

IN THE SUPERIOR COURT OF CHATTOOGA COUNTY

STATE OF GEORGIA

IN RE: JOHN AGNEW RECALL PETITION

CIVIL ACTION no.2019CA43110

ORDER

The above styled case came on for hearing for the Court to Review the Sufficiency of an Application for Recall of an elected official, in this case John Agnew, Chair of the Chattooga County Board of Education. After hearing evidence and argument of counsel and considering the letter briefs of both the applicant for recall and the elected official,

It is hereby ordered and adjudged as follows:

1.

Allan Baggett sponsored a recall Petition against John Agnew, the Chair of the Chattooga School Board pursuant to O.C.G.A. Section 21-4-1 et seq. The Court's review is limited solely, under O.C.G.A. Section 21-4-6(f), as to the legal sufficiency of the recall ground or grounds and the legal sufficiency of the alleged fact or facts upon which such ground or grounds are based as set forth in such recall application. *Brooks v.*, Branch 262 GA 65 (1993), *Davis v. Shavers* 263nGA 785 (1994), *Hamlett v. Hubbard* 262 GA 279, *Phillips v. Hawthorne* 269 GA 9 (1998).

All necessary steps have been accomplished to place those issues before the Court,

2.

The legal grounds for recall are set out in O.C.G.A. Section 21-4-3 (7) A and B. The Applicant, Mr. Baggett, brought his recall application on the following legal grounds:

1. Has committed an act or acts of malfeasance while in office.
2. Has violated his or her oath of office.
3. Has committed an act of misconduct in office,
4. Is guilty of a failure to perform duties prescribed by law.

These allegations are legally sufficient. Brooks v. Branch supra.

3.

The facts upon which this recall is based are as follows:

“On January 17, 2019, in violation of Georgia Law and the Chattooga Board of Education’s own Code of Ethics, John Agnew, Chairman of the Chattooga County School Board, allowed NO discussion of the 5-day school week issue at a publicly held school board meeting prior to calling board members to vote on that policy matter. Such conduct constitutes a breach of Public trust.”

4.

The issue is whether those factual allegations are stated with sufficient reasonable particularity to support one of the legal grounds for recall that were alleged in the Petition. Brooks v. Branch supra.

5.

The review of such facts includes a determination of whether probable cause exists to believe such facts are true. The burden is on the Applicant, see O. C.G.A.

Section 21-4-6 (f). The facts alleged must state with reasonable particularity a ground for recall. *Hamlett v. Hubbard supra*, *Davis v. Shavers supra*.

While *Phillips v. Hawthorn, supra*, loosened the need for absolute specificity that case went on to say-

“the standard for assessing the legal sufficiency of a recall application is whether the facts supporting the grounds for recall are stated with such ‘clarity and specificity’ that that the application can “properly notify “both the official sought to be recalled and those members of the public who are registered and qualified voters in the appropriate electoral district where the violations were alleged to have been committed.”

6.

In this case, by stipulation of both parties, the video of the Board of Education meeting in question was played by the court. The Board had a policy issue to decide as to whether the school system should remain on a 4-day school schedule or go to a 5-day schedule. When that issue came before the Board no public comment was allowed although many people raised their hands and requested to speak. However, there was extensive discussion by the Board members. At least one member of the public requested to speak during that discussion but was denied. The Board finally voted 4-1 to approve the 5-day school measure.

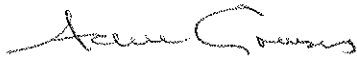
7.

The Court finds that the factual allegations of the Petition are not sufficient to support the recall petition. It says that “NO” discussion was allowed. In fact, the members of the Board discussed the measure at length. It was the public that was not allowed to participate. They had not signed up 5 days before to speak for a matter on an agenda that was only issued the day before, but that is not material to the question involved here. Some discussion was had on the measure by the members of the Board. This creates the question of whether a person signing the petition may have thought that no discussion was allowed at all. That is markedly different from the public not having been allowed to speak. The discussion by the

Board was long and informative. The allegations of fact lack the specificity to support the Petition.

Therefore, the Court finds that the grounds for recall set forth in the application to be insufficient, and the Application for Recall of John Agnew, Chair of the Chattooga Board of Education denied and dismissed.

This 9 May 2019

A handwritten signature in cursive script, appearing to read "Adele Grubbs".

Adele Grubbs

Senior Judge, State of Georgia

Certificate of Service

This is to certify that this order has been served on all parties by e mail as follows:

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This 9 May 2019

A handwritten signature in cursive script, appearing to read "Adele Grubbs".

Adele Grubbs