations and Arguments

Other allegations and arguments also evidence a bad faith, sham process and establish other indicia of discriminatory intent, in the light of Arlington Heights and other precedent, for example, "the alternatives that were available" [Clients' Council v. Pierce, 711 F.2d at 1409] but , without explanation, not invoked.

** The State Defendants and their agents repeatedly relied on test results from the years 2011-12, 2011-12, and 2012-13 in violation of the timeliness standard in Section 10.04 of their own ACTAAP Rules. On the first occasion, a letter of May 1, 2014, notice

was given to the LRSD of schools identified as in academic distress more than 150 days after the release of the state assessment results by the Department, not within the 30 day regulatory window. The subsequent occasions were [a] on July 10, 2014 , when the State Board classified six LRSD schools as in academic distress; [b] On January 8, 2015, in the letter informing LRSD officials of the January 28, 2015 proceeding; [c] during the January 28, 2015 proceeding; and [d] in the letter of January 28, 2015, written notice to LRSD officials of the takeover action. [See #51, Plaintiffs' Response at 22-23, 24, 27, 30 (discussion of these facts with cites to Amended Complaint and other documents); see also Order at 15 ("The State Board never mentioned the November 2014 notice of academic distress. No. 6 at para. 272")] The Order [at 9] mentions the timeliness point without citation to the pertinent Rule section, or any of the detail provided in Plaintiffs' Response.

** There were no performance-based criteria for use in determining the proper decision regarding individual LRSD School Board members. [See the letters cited above and Amended Complaint Exhibit 12] Multiple provisions of Section 6-15-430 identified the alternative of differing treatment School Board members based upon different facts. See 430(a)(2); (a)(3) ("panel appointed by the Commissioner of Education"); (b)(9).

** On January 28, 2015, with the possible outcome takeover of a local school district and removal of seven School Board members seated by the voters, the State Board gave the LRSD only 20 minutes for its presentation. [#6 at 217] [Order at 14] The LRSD "folks" [id.] there included an experienced advocate, Mr. Heller, the Superintendent, and seven elected School Board members.

** At the outset of the hearing, the Chairman of the State Board asked the

members if they had any questions for their staff; no member had a question. [#6 at 220] [Order at 14]

** The ADE staff had monitored the LRSD; the staff had not recommended takeover of the LRSD, or the ouster of the School Board. [#6 at 221] [Order at 14]

** The January 8, 2015, letter "told LRSD to make any written submission by January 21st . . . ." [Order at 13] During the hearing, State board members did not discuss or ask questions about the plan submitted by the LRSD to address the schools in academic distress. [#6 at 220; Order at 14]]

** School Board members Dr. Jim Ross and Mrs. Joy Springer had begun their terms only four months and two days before the hearing. They had not been School Board members for any of the period related to the test scores on which the State Board's notice and proceeding relied. Although Section 6-15-430 included the alternative of "[s]uspending or remov[ing] some or all of the current board of directors," the State Board did not designate a specific period for Mrs Springer or Dr. Ross to speak. [#6 at 217] [Not mentioned in Order]

** State Board members did not discuss the basis for removal of Mrs. Springer and Dr. Ross [#6 at 220], each of whom was highly qualified to serve. [#6 at 187-88] [#6 at 220 not mentioned by the Court]

** The State Board members did not discuss the togetherness exhibited by LRSD School Board members at the meeting on January 22, 2015, shortly before the hearing. [#6 at 220; Order at 14]

** When State Board members did present their views, the Board Chairman Sam Ledbetter said nothing. He later voted for the takeover. [#6 at 220]

** The LRSD as a District continued to satisfy the 49.5 percent standard. [184] The July 14, 2014 letter from ADE to the LRSD stated that the State Board had classified six (6) LRSD schools as in academic distress. The LRSD operated 48 schools. [#6 at 226] Nevertheless, the State Board majority invoked the most stringent Section 630 procedure, takeover of the LRSD and removal of all School Board members. Sub-section (b) of Section 630 granted the State Board extensive authority short of the path which it selected. The State Board could have wholly revamped the operation of the six schools, as explained in #51, Plaintiffs' Response, at 32-33.

** The January 28, 2015 communication to the LRSD contained no findings, statement of reasons, or opinions supporting or explaining in specific terms the takeover of the entire District, or the removal of all School Board members, including short-term members Dr. Ross and Mrs. Springer. The State Board never provided in writing any such findings, statement of reasons, or opinions. [#6 at 226-27] However, the State Board had a statutory duty to "include findings of fact and conclusions of law, separately stated" in its final decision. Ark. Code Ann. §25-15-210(b)(2); *see Voltage Vehicles v. Ark. Motor Vehicle Comm'n,* 424 S.W.3d 281, 287 (2012)(emphasis added)(citing *Holloway v. Ark. State Bd. Of Architects*, 352 Ark. 427, 438 (2003))("…because the Commission failed in its obligation to make sufficient findings of fact relevant to the contested issue…we must reverse and remand the matter…with direction to remand it to the Commission to make findings based on the correct termination date."); *see also Gore Eng'g Assocs. v. Ark. Constrs. Licensing Bd.*, 2011 Ark. App. 640, ¶¶4-5 (2011)("The long-standing rule is that, when an administrative agency fails to make a finding upon a pertinent issue of fact, the courts do not decide the question…The cause is remanded to the agency so that a finding

can be made on that issue.") This failure amounted to a procedural deviation evincing the discriminatory purpose of the removal of the School Board members. *See Village of Arlington Heights, v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 267 ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.")

** In oral remarks on January 28, 2015, State Board members Ms. Vicki Saviers and Ms. Toyce Newton both mentioned the State's causal role regarding achievement issues in the LRSD. [#6 at 233; not mentioned in the Order] In making its takeover decision, the State Board ignored its role and the role of other State actors [the legislature and ADE] in creating and continuing the problem underconsideration. [#6 at 233] See #6 at 234 [referring to charter school impacts on LRSD (loss of students stronger academically; greater concentration of academically challenging students in LRSD; loss of funding in LRSD); repetitive delays in releasing LRSD's share of title 1 funds diminished the ability of the LRSD to address the racial achievement gap and achievement in schools classified as in academic distress; United States Department of Education found that ADE had not ensured implementation of promised programs in schools with low outcomes on State assessments. [#6 at 234]. See also #51, Plaintiffs' Response at 33-34 (explaining State causal role rationale with regard to Title 1 program)] The Order [at 6-7] does not address the basis for Plaintiffs' inclusion of the findings on "federal programs."

** On January 29, 2015, the day following the takeover and School Board removal action, ADE, for Defendant Commissioner Johnny Key, reported to the legislature as required by Ark. Code 6-13-112. This report was to contain "[a] clear statement of the

reasons the district has been placed under the authority of the state board or the commissioner; . . .” The report identified the six schools in academic distress. However, as to the removal of the seven school board members, the predicate for the commissioner assuming authority, it stated only that “[t]he State Board deemed it necessary to remove the Little Rock School District Board of Directors in order to address the academic distress status of those schools.” This answer was non-substantive. It gave no reason for the removal of Dr. Ross, Mrs. Springer, any other individual member, or the full School Board. It again hid the ball. [The Order does not mention the Report to the legislature.]

** Superintendent Suggs made statements undermining the position of the LRSD School Board at the State Board meetings of October 14, 2014, January 7, 2015 and January 28, 2015. Takeover of the District and removal of the School Board followed. Nevertheless, once Mr. Suggs’ academic dishonesty was exposed, the State Board did not reconsider its action of January 28, 2015. [#6 at 198, 207, 219, 239; Amended Complaint Exh. 9] [The Order does not mention this point.]

**Mr. Tony Wood, a white person, was the Commissioner of Education as of the January 28, 2015 actions. [Minutes, January 28, 2015 meeting, ADE web site] The January 28, 2015 action, in effect, designated him the School Board for the LRSD. Thereafter, the three persons newly appointed to the top leadership positions for the LRSD have been white persons, Commissioner Johnny Key, Superintendent Baker Kurrus, and Superintendent Michael Poore. Mr. Suggs, who is black, was the Superintendent as of the takeover action. Mr. Key “has not earned any degree in the education area nor does he possess an advanced degree; he does not possess any of the certificates Arkansas awards to qualified educators. “ [#6 at 237; Order at 15] On May 15,

2015 the State Board selected Mr. Kurrus to serve as the Superintendent for the LRSD. Like Mr. Key, he had not earned any degree in the education area and did not possess any of the certificates Arkansas awards to qualified educators. The State Board's waiving of many statutory and regulatory requirements was necessary for the Board to designate Mr. Kurrus Superintendent. [#6 at 240; Order at 15-16] These persons replaced a majority African American School Board. [Order at 10] Indeed, testimony at the Hearing on Plaintiffs' Motion for Preliminary Injunction revealed that both Mr. Key and Mr. Kurrus were hired without having to go through certain formalities expected of job applicants such as filling out a job application before procuring employment. Excerpt of Testimony of Johnny Key, March 22, 2016, at 4: Excerpt of Testimony of Baker Kurrus, March 22, 2016, at 42. State Defendants failed to give a reason why these two men, who are white, received such favorable treatment. See *Furnco Constr. Corp. v Waters*, 438 U.S. 567, 579-80 (1978) ("…experience has proved that in the absence of any other explanation it is more likely than not these actions were bottomed on impermissible considerations.")

** In mid-August 2015, reports to the State Board by LRSD representatives , evidenced the system using educational approaches which had been employed prior to the takeover of the District and the removal of the elected School Board. [#6 at 244-45; Order at 16]

** The Order states at 16: "On top of all this, Plaintiffs say, the changing curriculum standards each year will make it impossible for LRSD to present test outcomes in a consistent manner , which will prevent a return to an elected LRSD school board. No. 6 at paras. 251-52." This summary does not capture the full content of

Paragraphs 247 through 252 of the Amended Complaint. These paragraphs describe the change from the "Arkansas curriculum frameworks" to the "Common Core" curriculum; the use in a three year period of three different test systems [the Arkansas Benchmark tests, the PARC, and the ACT ASPIRE] to assess student mastery of the curriculum; and the role of test outcomes in returning local control of the schools. Paragraph 252 refers to "the different periods of exposure" to the curricula. Paragraph 251 alleges that the ACT ASPIRE "is not a criterion-referenced test system, geared to curriculum to which LRSD students have been or will be exposed."

** The foregoing discussion has identified two ways in which State actors did not adhere to legal standards. [a] The use of assessment data by ADE and the State Board to identify LRSD schools in academic distress, a predicate for the takeover action, was violative of the timeliness provision of a State Board regulatory standard. [b] The report to the legislature regarding the takeover action did not fulfill, in substance, the mandate of Section 6-13-112(a)(1). [c] Plaintiffs have identified a third violation of a legal standard in the takeover process. Given the full content of Section 6-15-430, the failure to set forth in writing a complete statement of the reasons for the takeover of the LRSD and the removal of the school board will negate the availability of an avenue to "[r]eturn the administration of the school district to the former board of directors or to a newly elected board of directors. . . ." See #51, Plaintiffs' Response, at 30-31 [full statement of this contention]

** A second significant portion of the memorandum reciting Board member Jay Barth's views reads as follows: "He feels that there may also be an opportunity now to deal with the district lines in the county. He had a conversation with John ---- about this,

so John please shed some light. He mentioned that if there is redistricting, that the new elections have to occur and other items get reset. He feels this is an important issue and possibly we should seriously consider a south of the River SD along with state takeover (the state already has control of PCSSD, of course." [emphasis added] [#6 , Exhibit 4 at 1, para. 4.a] As of November 30, 2014, who are the persons who would be affected by redistricting and "new elections" with different election districts? They are advocates for equity and non-discrimination Mrs. Springer and Dr. Ross; they are members of the entire LRSD School Board, a majority of whom are African Americans. The Order does not discuss this point. Plaintiffs did not have the opportunity to determine by discovery the persons to whom the memo would be disseminated by Mr. Barth's e-mail partner – including whether any were State Board members, who later supported the takeover. See also Section 6-15-430(a)(5) (Authorization to "[r]equire the annexation, consolidation, or reconstitution of the school district"); (b)(9). As of this period and January 28, 2015, State Board members could well have been uninformed about the constraints of district reorganization set forth in the second Settlement Agreement in the longstanding "Pulaski County school case." A reconfiguration of districts in the manner suggested by Mr. Barth would likely produce three districts (Maumelle, Sherwood and "Couth of the River") in predominantly white areas of Pulaski County; thereby furthering interdistrict segregation.

4. Conclusion

The relevant facts, considered in their totality, demonstrate the plausibility of Plaintiffs' contention that "a discriminatory purpose [was] a motivating factor in the decision[s] [to takeover the LRSD and remove the majority African American School

Board]." Arlington Heights, 429 U.S. at 265-66. They have been detailed separately; a summary in the aggregate is as follows.

Rather than the good faith implementation of a different policy perspective showing the lack of discriminatory intent, there was a rigged, bad faith process evidencing the illicit purpose. The "in cahoots" point. Within this point, Plaintiffs rely on the "sequence of events." Arlington Heights at 265. There was a lack of interest in developing and discussing the facts [20 minutes for LRSD's presentation; no questions for State Board's staff; no probing of statements by Superintendent Suggs; no discussion of the LRSD plan; no discussion about new Board members Mrs. Springer and Dr. Ross].

From start to finish, the State Board and other State agents relied on test results, untimely in the light of their own Rules. This was a "[departure from the normal procedural sequence," or a "[s]ubstantive departure . . ." –- in Arlington Heights terms [429 U.S. at 267].

The State Board selected the most intrusive statutory alternatives [takeover when only 6 of 48 schools were classified as in "academic distress" ; removal of all Board members]. The nature of the "the alternatives that were available" is a relevant consideration. Clients' Council, 711 F.2d at 1409.

The process evidenced a lack of willingness to explain the choices made. The State Board action took over the largest local public school system in the State. It displaced an entire School Board of seven members elected by the voters. These are not trivial matters. The lack of a public, written explanation is inconsistent with expectations in these circumstances. The required report to the Legislature lacked candor with regard to the removal of all School Board members.

There was arbitrariness. Mrs. Springer and Dr. Ross were removed, without discussion and explanation, despite the absence of a connection with the academic distress problems in the six schools. The State Board did not account for the role of State actors in the achievement issues addressed.

The State Board removed a majority African American School Board, including Mrs. Springer and three African American colleagues. Thereafter, the four persons newly seated in the top positions to direct the LRSD have been white males, Mr. Tony Wood, Mr. Johnny Key, Mr. Baker Kurrus, and Mr. Michael Poore. After such a takeover, as discussed, the State Board is empowered by Section 430(a)(5) and (b)(9), in normal circumstances, to change the school district's configuration in a way requiring new election districts. Changing the configuration of the LRSD was a topic to be communicated to many persons other than Board Member Barth, in the relevant time period. Only discovery could determine whether one or more State Board members who voted for removal of the School Board was in this communication loop.

These are "enough facts to raise a reasonable expectation that discovery will reveal evidence of [racial motivation]." Bell Atlantic Corp., 550 U.S. at 556. The claim is plausible.

Superintendent Suggs' Appeals and the Arkansas Supreme Court Decision

The Order does describe Superintendent Suggs' appeals regarding the appearance of two LRSD programs and the Forrest Heights Middle School on school academic distress lists. [Order at 9, 11-12; see also No. 6 at 185 and 204] The Forrest Heights facility had transitioned from a grade 6 to 8 middle school to a K-8 Stem Academy, with a substantial increase in white enrollment. [#6 at 84-87] On February 12, 2015, the appeal

regarding the Forrest Heights Middle school succeeded because upon the conversion to the Forrest Heights STEM program it "had been reconstituted under a new LEA number . . ." [Minutes of State Board of Education meeting, Feb. 12, 2015, at 5; available on ADE web site]. At the same meeting, the State Board tabled action on the academic distress appeals for the two LRSD programs and four other "Alternative Learning Environment" programs in other systems. "Commissioner Wood said the agency has prepared language for legislation to address this issue." [Minutes, Feb. 12, 2015, at 3] Students move in and out of ALE programs; they are not students' home schools. [#6 at 112]

The premise of the Order may be, sub silentio, that the Superintendent's appeals establish his good faith in the relevant period. However, Plaintiffs have identified far more to the contrary, with allegations that are to be taken as true. This is the pleading phase of the case; not the merits. Assume arguendo that there are at this stage two plausible outcomes, meaning two outcomes with "reasonable likelihood" of being established by a preponderance, after discovery [see Bell Atlantic Corp., 550 U.S. at 556, 558]; the proper approach is to sustain the Plaintiff's claim, with the matter to be resolved after an answer, depositions, other discovery, and the opportunity for the Court and the parties to hear significant testimony in the courtroom, which this Court prefers [# 73, Final Scheduling Order at 3]. The plausibility standard "does not impose a probability requirement at the pleading stage . . . ." [550 U.S. at 556]

The Order [at 22-23] relies upon the decision of the Arkansas Supreme Court in Key v. Curry, 2015 Ark, 392, at ---, 6. This Court's view is that the "the Supreme Court held that many of the facts pleaded here . . . did not establish arbitrary or bad faith action by the State." [at 10] Plaintiffs note the following. That Court was not deciding a

racial discrimination claim, beginning with acceptance of the presence of multiple racial effects, including the removal of a majority African American School Board. Compare Key at 10 (existence of less intrusive options does not evidence that "State Board acted arbitrarily, capriciously, in bad faith . . . in assuming control of the District") with Clients' Council, 711 F.2d at 1409 (consideration of "the alternatives that were available" relevant on issue of identifying discriminatory intent).

That Arkansas Supreme Court and the Order refer to "the retention of Dexter Suggs as Superintendent after the takeover . . . ." This is less than "the tip of the iceberg" of Plaintiffs' factual and legal contentions regarding Dr. Suggs. That Court also does not address: untimely use of test results [a regulatory violation]; various procedural aspects of the hearing; ADE monitoring staff did not recommend takeover; no separate discussion or treatment of new members Ross and Springer; no discussion of School Board togetherness; no written findings or statements of reasons; no consideration of State actors' earlier causal role; no reconsideration after prior academic dishonesty exposed; lack of substantive compliance with requirement of report to legislature; race of key officials designated after ouster of School Board; impact of changes in curriculum standards and tests used; and discussion, in midst of consideration of possible takeover, of creation of new school district lines , resulting in need for new election districts and elections.

B. The Racial Discrimination Claim Concerning Charter Schools

Applying the plausibility standard to Plaintiff' charter school allegations requires four steps. First, a fair factual picture must be created by "[a]ccepting all the facts alleged as true, and adding all the reasonable inferences from them . . . ." [Order at 3] Second,

relevant principles for proof of intentional discrimination in this context must be identified. Third, the factual picture must be analyzed in the light of these principles to determine whether Plaintiff satisfies the plausibility threshold. And here there is a fourth needed step. Plaintiff must address the Court's belated introduction in its Order of September 28, 2016, without detail, of the State Board's approval on March 31, 2016 of additional charter school seats. [Order at 28-29] The State Board action to which the Order alludes created at least 3,000 additional charter seats within the LRSD for Lisa Academy and E-STEM. [In the absence of record evidence, number of seats based on "Expansions of charters in Little Rock wins Oks," Arkansas Democrat Gazette, by Cynthia Howell, April 1, 2016]

Facts

The relevant facts begin with the Order [at 2] : "the students at the growing charter schools in Little Rock are (to generalize) whiter and wealthier than LRSD's students." The Order presents two pages of facts regarding E-STEM Public Charter School and Quest Middle School, in West Little Rock. [At 4-6] Plaintiffs rely on this text, which shows the "whiter" make-up of E-STEM and Quest, as well as the LRSD's loss of funds due to student movement to charter schools.

Plaintiffs made the following additional allegations regarding E-STEM [underlining added for clarity].

E-STEM staff actively recruited students enrolled in the LRSD [#6 at 139] As in the case of race , there were marked disparities in 2008-09 and 2010-11, in the proportions of special education, limited English proficient, and free/reduced lunch populations in E-STEM compared to the LRSD. [#6 at 141-142] For example: "In 2010-11,

the special education population in the LRSD included 2,587 students, 11% of the total enrollment. That year, the special education population of E-STEM was 8 of 1,231 students, less than 1%." [#6 at 141] "In 2010-11, the limited English proficient population in the LRSD included 1,896 students, 7.8% of the total enrollment. That year, the limited English proficient population of E-STEM was 8 of 1,231 students, less than 1%." [#6 at 142] "In 2008-09, the free/reduced lunch rate for LRSD was 65.4%. The free/reduced lunch rate for E-STEM was 39.1%. In 2010-11, the free/reduced lunch rate for LRSD was 67.4%. For that same year, the free/reduced lunch rate for ESTEM was 34%." [#6 at 143] The operation of E-STEM continued to "negatively impact the LRSD budget" in 20114-15. [#6 at 147; emphasis added]

Plaintiffs made the following additional allegations regarding Quest Middle School [underlining added for clarity].

The Order states [at 39]: "LRSD appealed the Department's decision [approving the Quest application] to the State Board. " The Amended Complaint states that the appeal was taken by LRSD and PCSSD. [#6 at 168] "Counsel for the two school districts challenged the contention that the school would enroll a significant percentage of minority and low-income students. They noted its location, residential patterns, and the lack of a plan and funds to transport these students to the location of the school." [#6 at 168]

The Amended Complaint described other differences in the enrollments of LRSD and Quest. "In 2014-15, the special education population in the LRSD included 2,669 students, 11.4% of the total enrollment. The special education population at the Quest school was 0 of 166 students.] [#6 at 170] "In 2014-15, the limited English proficient

population in the LRSD included 2,666 students, 11.4% of the total enrollment." The limited English proficient population of the Quest school was 0 of 166 students." [#6 at 171] "In 2014-15, the free/reduced lunch rate for LRSD was 65.4%. The free/reduced lunch rate for Quest was 6%." [#6 at 172] As in the case of E-STEM, Quest received a waiver of the obligation to provide an alternative learning environment program. [#6 at 174]

The LRSD experienced reduced State funding due to the operation of the Quest School. [#6 at 175]

Legal Framework

The following legal principles and educational research are relevant for purposes of this plausibility determination. [a] "Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." Washington v. Davis, 426 U.S. at 242; Arlington Heights, 429 U.S. at 266; Client's Council v. Pierce, 711 F.2d 1406, 1409 (8thCir. 1983) ("When a court is faced with an aggregation of many decisions made by different administrators as is the case here, the impact or effect of the choices made is 'an important starting point ' in determining purposeful discrimination. Crawford v. Board of Education, 102 S.Ct. 3211, 3221 (1982) [citing Personnel Administrator v. Feeney and Arlington Heights]." [b] "Adherence to a particular policy or practice , 'with full knowledge of the predictable effects of such adherence upon racial imbalance . . . is one factor which may be considered by a court in determining whether an inference of segregative intent should be drawn.'" Columbus Board of Education v. Penick, 443 U.S. 449, 465 (1979) (citations omitted), as set forth in Clients' Council, 711 F.2d at 1409. [c] The presence of a "series of official actions" is

significant. Arlington Heights, 429 U.S. at 267. [d] The locating of schools is relevant on question of intent to segregate students. Swann v. Charlotte-Mecklenburg Board of Education, 419 U.S. 1, 20-21 (1971). [e] Cognizable harm includes not only pupil segregation, but also the absence of "schools of like quality, facilities and staffs" [Swann, 419 U.S. at 18-19] and the adverse effects on student achievement of discriminatory practices. United States v. Jefferson County Board of Education, 380 F.2d 385, --- (5thCir. 1967) (en banc) (Model Decree, Para. VI(b): "Remedial Programs. The defendants shall provide remedial education programs which permit students attending or who have attended segregated schools to overcome pasts inadequacies in their educations."). [f] See Educational Leadership, May 2013, Vol. 70, No. 8, at 38-43 ("On average students' socioeconomic backgrounds have a huge effect on their academic outcomes. But so do the backgrounds of the peers who surround them. Poor students in mixed-income schools do better than poor students in high-poverty schools. Research supporting socioeconomic integration goes back to the famous Coleman Report. which found that the strongest school-related predictor of student achievement was the socioeconomic composition of the student body (Coleman et al. 1966). More recent data confirm the relationship between individual achievement and student body characteristics. . . .")

A Plausible Claim

The Order states [at 4]: "Charter Schools. Plaintiffs say the charters hurt LRSD schools by siphoning the best students and the state funds that follow them. This leaves LRSD schools poorer and blacker than they'd be without the competing charters." Plaintiffs' allegations demonstrate an additional concern, charter schools leaving to the

LRSD the task of educating other students whose needs are most daunting due to special needs, limited English proficiency, or discipline concerns.

Viewing the facts in the light of the principles cited [a to f], Plaintiffs satisfy the plausibility pleading standard. The acknowledged racial impact is a proper starting point. There is a series of actions, the multiple steps in increasing authorized enrollment for E-STEM and then the approval of Quest. The initial racial make-up of the enrollment at E-STEM provided predictability of the racial impact of additional seats there and at Quest, given its location. Counsel for the LRSD and PCSSD provided a warning as to the enrollment at Quest, by race and income level; it proved to be accurate. The location of Quest and its racial make-up exemplify the scenario discussed in Swann. LRSD has faced simultaneously a drain on its resources and an increase in the proportion of its students whose educating is most challenging. This too has been predicable given the early enrollment make-up at E-STEM. This funding loss threatens to adversely impact the District's effectiveness in meeting the needs of the remaining African American student population, as well as Hispanic students. Long available research shows that the loss of students most advantaged in socioeconomic terms is a negative factor with regard to educating the population remaining in the LRSD [65.4 % of students eligible for free/reduced price lunch in in 2014-15 (#6 at 172)]. The pattern of student movement in this regard has also been apparent from the start. See the E-STEM data cited.

On March 31, 2016, the State Board approved the requests of E-STEM and Lisa Academy to add a total of at least 3,000 additional charter seats within the LRSD. Adding this circumstance to

to the foregoing picture would add depth to each set of Plaintiffs' factual allegations

regarding charter schools and their impact on the LRSD. It would also increase or heighten concerns. LRSD's most substantial recent facility endeavors are Roberts Elementary and the first steps at the Leisure Arts building [with much more to come there]. In March 2016, during the hearing on Plaintiffs' motion, the LRSD pledged, including by the testimony of Mr. Kurrus, to build a new Southwest High School and, thereafter, to rehabilitate the McClellan building to replace Cloverdale Middle School. [Separate transcript of B. Kurrus testimony, March 22, 2016 at 11, 16-17, 19-20, and 31-32 (Cloverdale)] The Fanning Howey study identified the Cloverdale facility as the poorest in the LRSD. See Chapter 7 at 81,-83 [only district school with "condition" identified as "critical"); at 91 "(current FCI of 0.71)"]. The opening of the new Southwest High School and the following work to address Cloverdale are necessary steps on the path to facilities of like quality. Swann, supra.The Court relied upon LRSD's proposal regarding these schools in its ruling on the motion for a preliminary injunction. See Transcript of Court's decision, March 23, 2016, at 5-6. Yet, the massive charter seat increases, with accompanying funding losses, might well end the District's ability to follow through on its Southwest High-Cloverdale pledges.The LRSD filed on October 13, 2016 a "Status Report " by Superintendent Michael Poore [# 77] regarding construction projects and their funding. It cites events [at 2] which "left LRSD unsure about its ability to fund a first-class high school in Southwest Little Rock"; it continues "even if LRSD could pay for the new high school, there would be very little left to fund needed improvements in other schools in the district." There is no mention of the Cloverdale project. There is no mention of the loss of funding to date due to movement to charter schools, or the large loss on the horizon due to approval of 3,000 new seats. In sum,

inclusion of the facts regarding the 3,000 seats would support a plausible claim regarding discrimination in LRSD facilities.

Plaintiffs' ultimate burden is to show that "a discriminatory purpose has been "a motivating factor in the decision[s] challenged . . . . " Arlington Heights, 429 U.S. at 265-66. Plaintiffs need not establish a sole, dominant, or primary purpose. Id. The plausibility standard "calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of [illegality]," it "does not impose a probability requirement at the pleading stage . . . ." Bell Atlantic Corp., 550 U.S. At 556.

Proper analysis requires examination of the totality of the relevant facts to ascertain whether a discriminatory purpose may legitimately be inferred. Clients' Council, 711 F.2d at 1409 [citing four Supreme Court decisions]. The foregoing facts in their totality, considered in the light of the precedent cited, identify the plausibility of such a purpose. It was and is to provide the white student population the opportunity to enroll in schools with greater proportions of white students. Moreover, charter approvals pursuant to this discriminatory purpose and movement of white students have left the LRSD more segregated and more challenged in dealing with its remaining student population. The discriminatory purpose affects not only the charter schools, but also the LRSD schools. These contentions would be strengthened and expanded by inclusion in the case of the 3,000 new charter seats.

The Court's Introduction of New Matters and the Denial of Leave to Amend

Plaintiffs seek the ability, ultimately, to add allegations regarding the approved, massive increase in charter seats. Plaintiffs act within a reasonable period after the Court introduced the matter and made rulings on plausibility and amendment of the

Amended Complaint --- without the functioning of the adversary process. Compare Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 313 (1950) (notice and opportunity to be heard fundamental requirements of due process of law).

The Fairview Health System decision [Order at 29] does not support or justify the rulings made. In that case, one of Plaintiff's claims focused on "wrongly allowing athletic trainers to perform duties that could only be performed by physical therapists and physical therapy assistants." After many steps in the litigation, Plaintiff sought and the District Court denied, as futile, leave for an amendment alleging that "athletic trainers were not properly supervised . . . ." This circumstance, if true, existed as of the writing of the complaint; as of Defendant's motion to dismiss all claims; as of Plaintiff's motion for leave to amend if one or more of her claims were dismissed; and as of a hearing on that motion. Indeed, at that hearing, Plaintiff's counsel stated that "supervision issues were 'irrelevant' to her claims." As to the futile ruling, the District Court concluded that no set of facts could overcome Plaintiff's flawed interpretation of Minnesota law. That language shows that Plaintiff had an opportunity to be heard on the issue. There is nothing suggesting that the futility ruling was based upon the Court's introducing and acting upon a truncated description of a circumstance, without the Plaintiffs ability to be heard on the matter.

The Eighth Circuit affirmed the lower court ruling on two grounds, futility and Plaintiff's "failure to communicate the substance of her proposed amendments" – when there had been many opportunities to do so.

Plaintiffs have demonstrated a plausible charter school racial discrimination claim based upon the consideration of the existing E-STEM and Quest programs alone.

Plaintiffs have also shown how allowing consideration of the additional 3,000 seats would strengthen this contention. Thirdly, Plaintiffs have noted that the addition of 3,000 charter seats, with a predictable massive funding loss for the LRSD [see Order at 5], threatens the LRSD's ability to follow through on the Southwest High School-Cloverdale plan articulated by then-Superintendent Baker Kurrus in this Court on March 22, 2016 and relied upon by the Court in its ruling. Superintendent Poore's recent Status Report [# 77] reports that funding for the Southwest High School project is now problematical; he does not mention Cloverdale ; his analysis does not include the additional loss of funds due to the new charter seats.

Plaintiffs' Motion requests that the Court revise the Final Scheduling Order [# 73] by providing a deadline for Plaintiffs' filing of a further amendment addressing the addition of charter school seats raised by the Court, at least 3,000 in number. This relief is authorized by Rule 16(b)(1), (b)(4), Fed.R.Civ.Pro.. This date could be the date identified for amendments to the Amended Complaint, in each of the Scheduling Orders filed to date, December 13, 2016. [# 61 at 2; #73 at 2].

Rule 15(a)(2), Fed.R.Civ.Pro., provides that Plaintiffs may file this amendment "only by leave of court; and [such] leave shall be freely given when justice so requires."

Plaintiffs' motion and memorandum demonstrate why Plaintiffs would satisfiy the "justice so requires" standard. This is not a situation where Plaintiffs have delayed their discovery and seek leave shortly before the scheduled trial date. Hannah v. City of Overland, Mo., 795 F.2d 1385, 1392-93 (8thCir. 1986). Plaintiffs take this first step within a short period after the Court's raising the issue and disposing of a claim, without Plaintiffs' participation. As noted, proposed amendments could be filed by the time

specified by the Court in the Draft and Final Scheduling Orders. The Motion and this memorandum inform the Court and the parties and former parties of the elements of Plaintiffs' charter school contentions in detail. Finally, Plaintiffs' have explained how the recent LRSD status report on facilities [# 77] strengthens their "justice so requires" argument.

Plaintiffs also request that the Court ultimately approve their filing of only the text of their amendment, as authorized by Local Rule 5.59e). The existing Amended Complaint and exhibits are voluminous.

C. The Freedom of Expression Claims of Plaintiffs Springer and Ross

The Order deals with the freedom of expression claims tersely. The Order states:

". . . . The law requires them to show that the 'retaliatory motive was a but-for cause of the harm; that is, that [they were]singled out for adverse treatment because of [their] exercise of constitutional rights.' Kilpatrick v. King, 499 F.3d 759, 767 (8thCir. 2007) (quotation omitted). But Springer and Ross weren't singled out – the entire LRSD board was removed. The State Board could have removed only them, but it didn't. ARK. CODE ANN. Sec. 6-15-430(a)(20 & (b)(9). Because Springer and Ross were treated the same as those who didn't champion equality issues, they've failed to state a claim for retaliation issues."

This argument lacks merit for multiple reasons.

The standard drawn from Kilpatrick v. King appears on a page (767), on which four standards are quoted, with this one the most stringent. Moreover, as employed in this case, it is dictum in Kilpatrick, as the case involved only a single potential victim of retaliatory conduct. In addition, the standard is otherwise inapplicable as next shown.

The quotation in Kilpatrick is drawn in turn from the decision in Osborne v. Grussing, 477 F.3d 1002, 1006 (8thCir. 2007). Study of that case shows that the "singled out" standard does not apply here. The plaintiffs in Osborne were two residents who complained about Rice County's lax enforcement of environmental regulations

regarding a housing development. Thereafter, investigation of formal complaints against them yielded determinations that they had each violated a County Zoning Ordinance. Enforcement proceedings followed. The residents filed suit, contending that the enforcement actions were in retaliation for their earlier protected speech. They "concede[d] that the alleged retaliatory injury . . . result[ed] from their earlier violations of the Rice County Zoning ordinance . . . ."

The Eighth Circuit wrote:

"Recognizing that we must craft a causation standard 'with details specific to this type of case,' Hartman, 126 S.Ct. At 1703, we conclude that a plaintiff who seeks relief from valid adverse regulatory action on the ground that it was unconstitutional retaliation for First Amendment protected speech must make the same showing that is required to establish a claim of selective prosecution --- 'that he has been singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted [and] that the government's discriminatory selection of him for prosecution was based upon . . . his exercise of his first amendment right to free speech. [citations omitted]"

This situation is distinguishable. There was no established and conceded regulatory violation. Obviously, no basis to prosecute Mrs. Springer and Dr. Ross had been identified. Indeed, Plaintiffs were not School Board members at the times of the relevant test results and the State Board neither discussed these Plaintiffs, nor made factual findings about them.

Plaintiffs' response [#51 at 19] relies on the free speech retaliation standard set forth in Mt. Healthy City School District v. Doyle, 429 U.S. 274, 287 (1977). The Mt. Healthy court [at 287] identified the burden of a plaintiff seeking to establish retaliation for the exercise of free expression, as follows. It is "to show that [their] conduct was constitutionally protected, and that this conduct was a 'substantial' factor --- or, to put it in other words, that it was a 'motivating factor' in the Board's decision to [remove

them]." The Mt. Healthy court also ruled [at 287] that once a plaintiff fulfills her burden, the defendant has the opportunity to prove "by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct."

The Order describes the exercise of freedom of expression by Dr. Ross and Mrs. Springer before and after their election to office. [At 10; 11, 13] The allegations of the Amended Complaint provide a much fuller picture of their protected expression. See #6 at 189-91, 199-200, 191 (advocacy by Mrs. Springer for return to LRSD evaluation policy facilitating focus on racial achievement gap), 212-15. These plaintiffs each had an agenda which they expressed in public repeatedly. "State Board members watched some of the televised meetings of the LRSD School Board." [#6 at 216]

The plaintiffs' expression and related associational activities were constitutionally protected. See #51 at 17-18. The available facts satisfy the causal connection requirement at the plausibility stage of the case.

[a] On January 10, 2014 the State Board heard the appeal of the approval to open the Quest Middle School in west Little Rock. Counsel for the LRSD stated during his presentation that opening of a new public middle school in that area had not been foreclosed. State Board member Saviers asked LRSD counsel how long it would take to open a public middle school in West Little Rock. [#6 at 168]

[b] During her campaign, Mrs. Springer's radio spot included this statement: "Do you want the schools of Zone 1 to be equal and treated as well as those schools in northwest and west Little Rock? I do!!!" [#6 at 189]

[c] From the time of their campaigns through their ouster, the advocacy of Mrs. Springer and Dr. Ross was out in the open, some televised, and consistent. All could

determine that they would not give undue attention to when a middle school could open in west Little Rock. [#6 at 188-191; 199-202]

[d] Their advocacy continued to a point very close in time to the pivotal meeting of January 28, 2015. On the doorstep of that meeting, the School Board approved unanimously Mrs. Springer's motion regarding facilities. Dr. Ross and other Board members were effusive in their praise of the motion. [#6 at 212, 215] Two aspects of its content are pertinent. First, the approved motion included this content [#6 at 212]:

> [d] Construction of a southwest high school shall be the district's first priority. Upon a successful millage, the district shall simultaneously authorize construction of a southwest Little Rock high school and a west Little Rock middle school. (northwest of Barrow Road and I-630) If for some reason the southwest Little Rock's school construction is delayed, the west Little Rock school construction shall also be delayed pending resolution of the reasons for delay; . . .

Second, the motion encompassed facility work at every District school, not a downsizing looking to further exodus of LRSD students to charter schools. [#6 at 212-15]

[e] Given their tenure, there was a basis to treat Mrs. Springer and Dr. Ross differently than other members. This point was not discussed; they were removed. They were ousted in a bad faith, rigged and sham process, as shown.

[f] Mrs. Saviers made the motion for takeover of the District and removal of the entire School Board; she voted in favor of it; the motion prevailed by one vote. A State Board action regarding only the six schools would have left Mrs. Springer and Dr. Ross in place, with the ability to advocate for their priorities for school construction..

[g] And, importantly, there is the subsequent comment by Mrs. Saviers, about persons with "agendas" – like Mrs. Springer and Dr. Ross. This point, first made on page 2 of Plaintiffs' Response [#51] and discussed thereafter [at 36], is never mentioned in the Order. For Mrs. Saviers, what was Mrs. Springer's agenda in the pertinent period? Same

question regarding Dr. Ross. What would answers to these and follow-up questions show regarding her evaluation of them, in the light of her complete comment. In view of the entire picture [from a to g], the reasonableness of seeking answers to these questions is apparent. This would require one or more depositions.

With the correct causation standard in mind, these facts, as a totality, show that the Plaintiffs' freedom of expression claim is plausible. In accord with Bell Atlantic Corp. v. Twombly, there is "a reasonable expectation that discovery will reveal evidence" sufficient to satisfy Plaintiffs' burden as set forth in Mount Healthy.

The State Defendants offered the "[not] singled out for removal" point in their Brief in support of their dismissal motion, although without a case citation. [#25 at 6] Plaintiffs replied as follows [#51 at 14].

"This argument fails for three reasons. First. Facts previously discussed show the State Board could have treated Springer and Ross differently, as authorized by Section 430. Events occurred before they were school board members. They were members for only several months as of January 28, 2015. They each had strong credentials. Second. Their removal alone would `stick out' like the proverbial `sore thumb.'; and employing such `common sense' is part of the Court's arsenal in evaluating the sufficiency of Plaintiffs' allegations. Ashcroft v. Iqual, 562 U.S. 662, 679 (2009). Third. All school board members supported Mrs. Springer's motion [212-213, 215], embodying an important component of the Springer and Ross agenda. "

Conclusion

Plaintiffs respectfully pray that this Court grant the relief requested in their Motion and this Memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby state that a copy of the foregoing has been served on all counsel of record wherein a copy was sent by utilizing the CM/ECF system on this 17th day of October, 2016.

/s/ John W. Walker