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OPINIONS AND ORDERS

REHEARING ORDER

OPINION, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (AUGUST 5, 2024)

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALAN RODEMAKER,

Plaintiff-Appellant,

v.

CITY OF VALDOSTA BOARD OF EDUCATION, or, in the Alternative, VALDOSTA CITY SCHOOL DISTRICT, WARREN LEE, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, LIZ SHUMPHARD, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, TYRA HOWARD, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, DEBRA BELL, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, KELISA BROWN, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District,

Defendants-Appellees.

No. 22-13300

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 7:21-cv-00076-HL

Before: Jill PRYOR, BRANCH,
and Ed CARNES, Circuit Judges.

ED CARNES, Circuit Judge:

Coach Alan Rodemaker's contract as the head football coach at Valdosta High School was not renewed by the Valdosta Board of Education in 2020. That result followed from a vote in which all four of the white members of the Board voted to renew, but all five of the black members voted not to renew. Rodemaker believes that all of the black members of the Board voted not to renew his contract because he is white.[1]

In 2020 Rodemaker sued the five black members of the Board of Education in their individual capacities in federal court under 42 U.S.C. §§ 1981, 1983 (*Rodemaker I*). He sought monetary damages from them. His lawsuit did not name as parties the Board itself or any of the white members of the Board. The district court denied the individual Board members' motions to dismiss on qualified immunity grounds, but we reversed that denial after concluding that Rodemaker had failed to state a claim against them. The result

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[1] The complaint in *Rodemaker II* uses the racial identifiers "black" and "African American" interchangeably. It also uses the term "white," except for three occasions on which "Caucasian" is used. For internal consistency, we will use the terms "black" and "white" when referring to race. And we will follow the predominate practice in the complaints of not capitalizing either the "b" or the "w," except at the beginning of sentences.

was judgment for the defendant board members in *Rodemaker I*.

Then came *Rodemaker II* in 2021. The complaint in it named the same black board members as before, but this time it also included the Board itself as a defendant. And it did not claim that the alleged racial discrimination was a violation of § 1981 but of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. The complaint in *Rodemaker II* includes more detailed factual allegations than the one in *Rodemaker I*, and is based on a different anti-discrimination statute, but the crux of both complaints is the same. Both complaints claim that the Board and its black members discriminated against Rodemaker based on his race when his contract was not renewed. He sought monetary damages in both lawsuits.

In the present lawsuit, *Rodemaker II*, the Board moved for summary judgment, contending that because of the judgment in *Rodemaker I* res judicata barred the claim against the defendants in this lawsuit. The district court granted the motion after determining that the Board was in privity with the board member defendants because they had been acting as its agents when they decided not to renew Rodemaker's contract and that, despite the different legal labels for the claims, *Rodemaker I* and *II* involve the same cause of action. We agree.

I. Background[2]

A. *Rodemaker I*

1. Allegations in *Rodemaker I*

Rodemaker filed his first lawsuit, *Rodemaker I*, in federal court in April 2020. It named as defendants the five black members of the Valdosta Board of Education—Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown—in their individual capacities. It claimed racial discrimination in violation of 42 U.S.C. §§ 1981 and 1983 against all five defendants, seeking monetary damages and attorney's fees.

The *Rodemaker I* complaint alleged that Rodemaker had been the head football coach at Valdosta High School in Georgia, where he once won the State 6A Championship and twice made it to the State 6A quarterfinals. He had also been a gym teacher at Valdosta and had "accepted a school contract with the Valdosta Board of Education on an annual basis for each of the last ten years." As both a football coach and teacher, his "reviews and reputation [were] exemplary."

In January 2020, the contracts of 151 teachers and coaches were up for annual renewal by the Valdosta Board of Education. According to the complaint, the racial makeup of the Board "had recently changed"

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[2] In its motion for summary judgment based on res judicata, the Board relied on the historical facts alleged in the *Rodemaker I* and *Rodemaker II* complaints, and in this appeal Rodemaker has not raised any issue with that reliance or with any of those historical facts. We will go along with their approach in recounting the facts, even though this is an appeal from the grant of summary judgment and not from the grant of a motion to dismiss.

from five white members and four black members to four white members and five black members.

When it came time to renew the teachers' and coaches' contracts, board member Lee moved to consider Rodemaker's contract separately from the 150 other contracts up for renewal. All 150 other contracts were renewed. But by a 5-4 margin along racial lines, the Board voted not to renew Rodemaker's contract. None of the board members who voted against renewing Rodemaker's contract provided any reason for their decision.

The Board held a second vote on Rodemaker's contract in February 2020, but the Board again voted along racial lines not to renew the contract. At the meeting, white board member Kelly Wilson stated that "the actions of the School Board with regard to Coach Rodemaker were not only improper, but probably illegal." Rodemaker contended that his contract was not renewed because the black board members wanted to hire a black football coach. He claimed that "the conspiracy to non-renew Coach Rodemaker occurred in illegal meetings" with the black board members.

2. Procedural History of *Rodemaker I*

All five defendants filed motions to dismiss, contending that they were entitled to qualified immunity. The district court denied the motions to dismiss, and the defendants filed an interlocutory appeal of the order. In June 2021 we reversed the denial of the defendants' motions to dismiss, holding that the complaint failed to state a claim. *See Rodemaker v. Shumphard*, 859 F. App'x 450, 453 (11th Cir. 2021). We remanded the case to district court for dismissal. *See id.*

B. *Rodemaker II*

While *Rodemaker I* was pending before the district court, Rodemaker filed two charges of discrimination with the United States Equal Employment Opportunity Commission (EEOC), one against the Valdosta Board of Education and one against the Valdosta City School District. And while the *Rodemaker I* defendants' interlocutory appeal was pending, the EEOC issued a right to sue letter for both charges. *See generally Forehand v. Fla. State Hosp. at Chattahoochee*, 89 F.3d 1562, 1567 (11th Cir. 1996) (describing the EEOC's right to sue process).

1. Allegations in *Rodemaker II*

Ten days after we remanded *Rodemaker I* to the district court, Rodemaker filed the complaint that forms the basis of this lawsuit, *Rodemaker II*. It named as defendants the City of Valdosta Board of Education, as well as the five black board members.[3] It contained a race discrimination claim under Title VII against the Board, a race discrimination claim under Title VII against the board members, and a conspiracy claim against the board members. It sought compensatory and punitive damages as well as attorney's fees under 42 U.S.C. § 2000e-5(k) and O.C.G.A. § 13-6-11. The claim against the board members under

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[3] The complaint does not clearly state in what capacity the five board members were being sued. Rodemaker contends that he sued them in their official capacity. But because he appeals only the grant of summary judgment against the Board, and not the dismissal of the claims against the individual board members, the capacity in which he sued the board members in *Rodemaker II* is not relevant.

Title VII alleged that they "acted as agents" of the Board when they voted not to renew his contract.

The factual allegations in the *Rodemaker II* complaint are materially identical to those in *Rodemaker I*, albeit slightly more detailed. What follows is a recounting of those allegations.

Rodemaker was the head football coach at Valdosta High School, where he once won the State 6A Championship and twice made it to the State 6A quarterfinals. He was also a gym teacher at Valdosta and in both positions was an employee of the Board. As both a football coach and teacher, his "reviews and reputation were exemplary," and there were no complaints or any evidence of misconduct in his personnel file.

The Board was required to consider for renewal on a yearly basis Rodemaker's employment. It had renewed his contract every year from 2010 through 2019. But before the vote on renewal of Rodemaker's contract for the 2020–2021 school year, the racial makeup of the Board had changed from a majority-white board to a majority-black board, on which five of the nine board members were black. The five black board members were Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown. They "participated in public meetings where they discussed their intent" to vote to non-renew Rodemaker's contract in order to replace him with a black head coach. The black board members also texted and emailed among themselves "regarding their concerted plan to vote to non-renew Coach Rodemaker as the Head Football Coach." And black board member Lee had made comments in the past that "Valdosta High School needed a head football coach of color" and had insisted

that job applications submitted to the Board should indicate whether the applicant was black or white.

For the 2020 school year, the Valdosta City Schools Superintendent had recommended that the Board renew Rodemaker's contract for another year. Generally, once the Superintendent recommended renewal of a contract, the Board would "vote on all of the Superintendent[']s recommendations for rehire in one vote."

But at the January 2020 board meeting, "Lee requested that the recommendation to renew Coach Rodemaker[']s football coaching contract be considered separately" from all other recommendations. The Board then separated the personnel list into two groups, an A list and a B list. All other school system personnel were on the A list, and Rodemaker was the only employee on the B list.

The Board members discussed the renewal matters in private during an executive session. The Board then returned to a public session to vote. A white board member moved to renew Rodemaker's employment contract, but that motion was defeated by a 4-5 vote along racial lines. The five black board members who voted to non-renew Rodemaker's contract did not explain why they did so.

In response to public outcry, the Board planned to reconsider the non-renewal of Rodemaker's contract at a February 2020 meeting. At the meeting, Lee moved to strike reconsideration of Rodemaker's contract from the agenda, but the motion was defeated by a vote of 4-5, with Lee, Shumphard, Howard, and Brown voting to remove consideration of the matter from the agenda, while Bell voted with the four white board members

to leave it on the agenda. The Board then heard comments from the public about whether it should renew Rodemaker's contract. Five black members of the community spoke against renewing Rodemaker's contract. They made comments: "urg[ing] the black members of the School Board to 'stand together'"; reminding those members they were "'put there' by black votes"; and "impl[ying] that black football players had been used by the white establishment . . . without regard to the well-being of the black players." Seven people, some of them black and some of them white, spoke in support of renewing Rodemaker's contract.

After hearing the public comments, the Board again discussed the vote in private. Once the board members returned to the public forum to vote, a white board member again moved to renew Rodemaker's contract. And again the motion was denied, with the board members voting entirely along racial lines. The board members who voted against renewing Rodemaker's contract did not give a reason for their decision. One of the white board members later "confirmed that race was a factor" in the vote.

The black board members sought to replace Rodemaker with a black coach. But after they were unable to find a black candidate, the Board voted along racial lines to hire "controversial football coach Rush Pro[p]st." After Propst was removed as coach in April 2021 for illegally recruiting players, the Board hired a black man as interim head coach.

2. Procedural History of *Rodemaker II*

The board members moved to dismiss Rodemaker's complaint on the merits. A couple months later, the Board filed a motion for summary judgment, arguing

that Rodemaker's claims against it are barred by res judicata. Specifically, the Board argued that it was in privity with the board members sued in *Rodemaker I* because they were its agents and the causes of action in the two cases are the same. It also argued (for the first time in its reply brief) that it was in privity with the board members because "[t]he School Board controlled the litigation [in *Rodemaker I*]. Counsel for the Board had defended all five Individual Defendant Board Members and necessarily consulted with the School Board throughout the course of the prior litigation," *i.e.*, during *Rodemaker I*.

The district court granted the board members' motions to dismiss and entered judgment for them, a judgment which is not contested in this appeal. It also granted the Board's motion for summary judgment, which is contested in this appeal.

The district court granted summary judgment for the Board on res judicata grounds after determining that it was in privity with the board members because their votes not to renew Rodemaker's contract were cast as agents of the Board. Privity existed, the court reasoned, because the board members acted as agents of the Board in *Rodemaker I*, the Board and the board members shared a "commonality of interests for purposes of defending against [Rodemaker's] claim," and because Rodemaker did "not dispute [the Board's] assertion that the School Board provided counsel for the [board members] in the previous action and exerted substantial control over the defense." The court also determined that *Rodemaker I* and *II* shared the same cause of action because the claims in both arose out of the same nucleus of operative facts.

This is Rodemaker's appeal of the district court's entry of judgment in favor of the Board in *Rodemaker II* based on res judicata.

II. The Elements of Res Judicata and the Applicable Standard of Review for It

Res judicata prevents plaintiffs from bringing claims related to prior decisions when "the prior decision (1) was rendered by a court of competent jurisdiction; (2) was final; (3) involved the same parties or their privies; and (4) involved the same causes of action." *TVPX ARS, Inc. v. Genworth Life & Annuity Ins. Co.*, 959 F.3d 1318, 1325 (11th Cir. 2020).

In their briefing, both parties contend that we should "review *de novo* a district court's determination of res judicata," but that "whether a party is in privity with another for preclusion purposes is a question of fact that is reviewed for clear error." *EEOC v. Pemco Aeroplex, Inc.*, 383 F.3d 1280, 1285 (11th Cir. 2004). As it turns out, it's a little more cloudy than that because there is an intra-circuit conflict in our decisions about the standards of review for privity determinations.

At least a half dozen of our decisions review questions of privity only for clear error. *See ADT LLC v. NorthStar Alarm Servs., LLC*, 853 F.3d 1348, 1351 (11th Cir. 2017) ("Whether a party is in privity with another party is a question of fact that we review for clear error."); *CSX Transp., Inc. v. Gen. Mills, Inc.*, 846 F.3d 1333, 1340 (11th Cir. 2017) ("Privity is a factual question which should not be reversed unless its determination is clearly erroneous.") (quoting *Hart v. Yamaha-Parts Distribs., Inc.*, 787 F.2d 1468, 1472 (11th Cir. 1986)) (cleaned up); *Baloco v. Drummond Co., Inc.*, 767 F.3d 1229, 1246 (11th Cir. 2014) ("[W]hether

a party is in privity with another for preclusion purposes is a question of fact that is reviewed for clear error.") (quotation marks omitted); *Griswold v. Cnty. of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010) ("[W]hether a party is in privity with another for preclusion purposes is a question of fact that is reviewed for clear error.") (quotation marks omitted); *Pemco Aeroplex*, 383 F.3d at 1285 ("[W]hether a party is in privity with another for preclusion purposes is a question of fact that is reviewed for clear error."); *Hart*, 787 F.2d at 1472 ("A district court's determination as to whether interrelated corporations are in privity with each other is a factual question which should not be reversed unless its determination is clearly erroneous."); *Astron Indus. Assocs., Inc. v. Chrysler Motors Corp.*, 405 F.2d 958, 961 (5th Cir. 1968) ("This determination of identity between litigants for the purpose of establishing privity is a factual question, and the District Court should not be reversed unless its determination is clearly erroneous.").[4]

But some of our other decisions apply *de novo* review to all elements of res judicata, including privity. *See Herman v. S.C. Nat'l Bank*, 140 F.3d 1413, 1424 n.17 (11th Cir. 1998) ("Application of res judicata presents questions of law reviewed *de novo*."); *NAACP v. Hunt*, 891 F.2d 1555, 1560 (11th Cir. 1990) ("A district court's conclusions as to *res judicata* are conclusions of law, and are thus reviewable *de novo* by this Court."); *id.* at 1561 ("The question of whether sufficient privity exists to warrant application of res judicata is a question of law.") (citing *Sw. Airlines Co. v. Tex. Int'l*

[4] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

Airlines, Inc., 546 F.2d 84, 95 (5th Cir. 1977)) (explaining that "federal cases have recognized that 'privity' denotes a legal conclusion"); *McDonald v. Hillsborough Cnty. Sch. Bd.*, 821 F.2d 1563, 1564 (11th Cir. 1987) ("The district court's determination regarding the availability of *res judicata* as a defense is a conclusion of law. Thus, whether or not *res judicata* is available is totally reviewable.") (citation omitted); *see also Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.*, 30 F.4th 1079, 1083 n.1 (11th Cir. 2022) (stating, in a case where privity was not at issue, that "[b]ecause barring a claim on the basis of res judicata is a determination of law, our review is de novo") (cleaned up); *Maldonado v. U.S. Att'y Gen.*, 664 F.3d 1369, 1375 (11th Cir. 2011) (stating that "[b]ecause *res judicata* determinations are pure questions of law, we review them *de novo*," but where privity was not at issue) (quotation marks omitted); *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1295 (11th Cir. 2001) (explaining that "[a] court's application of res judicata presents questions of law reviewed de novo," but not reaching the privity question); *Sewell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 94 F.3d 1514, 1517 (11th Cir. 1996) (asserting that "[t]he application of *res judicata* principles to [the plaintiff's] claims constitutes a pure question of law which this court reviews *de novo*," but where privity was not at issue).

The conflict is also reflected one place removed in opinions discussing whether privity is a question of fact or a question of law. *Compare Sellers v. Nationwide Mut. Fire Ins. Co.*, 968 F.3d 1267, 1275-76 (11th Cir. 2020) (stating in an issue preclusion case involving the application of Alabama law that "[w]hether parties were in privity is a factual question that should be

decided in the first instance by the district court") (quotation marks omitted), *with Riddle v. Cerro Wire & Cable Grp., Inc.*, 902 F.2d 918, 921-22 (11th Cir. 1990) (explaining that when determining if res judicata bars a subsequent action, it's "a question of law" whether the plaintiff has "sufficient identity of interests . . . so that she may be treated as a party for preclusion purposes").

Were we deciding the issue as one of first impression, we might well hold that privity is a mixed question of law and fact. *See Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982) (explaining that a mixed question of law and fact is a "question[] in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard"). And for mixed questions of law and fact, we normally review the underlying factual determinations for clear error, while reviewing *de novo* the district court's application of facts to law. *See In re Am.-CV Station Grp., Inc.*, 56 F.4th 1302, 1309 (11th Cir. 2023) ("Because these determinations are mixed questions of law and fact, we review them de novo."); *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1187 (11th Cir. 2014) ("[M]ixed questions of law and fact we review *de novo*."); *Chandler v. Crosby*, 379 F.3d 1278, 1288 (11th Cir. 2004) ("We review de novo the district court's resolution of questions of law and of mixed questions of law and fact.") (alteration adopted) (quotation marks omitted); *see also McNair v. Campbell*, 416 F.3d 1291, 1297 (11th Cir. 2005) ("The district court's factual findings are reviewed for clear error, while mixed questions of law and fact are reviewed *de novo*.").

But the question is not before us as a matter of first impression. We must follow precedent embodied in published opinions. And in situations like this one where there is conflicting precedent, an intra-circuit conflict, we follow the precedent set out in our "well-established approach to resolving conflicts in our precedent." *Washington v. Howard*, 25 F.4th 891, 899 (11th Cir. 2022) (quotation marks omitted). It prescribes that we first try to find a "basis of reconciliation from the apparently conflicting decisions and then apply that reconciled rule." *Id.* at 900 (quotation marks omitted). If that is not possible, then "we must follow the earliest precedent that reached a binding decision on the issue." *Id.* (quotation marks omitted).

Here, the application of two completely different standards of review cannot be reconciled. *De novo* review is not clear error review, nor is there any other apparent basis for reconciling the two lines of precedent. So we apply our earliest binding precedent on the issue. As far as we can tell, that earliest precedent is the 1968 pre-split Fifth Circuit decision in *Astron Industrial Associates, Inc. v. Chrysler Motors Corp.*, which held that "privity is a factual question, and the District Court should not be reversed unless its determination is clearly erroneous." 405 F.2d at 961 (*citing Towle v. Boeing Airplane Co.*, 364 F.2d 590, 593 (8th Cir. 1966)). Accordingly, we apply clear error review to determine if the board members are in privity with the Board, and we review *de novo* the district court's determination of the remaining res judicata elements.[5]

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[5] For whatever it is worth, we do not think that it would change the result of this appeal if we were reviewing *de novo* instead of for clear error.

III. Discussion

The preclusive effect of prior judgments in federal court is governed by "uniform federal rules of res judicata." *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008) (alterations accepted) (quotation marks omitted). The purpose behind the doctrine of res judicata is to "preclud[e] parties from contesting matters that they have had a full and fair opportunity to litigate" and to "protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* at 892 (alterations adopted) (quotation marks omitted).

The party asserting res judicata bears the burden of "show[ing] that the later-filed suit is barred." *In re Piper Aircraft Corp.*, 244 F.3d at 1296. That's the Board, which contends that the district court properly granted summary judgment in its favor because *Rodemaker II* is barred by res judicata based on *Rodemaker I*. There is no dispute that two of the four elements of res judicata are met: (1) a court of competent jurisdiction, (2) rendered a final decision. *See Rodemaker I*, 859 F. App'x at 453.

The other two res judicata elements are the disputed ones: whether the two lawsuits involve (3) the same parties or ones in privity with them and (4) the same causes of action. Rodemaker contends that the defendants in *Rodemaker I*, the board members sued in their individual capacities, are not in privity with the remaining defendant in *Rodemaker II*, the Board. He also argues that the causes of action in the two cases are different. We will take up those issues in that order.

A. Privity

Privity is not a concept whose boundaries have been staked out with mathematical precision. It has been somewhat circularly defined as the "relationship between one who is a party of record and a nonparty that is sufficiently close so a judgment for or against the party should bind or protect the nonparty." *Hunt*, 891 F.2d at 1560 (quotation marks omitted); *see also Sw. Airlines Co.,* 546 F.2d at 95 ("[T]he term privity in itself does not state a reason for either including or excluding a person from the binding effect of a prior judgment, but rather it represents a legal conclusion that the relationship between the one who is a party on the record and the nonparty is sufficiently close to afford application of the principle of preclusion.") (footnote omitted); *Pemco Aeroplex*, 383 F.3d at 1286 (explaining that "privity" is "a flexible legal term" that "compris[es] several different types of relationships," and generally applies "when a person, although not a party, has his interests adequately represented by someone with the same interests who is a party").

More helpful is the non-exhaustive list of facts or factors the Supreme Court has provided that favor a finding of privity:

> (1) the nonparty agreed to be bound by the litigation of others; (2) a substantive legal relationship existed between the person to be bound and a party to the judgment; (3) the nonparty was adequately represented by someone who was a party to the suit; (4) the nonparty assumed control over the litigation in which the judgment was issued; (5) a party attempted to relitigate issues through

> a proxy; or (6) a statutory scheme foreclosed successive litigation by nonlitigants.

Griswold, 598 F.3d at 1292 (citing *Taylor*, 553 U.S. at 893-95); *see Taylor*, 553 U.S. at 893 & n.6 (explaining that this list "is meant only to provide a framework" for consideration of privity issues, "not to establish a definitive taxonomy").

Rodemaker argues that because he sued the board members in their individual capacity in *Rodemaker I*, they cannot be in privity with the Board in this case. That brings up the difference between individual capacity and official capacity claims. Claims against individuals in their official capacities "generally represent only another way of pleading an action against an entity of which an officer is an agent," and are "in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (quotation marks omitted). That's because an award of damages in an official capacity suit is paid by the government entity itself, so that entity is the real party in interest in that type of lawsuit. *Id.* at 166. A lawsuit against an individual in his individual capacity, by contrast, "can be executed only against the official's personal assets," meaning that the government itself is not responsible for any damages award from the suit (although, of course, it may voluntarily pay them to relieve its official of the burden of personally doing so). *Id.*

If the government is on the hook for damages in a lawsuit against an official in his official capacity, it should not later have to be on the hook for damages again based on the same conduct in a different lawsuit where it is a named defendant. So it makes sense that "[g]enerally, a government official sued in his or her

official capacity is considered to be in privity with the government, but a government official sued in his or her individual capacity is not." *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.7 (11th Cir. 2013); *cf. O'Connor v. Pierson*, 568 F.3d 64, 71 (2d Cir. 2009) (holding that members of a board of education sued in their official capacity were in privity with the Board). Because the board members were sued in their individual capacity in *Rodemaker I*, official-capacity-and-entity privity is not present here. But that does not mean that another type of, or basis for, privity does not exist here.

The Supreme Court has told us that there are other ways for privity to exist. *See Taylor*, 553 U.S. at 893-95. The question is whether the relationship between the parties in question was "sufficiently close so a judgment for or against the [individuals] should bind or protect the [Board]." *Hunt*, 891 F.2d at 1560 (quotation marks omitted). And where, as here, the five board members were able to take the action they took because they controlled the Board, the law slaps a privity label on the relationship and treats what the members did as action by the Board. When one party's actions are *legally* another party's actions, those two parties have the kind of substantive legal relationship that establishes privity. *See Harmon Indus., Inc. v. Browner*, 191 F.3d 894, 903 (8th Cir. 1999) ("Privity exists when two parties to two separate suits have a close relationship bordering on near identity.") (quotation marks omitted).

Contrast the relationship between the board member defendants and the Board to the relationship between a police officer and the police department for which he works. While performing his official duties,

the police officer acts as a representative of the police department, but he cannot reasonably be said to be acting as the department, at least not when he is sued in his individual capacity. He can't be said to be the department because he does not control the department. But here, the five board members, when performing their official duties and acting as a majority of the board, do control the Board; as the controlling majority, they are acting as the Board. Their collective decision not to renew Rodemaker's contract was a decision of the Board and resulted in the non-renewal of the contract.

Our decision about this is consistent with the precedent of other circuits. *See Schuster v. Martin*, 861 F.2d 1369, 1373 (5th Cir. 1988) (holding that members of a hospital's board of trustees were in privity with the hospital under Mississippi law because "[a]ll of the allegations made by [the plaintiff] refer to actions taken by [the board members] as members of [the hospital's] board or executive committee. Moreover, only these entities could have taken the actions complained of"); *Licari v. City of Chicago*, 298 F.3d 664, 667 (7th Cir. 2002) (holding that members of a policemen's retirement board sued in their individual capacity were in privity with the Board itself under Illinois law because "a government and its officers are in privity for purposes of *res judicata*" and the plaintiff "does not allege any action taken against him by the [board members] . . . that is separate and distinct from any action taken by the Board"); *Harmon*, 191 F.3d at 903 (finding privity where two parties to two separate suits "have a close relationship bordering on near identity") (quotation marks omitted).

The district court did not err at all, much less clearly err, in determining that the Board is in privity with the five of its nine members who were sued in their individual capacity in *Rodemaker I*.[6]

B. Same Cause of Action

Rodemaker also contends that the district court erred in concluding that *Rodemaker I* and *Rodemaker II* involve the same causes of action because (1) §§ 1981 and 1983 are different statutes with causation standards different from those of Title VII, and (2) he sued different parties in *Rodemaker II* than he did in *Rodemaker I*. We are not persuaded.

Determining whether two cases involve the same cause of action for the purposes of res judicata is an inquiry "concerned with the substance, and not the form, of the [two] proceedings." *Trustmark Ins. Co. v. ESLU, Inc.*, 299 F.3d 1265, 1270 (11th Cir. 2002). We ask whether the claims "arise[] out of the same nucleus

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[6] Rodemaker also argues that the district court erred in considering the Board's argument, raised for the first time in its reply brief, that it is in privity with the board members because, even though it wasn't a party in *Rodemaker I*, it "controlled the litigation." *Cf. Taylor*, 553 U.S. at 895 (explaining that "a nonparty is bound by a judgment if she assumed control over the litigation in which that judgment was rendered") (alteration adopted) (quotation marks omitted). We need not consider that issue because it does not affect our reasoning or conclusion. There was privity regardless of whether the Board controlled the litigation on the defense side in *Rodemaker I*.

And for the same reason, we need not consider the Board's argument based on *Citibank, N.A. v. Data Lease Fin. Corp.,* 904 F.2d 1498 (11th Cir. 1990), that it is in privity with the board members because they acted as its agents in voting to non-renew Rodemaker's contract.

of operative facts, or [are] based upon the same factual predicate." *TVPX ARS, Inc.*, 959 F.3d at 1325 (quotation marks omitted). Causes of action share a nucleus of operative fact if "the same facts are involved in both cases, so that the present claim could have been effectively litigated with the prior one." *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 893 (11th Cir. 2013) (quotation marks omitted). But if "full relief [was not] available in the first action," res judicata does not bar the second action. *TVPX ARS, Inc.*, 959 F.3d at 1325 (quotation marks omitted).

The claims in both *Rodemaker* lawsuits grew out of the same nucleus of operative fact and were based on the same factual predicate: the allegedly racially discriminatory decision not to renew Rodemaker's employment contract. While there were more factual allegations and specifics about the non-renewal of the contract in the second lawsuit, the non-renewal was at the center or core of both complaints. Factual allegations do not need to be identical to arise out of the same nucleus of operative fact. The nucleus is the core, not the core and every layer, crack, and fissure.

That the *Rodemaker I* complaint contained claims under §§ 1981 and 1983 while the *Rodemaker II* complaint contained claims brought under Title VII is not relevant to the inquiry. *See Lobo*, 704 F.3d at 893 (holding that Seaman's Wage Act claim and Labor Management Relations Act claims arose from the same nucleus of operative fact because the plaintiff alleged the same facts as the basis for both claims). Res judicata "applies not only to the precise legal theory presented in the prior case, but to all legal theories and claims arising out of the same nucleus of operative fact." *Hunt*, 891 F.2d at 1561. Because legal theories are

different from operative facts, a different legal theory does not necessarily mean a different nucleus of operative fact.

Nor is the fact that the different claims may have been subject to different standards of proof relevant. *See Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1188 (11th Cir. 2003) (explaining that "the fact that the elements of proof in the context of [the second claim] differ from those at issue in [the first claim] is not a basis on which we may hold res judicata to be inapplicable").

Rodemaker argues that he would have had to add the Board as a party to *Rodemaker I* to bring his Title VII claim in that lawsuit because Title VII claims cannot be brought against individuals. *See Hinson v. Clinch Cnty., Ga. Bd. of Educ.*, 231 F.3d 821, 827 (11th Cir. 2000). From that he argues that the two complaints involved different causes of action. But there was nothing preventing him from naming the Board as a party in *Rodemaker I*. *See* Fed. R. Civ. P. 20(a)(2)(B) (allowing a plaintiff to join any party as a defendant if "any question of law or fact common to all defendants will arise in the action"). And, in any event, the identity of the defendant against whom claims are brought is not relevant to the inquiry about the same cause of action element: whether the claims share a common nucleus of operative fact. *See Lobo*, 704 F.3d at 893. Similarity of parties is covered in the privity element of res judicata, and as we explained earlier, the privity requirement is met here. *See supra* at 22.

In the district court, Rodemaker argued that he could not have brought his Title VII claim in *Rodemaker I* because the EEOC had not yet issued him his right to sue letters. Thus he contended that *Rodemaker I*

could not be the same cause of action as *Rodemaker II* because "full relief [was not] available in" *Rodemaker I*. *TVPS ARS, Inc.*, 959 F.3d at 1325 (quotation marks omitted). The district court rejected that argument, and properly so. We have held that the fact a plaintiff did not have when he filed his first lawsuit a right to sue letter that was necessary for the claim he raised in his second lawsuit does not prevent it from being barred by res judicata. *See Jang v. United Techs. Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000) (explaining that "plaintiffs may not split causes of action to bring, for example, state law claims in one suit and then file a second suit with federal causes of action after receiving a 'right to sue' letter"). Rodemaker argues that *Jang* is inapplicable "because the critical element for the application of res judicata—identity of parties—existed" in *Jang* but does not exist here. But that attempted distinction fuses the privity element and the same cause of action element. They are distinct elements, and neither one requires that parties be identical for res judicata to apply. Rodemaker's attempt to distinguish *Jang* doesn't work.

Rodemaker I and *Rodemaker II* involved the same causes of action. That means all four elements of res judicata are met, and the district court properly granted summary judgment in favor of the Board in *Rodemaker II*.

III. Conclusion

Res judicata is concerned with substance over form. Claims that are based on the same issues and involve the same entities should generally be litigated together. In the present lawsuit, Rodemaker seeks to relitigate a dispute already decided in *Rodemaker I*.

He had a "full and fair opportunity to litigate" the dispute in that first lawsuit. *Taylor*, 553 U.S. at 892 (quotation marks omitted). Our application of res judicata to bar his attempted do-over in this second lawsuit carries out the purposes of res judicata, which are to "conserve judicial resources" and "minimiz[e] the possibility of inconsistent decisions." *Id.* (alteration adopted) (quotation marks omitted).

AFFIRMED.

ORDER GRANTING MOTION TO DISMISS, U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA (AUGUST 31, 2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

ALAN RODEMAKER,

Plaintiff,

v.

CITY OF VALDOSTA
BOARD OF EDUCATION, ET AL.,

Defendants.

Civil Action No. 7:21-CV-76 (HL)

Before: Hugh LAWSON, Senior Judge.

ORDER

Plaintiff Alan Rodemaker brought this action for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, following Defendants' decision not to renew his employment as the head football coach at Valdosta High School. Now before the Court are Defendants Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown's Motions to Dismiss. (Docs. 7, 8, 11, 12, 13).

Also before the Court is Defendant the City of Valdosta Board of Education or, in the alternative, the Valdosta City School District's Motion for Summary Judgment. (Doc. 31). Following a hearing on May 19, 2022, and after careful consideration, the Court GRANTS Defendants' motions.

I. Background

Alan Rodemaker began his career at Valdosta High School as an assistant football coach and gym teacher in 2010. (Doc. 1, ¶¶ 15-16). In 2016, Rodemaker became the head football coach. (*Id*. at ¶ 17). Under Rodemaker's guidance during the 2016 season, the Valdosta High School football team won the Georgia State Championship for Division 6A for the first time in eighteen years. (*Id*.). The team reached the quarter-finals of the state championship two of the next three years. (*Id*. at ¶ 18). With seventeen of twenty-two starting players set to return for the 2020-2021 school year, the football community widely perceived Valdosta High School as a contender for another state title. (*Id*. at ¶ 19).

Rodemaker was well regarded as both a teacher and a football coach. (*Id*. at ¶¶ 20-21). For ten years, the Valdosta Board of Education ("School Board" or "Board") renewed Rodemaker's teaching and coaching contract without consequence. (*Id*. at ¶ 22). In January 2020, the Superintendent of Valdosta City Schools again recommended renewing Rodemaker's contract, which was set to expire on June 30, 2020.[1] (*Id*. at

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[1] The City of Valdosta Board of Education is the governing body for the City of Valdosta School District. (*Id*. at ¶ 3). The Valdosta City School Superintendent makes employment recommendations

¶¶ 23-24, 28). The Superintendent presented his recommendation at the School Board's January 28, 2020 meeting. (*Id*. at ¶ 29). Ordinarily, the School Board members consider all of the Superintendent's contract renewal recommendations in a single vote rather than reviewing each contract individually. (*Id*. at ¶ 30). During this meeting, however, Defendant Warren Lee moved the Board to consider Rodemaker's contract separately. (*Id*. at ¶ 31-33). The Board ultimately voted 4-5 not to renew Rodemaker's contract. (*Id*. at ¶ 35). The vote was divided along racial lines, with each of the five black members of the School Board, Defendants Lee, Liz Shumphard, Tyra Howard, Kalisa Brown, and Debra Bell, voting to end Rodemaker's coaching tenure with the school district. (*Id*.). These Board members provided no explanation for their decision. (*Id*. at ¶ 36).

In response to public outcry, the Superintendent's recommendation to renew Rodemaker's contract was included on the School Board's February 11, 2020, meeting agenda. (*Id*. at ¶ 37). When the meeting convened, Defendant Lee moved to remove the item from the agenda. (*Id*. at ¶ 38). Defendants Brown, Howard, and Shumphard supported Lee's motion, but the motion was defeated 4-5, and the recommendation to renew Rodemaker's contract was once again put to a vote. (*Id*. at ¶ 45-48). The Board returned a 4-5 vote opposing renewal of Rodemaker's contract. (*Id*. at ¶ 48). The decision remained divided along racial lines. (*Id*.). Rodemaker, who is white, alleges that the

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to the Board of Education. (*Id*.). The Board evaluates and acts upon those recommendations. (*Id*.).

School Board's decision to end his employment was motivated by racial animus. (*Id.* at ¶¶ 50, 52-53, 59).

Rodemaker filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on April 24, 2020, alleging that the School Board discriminated against him based on his race. (Doc. 1-1). He filed a second Charge of Discrimination on July 15, 2020. (Doc. 1-2). Around the same time, on April 23, 2020, Rodemaker filed a lawsuit against Defendants Lee, Brown, Howard, Shumphard, and Brown in their individual capacities, alleging Defendants discriminated against him based on his race in violation of 42 U.S.C. § 1981 and § 1983. *See Rodemaker v. Shumphard*, Case No. 7:20-CV-75 (HL) (M.D. Ga. Apr. 23, 2020). The lawsuit was based on the same sequence of events outlined in the present action.

The individual Defendants moved to dismiss Plaintiff's original lawsuit, arguing that they were entitled to qualified immunity because Rodemaker failed to allege sufficient facts to state a race discrimination claim under § 1981 and § 1983. The Court expressed skepticism regarding the plausibility of Rodemaker's claims, calling it a "close case," but nevertheless concluded Rodemaker adequately alleged a violation of a clearly established law. *Rodemaker v. Shumphard*, Case No. 7:20-CV-75 (HL) (M.D. Ga. Dec. 1, 2020). The Court therefore denied Defendants' motions to dismiss and allowed the case to proceed. *Id.* Defendants appealed. On June 8, 2021, the Eleventh Circuit Court of Appeals found the Court erred by not dismissing Rodemaker's complaint and vacated the Court's decision. *Rodemaker v. Shumphard*, 859 F. App'x 450, 453 (2021). The Court then dismissed Rodemaker's

case and entered judgment for Defendants on September 8, 2021.

The EEOC issued a Dismissal and Notice of Rights on March 22, 2021. (Docs. 1-3, 1-4). Rodemaker filed this action on June 18, 2021, alleging Defendants discriminated against him based on his race in violation of Title VII and that the individual Defendants conspired to deprive him of his position as the head football coach. (Doc. 1). This lawsuit and the previous lawsuit share the same nucleus of operative facts, namely that the School Board voted not to renew Plaintiff's employment contract and that the vote fell along racial lines. Having failed to succeed on his individual capacity claims against the Board members, Plaintiff now names as Defendants the School Board and the five black School Board members as agents of the School Board.

In this action, Rodemaker includes additional facts concerning his replacement as head football coach. Rodemaker alleges that despite their best effort to hire a black man to fill his position, the School Board was unable to secure a candidate. (Doc. 1, ¶ 53). The Board extended an offer to Rush Probst, a white man. (*Id*. at ¶ 54). A scandal involving Probst soon erupted, and the Board rescinded the offer in April 2021. (*Id*. at ¶¶ 55-56). The Board thereafter named Shelton Felton, a black man, as head coach. (*Id*. at ¶ 56). Rodemaker claims the University of Tennessee terminated Felton and that he is an inferior coaching candidate than Rodemaker. (*Id*. at ¶¶ 57-58).

II. Motions to Dismiss

In his Complaint, Plaintiff asserts two claims against the individual Defendants. First, Plaintiff

alleges Defendants, as agents of the School Board and/or the School District, violated his rights under Title VII. Plaintiff, who is white, contends Defendants, the five black members of the Board, terminated his employment as the head football coach with the specific intention of replacing him with a black coach. Plaintiff further alleges the individual Defendants entered into a conspiracy to deprive him of his employment based on his race. Defendants move under Federal Rule of Civil Procedure 12(b)(6) to dismiss each of these claims for failure to state a viable cause of action.

A. Motion to Dismiss Standard

When ruling on a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept "all well-pleaded facts . . . as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271,1273 n.1 (11th Cir. 1999). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face." *Ashcroft v. lqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While a complaint need not contain detailed factual allegations, it must provide "more than labels or conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. The allegations "must be enough to raise a right of relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.*

"The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer

possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Iqbal*, 556 U.S. at 678. Further, while a court must accept all factual allegations in a complaint as true, this principle "is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient. *Id.* The complaint must "give the defendant fair notice of what the [plaintiff's] claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 556 (citation and internal quotations omitted).

B. Discussion

1. Title VII

Defendants argue, and Plaintiff does not dispute, that members of a board of education cannot be held liable under Title VII in either their individual or official capacities. "The relief granted under Title VII is against the employer, not individual employees whose actions would constitute a violation of the Act." *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991) (emphasis in original) (explaining that recovery under Title VII shall be against the employer, either by naming the employer directly or by naming a supervisory employee as an agent of the employer); *see also* 42 U.S.C. § 2000e(b) (definition of "employer"). The Eleventh Circuit accordingly has consistently held that individual school board members cannot be sued in their individual capacities under Title VII. *See Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1234 n.3 (11th Cir. 2016); *Hinson v. Clinch Cnty, Ga. Bd. of Educ.*, 231 F.3d 821, 827 (11th Cir. 2000); *Busby*, 931

F.2d at 772. The Court therefore GRANTS Defendants' motion to dismiss Plaintiff's Title VII claims against the individual Defendants.

2. Conspiracy

Plaintiff asserts a conspiracy claim against the individual Defendants in Count Three of his Complaint. According to Plaintiff, the five black School Board members entered into an agreement to deprive him of his position as the head football coach at Valdosta High School because he is white. Plaintiff alleges these Board members knew their block vote would accomplish their goal of removing Plaintiff and replacing him with a black coach.

Plaintiff's Complaint does not articulate a specific legal basis for his conspiracy claim. However, in his response to Defendants' motion to dismiss, Plaintiff states that his conspiracy claim arises under 42 U.S.C. § 1985(3). Defendants argue that to the extent Plaintiff's conspiracy claim is based on § 1985(3), he has failed to state a claim. Alternatively, Defendants contend Plaintiff's conspiracy claim is barred by the intracorporate conspiracy doctrine.

a. Section 1985

Section 1985(3) makes it unlawful for two or more persons to conspire for the purpose of depriving any person or class of persons of equal protection of the laws or equal protection or immunities under the laws. *See* 42 U.S.C. § 1985(3). To state a claim under § 1985(3), "a plaintiff must allege: (1) defendants engaged in a conspiracy; (2) the conspiracy's purpose was to directly or indirectly deprive a protected person or class the equal protection of the laws, or equal

privileges and immunities under the laws; (3) a conspirator committed an act to further the conspiracy; and (4) as a result, the plaintiff suffered injury to either his person or his property, or was deprived of a right or privilege of a citizen of the United States." *Jimenez v. Wellstar Health Sys.*, 596 F.3d 1304, 1312 (11th Cir. 2010). "The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

"Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates." *Great Am. Fed. Say. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979). "The only rights the Supreme Court has expressly declared enforceable . . . under § 1985(3) are the right to interstate travel and the right against involuntary servitude." *Jimenez*, 596 F.3d at 1312. In contrast, the Supreme Court has specifically held that § 1985(3) "may not be invoked to redress violations of Title VII." *Id.* at 378; *see also Jimenez*, 596 F.3d at 1312 ("[C]onspiracies to violate rights protected by Title VII cannot form the basis of § 1985(3) suits."); *but see Dickerson v. Alachua Cnty. Comm'n*, 200 F.3d 761, 766-67 (11th Cir. 2000) (holding that Title VII does not preempt a § 1985(3) claim arising out of the same underlying facts when the § 1985(3) claim is based on an assertion of a constitutional right). In *Novotny*, the Supreme Court reasoned that permitting a plaintiff to use § 1985(3) to enforce a right created under Title VII would impair the effectiveness of Title VII's remedial scheme. *Id.*

Plaintiff s Complaint not only fails to invoke § 1985(3) but also is devoid of any allegations concerning a deprivation of a constitutional right. Unlike *Dickerson*, where the plaintiff's § 1985(3) claim was based on alleged violations of the Fourteenth Amendment rights to equal protection of the laws and due process, 200 F.3d at 766, Plaintiff's conspiracy claim makes no mention of a specific constitutional right. Plaintiff alleges only that the individual Defendants entered into an agreement to vote in unison to terminate Plaintiff's employment as the head football coach because he is white and because they desired a black coach. These factual allegations plainly fall under the province of Title VII. Plaintiff's § 1985(3) claim is thus preempted by Title VII. Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiff's conspiracy claim.

b. Intracorporate Conspiracy Doctrine

Even if Title VII did not preempt Plaintiff's § 1985(3) claim, Plaintiff's conspiracy claim is barred by the intracorporate conspiracy doctrine. Under the intracorporate conspiracy doctrine,

> a corporation's employees, acting as agents of the corporation, are deemed incapable of conspiring among themselves or with the corporation. This doctrine stems from basic agency principles that "attribute acts of agents of a corporation to the corporation, so that all of their acts are considered to be those of a single legal actor." The reasoning behind the intracorporate conspiracy doctrine is that it is not possible for a single legal

> entity consisting of the corporation and its agents to conspire with itself, just as it is not possible for an individual person to conspire with himself.

Dickerson, 200 F.3d at 767 (quoting *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 603 (11th Cir. 2000)). The doctrine applies both to private corporations and public government entities. *Id.*

Plaintiff argues, without authority, that the intra-corporate conspiracy doctrine does not apply because Defendants are elected officials and not employees of the Board of Education. Plaintiff's argument ignores that the doctrine applies to agents, not just employees. *See Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1261 (11th Cir. 2010). Elected or not, Defendants together comprise and indisputably serve as agents of the School Board, a single public entity. As agents acting on behalf of a single entity, Defendants cannot conspire with themselves or the entity to deprive Plaintiff of his employment for an unlawful purpose. *See Dickerson*, 200 F.3d at 769.

Plaintiff's assertion that the doctrine does not apply because Defendants conspired with non-Board members is equally unavailing. Plaintiff's Complaint contains no allegations to that effect. While Plaintiff pled that the Board permitted community members to speak on the subject of Plaintiff's contract renewal at a public hearing and that Defendants improperly discussed school business with persons outside of the Board, Plaintiff's Complaint in no way links these other individuals to the alleged conspiracy between Defendants to vote a certain way.

Plaintiff further argues that certain exceptions preclude application of the intracorporate conspiracy doctrine in this case. Though never explicitly adopted by the Eleventh Circuit, the Circuit has discussed exceptions to the intracorporate conspiracy doctrine rule observed by other circuits. *Id.* at 770. Other jurisdictions recognize exceptions (1) for "convictions involving criminal charges of conspiracy;" (2) for acts outside of an agents' employment; (3) where the employees have an "independent personal stake" in their unconstitutional acts; or (4) where the employees "engage in a series of discriminatory acts as opposed to a single action" over a prolonged period of time. *Id.* at 769-70.

Plaintiff contends three exceptions apply in this case. First, Plaintiff argues Defendants acted outside the scope of the Board of Education's legal purpose. Next, Plaintiff suggests Defendants' conduct was criminal in nature, so they should not be afforded the shield of the intracorporate conspiracy doctrine. Finally, Plaintiff argues Defendants engaged in a series of discriminatory acts rather than a single action.

The only one of these exceptions the Eleventh Circuit has applied involves application of the intracorporate conspiracy doctrine where the alleged conspiratorial conduct violates federal criminal law. *See McAndrew v. Lockhead Martin Corp.*, 206 F.3d 1031, 1034 (11th Cir. 2000). In *McAndrew*, the Eleventh Circuit held "that just as the intracorporate conspiracy doctrine cannot shield a criminal conspiracy from prosecution under the federal criminal code, the doctrine cannot shield the same conspiracy, alleging the same criminal wrongdoing, from civil liability arising under" § 1985(3). *Id.* This case involves an alleged civil

conspiracy. Plaintiff's Complaint asserts no allegations of a criminal conspiracy involving a violation of the federal criminal code. Accordingly, this exception does not apply.

Plaintiff likewise has articulated no facts in support of his claim that Defendants had a personal stake in removing Plaintiff as the head football coach. Plaintiff also has not adequately alleged that Defendants engaged in a series of discriminatory acts over an extended period of time. Rather, Plaintiff's case arises out of a vote, and a re-vote shortly thereafter, not to renew Plaintiff's employment contract. Concluding that none of the exceptions to the intracorporate conspiracy doctrine apply, the Court finds that Plaintiff has failed to state a viable conspiracy claim and GRANTS Defendants' motion to dismiss Count Three of Plaintiff's Complaint.

3. Attorney's Fees and Punitive Damages

Defendants move the Court to dismiss Plaintiff's claims for attorney's fees and punitive damages. Having determined that Plaintiff failed to state a claim under Title VII, the Court GRANTS Defendants' motion to dismiss Plaintiff's claim for attorney's fees. *See* 42 U.S.C. § 2000e-5(k) (allowing award of attorney's fees to the prevailing party). There being no award of actual damages, Plaintiff is not entitled to punitive damages. The Court therefore GRANTS Defendants' motion to dismiss Plaintiff's demand for punitive damages.

III. Motion for Summary Judgment

Defendant City of Valdosta Board of Education or, in the alternative, the Valdosta City School District ("School Board") moves for summary judgment as to Counts One, Four, and Five of Plaintiff's Complaint. Defendant argues Plaintiff's Title VII claims are barred by the doctrine of res judicata and that, consequently, Plaintiff's claims for attorney's fee and punitive damages are subject to dismissal. The Court concurs and GRANTS Defendant's Motion for Summary Judgment. (Doc. 31).

A. Summary Judgment Standard

Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue of material fact arises only when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The party seeking summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of a material fact." *Celotex*, 477 U.S. at 323 (internal quotation marks omitted). If the movant meets this burden, the burden shifts to the party opposing summary judgment to go beyond the pleadings and present specific evidence showing that

there is a genuine issue of material fact, or that the movant is not entitled to judgment as a matter of law. *Id.* at 324-26. This evidence must consist of more than conclusory allegations. *See Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991). Summary judgment shall be entered "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

B. Discussion

Res judicata is a "judicially made doctrine" whose purpose is to give "finality to parties who have already litigated a claim" and to promote judicial economy. *In re Atlanta Retail, Inc.*, 456 F.3d 1277, 1284 (11th Cir. 2006). "It is by now hornbook law that the doctrine of res judicata bars the filing of claims which were raised or could have been raised in an earlier proceeding." *Maldonado v. U.S. Att'y Gen.*, 664 F.3d 1369, 1375 (11th Cir. 2011). To invoke res judicata, the moving party must establish that the prior decision (1) was rendered by a court of competent jurisdiction; (2) was final; (3) involved the same parties or their privies; and (4) involved the same causes of action. *TVPX ARS, Inc. v. Genworth Life and Annuity Ins. Co.*, 959 F.3d 1318, 1325 (11th Cir. 2020). "If even one of these elements is missing, res judicata is inapplicable." *Manning v. City of Auburn*, 953 F.2d 1355, 1358 (11th Cir. 1992). "[T]he burden is on the party asserting res judicata . . . to show that the later-filed suit is barred." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001) (citation omitted).

The parties here do not dispute the first two elements. The Court must only determine whether Defendant has established the third and fourth elements.

1. Same Parties or their Privies

Plaintiff's previous lawsuit named as Defendants Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown, the five black School Board members, in their individual capacities. In the present action, Plaintiff asserts claims against the School Board along with the same five Board Members "individually as [a]gents" of the School Board. Plaintiff argues, and Defendants generally agree, that the relationship between the School Board of and the Board Members in their individual capacities does not automatically establish privity. *See Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1075 n.7 (11th Cir. 2013) ("Generally, a government official sued in his or her official capacity is considered to be in privity with the government, but a government official sued in his or her individual capacity is not"); 18A Wright, Miller & Cooper, *Federal Practice and Procedure* § 4458, at 567 & n.20 (2d ed. 2002) ("[A] judgment against a government or one government official does not bind a different official in subsequent litigation that asserts a personal liability against the official."). However, Defendants contend other circumstances create privity for purposes of the res judicata analysis.

"Identity of parties concerns two sets of persons": (1) "those persons who were actual parties in the original action"; or (2) those persons "who are or were in privity with the parties to the original suit." *N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1560 (11th Cir.

1990). Privity is defined as "a relationship between one who is a party of record and a nonparty that is sufficiently close so a judgment for or against the party should bind or protect the nonparty." *Id.* (quoting *Hart v. Yamaha-Parts Distribs., Inc.*, 787 F.2d 1468, 1472 (11th Cir. 1986)). Courts have identified a variety of "substantive legal relationship[s]" that establish privity for res judicata purposes. *See Echeverria v. Bank of Am., N.A.*, 632 F. App'x 1006, 1008 (11th Cir. 2015) (citing *Taylor v. Sturgell*, 553 U.S. 880, 894 & n.8 (2008)). For example, nonparty preclusion may exist when there is an agency relationship; when the nonparty was adequately represented by someone who was a party to the suit; or when the nonparty assumed control over the litigation in which the judgment was issued. *See Taylor*, 553 U.S. at 2172-73 (listing six categories of exceptions to the rule against nonparty exclusion).

The School Board was not named as a party in the prior litigation. Accordingly, in order for claim preclusion to apply, the School Board must demonstrate privity existed with the five individual School Board members. As mentioned, the School Board and School Board members are not necessarily in privity since Plaintiff's original lawsuit asserted claims against the Board members in their individual capacities. Defendant argues res judicata still precludes Plaintiff's claims against the Board because the Board members served as agents of the School Board. "A principal-agent relationship is one kind of 'substantive legal relationship' that establishes privity for claim preclusion purposes." *Echeverria*, 632 F. App'x at 1008 (quoting *Taylor*, 553 U.S. at 894 & n.8). "[I]t is settled that a judgment exonerating a servant or agent from liability bars a

subsequent suit on the same cause of action against the master or principal based solely on respondeat superior." *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1502 (11th Cir. 1990) (quoting *Lober v. Moore*, 417 F.2d 714, 717-18 (D.C. Cir. 1969)).

The Eleventh Circuit applied this principle in *Citibank* to bar claims against the financial institution based on a prior judgment in favor of seven individual directors of the bank. *Id.* The Court explained that privity between Citibank and the seven directors did not exist solely because the opposing party made identical claims against each of them:

> When a person suffers injury as the result of the concurrent or consecutive acts of two or more persons, he has a claim against each of them. . . . Accordingly, a judgment for or against one obligor does not result in the merger or bar of the claim that the injured person may have against another obligor.

Id. (quoting *Hart*, 787 F.2d at 1473). Rather, privity arose because the claims against Citibank were based on the alleged wrongful acts of the bank's agents and not on any action by the bank itself. *Id.* The Circuit Court approvingly noted the Fifth Circuit's observation that "[m]ost other federal circuits have concluded that employer-employee or principal-agent relationships may ground a claim preclusion defense, regardless which party to the relationship was first sued." *Id.* (quoting *Lubrizol Corp. v. Exxon Corp.*, 871 F.2d, 1279, 1288 (5th Cir. 1989)).

Both the previous lawsuit and this lawsuit involve a single set of events: the decision of the School Board not to renew Plaintiff's employment contract. In both

cases, Plaintiff alleges the five black School Board members voted to remove Plaintiff as the head football coach at Valdosta High School because he is white. Plaintiff asserts no allegations specific to any actions taken by the School Board. Instead, the premise of both lawsuits is that the individual Defendants, as agents of the School Board, acted on behalf of the Board. Based on these circumstances, and the Eleventh Circuit's reasoning articulated in *Citibank*, the Court is satisfied that the School Board has shown it is in privity with the School Board members.

Moreover, the School Board's interests were adequately represented in the previous lawsuit. The Supreme Court has "recognized an exception to the general rule when, in certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party." *Richards v. Jefferson Cnty., Ala.*, 517 U.S. 793, 798 (1996). Defendant argues, and Plaintiff does not contest, that the basis for liability in the previous lawsuit—the individual Defendants' alleged acts of racial discrimination against Plaintiff—is the same basis alleged for the School Board's liability in this case. The Board consequently shares a "commonality of interests for purposes of defending against [Plaintiff's] claim." *See McDonald v. Hillsborough Cnty. Sch. Bd.*, 821 F.2d 1563, 1566 (11th Cir. 1987). Plaintiff also does not dispute Defendant's assertion that the School Board provided counsel for the individual Defendants in the previous action and exerted substantial control over the defense. *See* Restatement (Second) of Judgments § 39 (1982) ("A person who is not a party to an action but who controls or substantially participates in the control of the presentation on

behalf of a party is bound by the determination of issues decided as though he were a party."). Both of these factors support a finding of privity.

Having concluded that there is privity between the School Board and the five individual School Board members, the Court finds Defendant has met its burden of establishing the third res judicata element.

2. Same Cause of Action

Plaintiff's original lawsuit asserted claims against the five individual School Board members for racial discrimination in violation of § 1981 and § 1983. In the present action, Plaintiff alleges the School Board is liable under Title VII for allegedly terminating Plaintiff's employment contract based on his race. Plaintiff does not dispute that the two actions arise out of the same sequence of events. However, Plaintiff argues that his Title VII claims could not have been raised in the prior action because Plaintiff did not name the School Board as a Defendant and because Plaintiff had not yet exhausted his administrative remedies with the EEOC and so could not have included the Title VII claim.

Claims are part of the same "cause of action" when they "arise out of the same transaction or series of transactions." *Piper*, 244 F.3d at 1297. The doctrine of res judicata "is concerned with the substance, and not the form, of the proceedings." *Trustmark Ins. Co. v. ESLU, Inc.*, 299 F.3d 1265, 1270 (11th Cir. 2002). Thus, "if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, th[en] the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata." *Piper*, 244 F.3d at 1297 (citation

omitted). In resolving whether the facts arise out of the same transaction or series of transactions, the court must ask "whether the plaintiff could, or rather should, have brought the second claim with the first lawsuit." *Trustmark*, 299 F.3d at 1270. Res judicata acts as a bar "not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact." *Manning*, 953 F.2d at 1358-59 (quotation marks and citation omitted).

Plaintiff asserts he could not have raised his Title VII claim in his previous lawsuit, so res judicata should not now bar the claim. Plaintiff filed the original lawsuit on April 23, 2020, the day before he filed his Charge of Discrimination with the EEOC. According to Plaintiff, because he had not yet received a right to sue letter from the EEOC, he could not pursue his Title VII claim in conjunction with his § 1981 and § 1983. Plaintiff is correct that his Title VII claim was not yet ripe.[2] However, the Eleventh Circuit in *Jang v. United Techs. Corp*., 206 F.3d 1147, 1149 (11th Cir. 2000), plainly held that the lack of administrative

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[2] A plaintiff seeking relief under Title VII must first exhaust his administrative remedies by filing a charge of discrimination with the EEOC. *See* 42 U.S.C. § 2000e-5(b) and (f)(1). The purpose of the exhaustion requirement is to allow the EEOC to "have the first opportunity to investigate the alleged discriminatory practices" so it can "perform its role in obtaining voluntary compliance and promoting conciliation efforts." *Gregory v. Ga. Dep't of Human Res*., 355 F.3d 1277, 1279 (11th Cir. 2004). Where the EEOC either terminates its investigation or elects not to file suit on behalf of the complaining party, the agency then must send the plaintiff notice of her right to file suit. Once the plaintiff receives this notice, he must file his lawsuit within ninety days. *See* 42 U.S.C. § 2000e-5(f)(1).

exhaustion does not impact the bar against claim splitting.

The plaintiff in *Jang* filed suit against his former employer under the Americans with Disabilities Act ("ADA") and the Florida Civil Rights Act, along with a breach of contract claim. *Id.* at 1148. The district court deemed the breach of contract claim as insufficient as a matter of law and found the Florida Civil Rights Act claim time barred. *Id.* The Court dismissed the plaintiff's ADA claim because the plaintiff had not obtained a right to sue notice. *Id.* After receiving a right to sue letter, the plaintiff filed a second lawsuit raising the same ADA and Florida Civil Rights Act claims. *Id.* The district court concluded res judicata barred the plaintiff's claim in light of the previous judgment. *Id.* at 1148-49.

On appeal, the Eleventh Circuit rejected the plaintiff's argument that res judicata should not bar his discrimination claim because he could not obtain a right to sue letter before filing his first lawsuit. *Id.* The Circuit Court relied on the reasoning of three other circuit courts to explain that res judicata prohibited claim splitting regardless of the exhaustion issue. *Id.* (citing *Heyliger v. State Unv. & Cmty. Coll. Sys. of Tenn.*, 126 F.3d 849, 855-56 (6th Cir. 1997); *Brzostowski v. Laidlaw Waste Sys., Inc.*, 49 F.3d 337, 339 (7th Cir. 1995); *Woods v. Dunlop Tire Corp.*, 972 F.2d 36, 41 (2d Cir. 1992)). Where there is an administrative impediment to brining a Title VII claim, a plaintiff may avoid claim preclusion "by filing [his] other claims and seeking a stay to await the Title VII administrative proceedings or by filing the claims and then amending after obtaining the right to sue letter." *Id.* (citing *Woods*, 972, F.2d at 41).

In support of its holding, the *Jang* Court also cited to *Rivers v. Barberton Bd. of Edu.*, 143, F.3d, 1029 (6th Cir. 1998), which the Court finds instructive. In *Rivers*, the Sixth Circuit found for res judicata purposes that the prior dismissal of a plaintiff's §§ 1981 and 1983 claims constituted a final decision "not only as to those legal theories, but also to any other legal theory under which that claim might have been litigated," including a Title VII claim. *Id.* at 1032. In the Court's opinion, the absence of a right to sue letter when filing an action for employment discrimination is inconsequential to the principle that a plaintiff could, and should, litigate Title VII claims in conjunction with all other federal claims based on the same facts. *Id.* To avoid subsequent preclusion of a Title VII claim, a plaintiff simply needs to file suit outlining his other claims, obtain the right to sue letter, then seek to amend the complaint to include the Title VII claim. *Id.* at 1033.

Plaintiff attempts to distinguish *Jang* and the cases upon which *Jang* relies by pointing out that the parties in each of those cases were identical, but here they are not. Plaintiff misses the point. Defendant cites to *Jang* to support its contention that the present and prior actions involve the same cause of action, not to address privity. Plaintiff's argument is therefore unpersuasive.

Eleventh Circuit precedent is clear. Plaintiff could, and should, have raised his Title VII claim in the previous lawsuit. Rather than wait for the EEOC to investigate his discrimination claim and to issue a right to sue letter so that he could pursue his Title VII claims and his §§ 1981 and 1983 claim in a cohesive action, Plaintiff instead chose to rush to the courthouse

to seek immediate justice for his allegedly unlawful termination. Even without the right to sue letter in hand, Plaintiff could have filed his civil rights action then requested a stay to await the letter and to amend his complaint. He did not, electing instead to split his claims.

There is no dispute that Plaintiff's Title VII claim arose from the same core facts as his §§ 1981 and 1983 claims. Having determined that Plaintiff's argument that he could not have asserted his Title VII claim in the prior action is squarely foreclosed by Eleventh Circuit present, the Court finds Defendant has satisfied the fourth res judicata element.

The Court concludes that Defendant has adequately met its burden of establishing each of the four res judicata elements. The Court consequently finds Plaintiff's Title VII claim asserted against Defendant is barred by the doctrine of res judicata and that Defendant is entitled to judgment as a matter of law.

3. Attorney's Fees and Punitive Damages

The Court finds Defendant is entitled to summary judgment. Accordingly, there is no basis to award Plaintiff either attorney's fees or punitive damages. Those claims are therefore DISMISSED.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Defendants' Warren Lee, Liz Shumphard, Tyra Howard, Debra Bell, and Kelisa Brown's Motions to Dismiss. (Docs. 7, 8, 11, 12, 13). The Court further GRANTS Defendant the City of Valdosta Board of Education or,

in the alternative, the Valdosta City School District's Motion for Summary Judgment. (Doc. 31).

SO ORDERED, this 31st day of August, 2022.

/s/ Hugh Lawson
Senior Judge

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (OCTOBER 2, 2024)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALAN RODEMAKER,

Plaintiff-Appellant,

v.

CITY OF VALDOSTA BOARD OF EDUCATION, or, in the Alternative, VALDOSTA CITY SCHOOL DISTRICT, WARREN LEE, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, LIZ SHUMPHARD, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, TYRA HOWARD, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, DEBRA BELL, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District, KELISA BROWN, individually as Agent of the City of Valdosta Board of Education and/or the Valdosta City School District,

Defendants-Appellees.

No. 22-13300

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 7:21-cv-00076-HL

Before: Jill PRYOR, BRANCH, and Ed CARNES,
Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Alan Rodemaker is DENIED.