

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

FALLS CHURCH MEDICAL CENTER, LLC *et al.*,

Plaintiffs,

v.

M. NORMAN OLIVER, *et al.*,

Defendants.

**CASE NO: 3:18-cv-428-HEH**

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION  
TO JOIN AN ADDITIONAL PARTY AND AMEND COMPLAINT**

On June 20, 2018, Plaintiffs Falls Church Medical Center, LLC d/b/a Falls Church Healthcare Center; Whole Woman's Health Alliance; All Women's Richmond, Inc. d/b/a A Capital Women's Health Clinic; and Virginia League for Planned Parenthood filed suit challenging certain abortion restrictions in the Commonwealth of Virginia under the Fourth and Fourteenth Amendments of the United States Constitution. Plaintiffs file this motion for leave to join an additional party and amend the Complaint to reflect the addition of Dr. Jane Doe, a physician who provides abortion care at medical facilities in Virginia, including one of clinic Plaintiff's healthcare centers, as a plaintiff. The proposed Amended Complaint is attached hereto as Exhibit A. Defendants represented by the Office of the Attorney General neither oppose nor consent to the motion or the filing of the proposed Amended Complaint.<sup>1</sup>

The instant case is in the very early stages of litigation. The parties have not yet exchanged initial disclosures or engaged in any discovery. Defendants' Motions to Dismiss are currently pending before the Court, and an initial pretrial conference is scheduled for September 6, 2018.

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<sup>1</sup> Over several days, counsel for Plaintiffs made multiple good faith efforts to confer with Defendant Robert Tracci, who failed to respond to any correspondence.

Pretrial Schedule A, issued by the Court on August 1, 2018, provides that the parties may file any motion to join additional parties to this action within 15 days of the scheduling order. Dkt. No. 27-1, at 1. Plaintiffs seek to add an additional party, Dr. Jane Doe, to this action as a plaintiff, and amend the Complaint accordingly, under Rules 15, 20, and 21 of the Federal Rules of Civil Procedure.<sup>2</sup> The motion is timely, and Plaintiffs have made the requisite showings under the Rules. The motion should therefore be granted.

### ARGUMENT

In considering whether to grant a motion to add a permissive party, a court considers both Rule 15(a)'s general principles for amending pleadings and whether the particular requirements of Rule 20 are satisfied. *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001) (citations omitted). Rule 15(a) permits a party to amend a pleading with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a). A court "should freely give leave when justice so requires." *Id.* A motion to amend pleadings "should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc) (quotation marks omitted).

Under Rule 20, plaintiffs may be joined in an action if their claim "aris[es] out of the same transaction, occurrence, or series of transactions or occurrences" and shares a common question of law or fact. Fed. R. Civ. P. 20(a)(1). Permissive party joinder is "liberally construed by the courts." *PBM Prods. v. Mead Johnson Nutrition Co.*, No. 3:09-CV-269, 2009 WL 4665746, at \*2 (E.D. Va. Dec. 1, 2009). The Supreme Court has stated that permissive party joinder should be

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<sup>2</sup> Plaintiffs may seek further leave to amend the Complaint pending the outcome of Defendants' motion to dismiss.

construed with the “broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). Permissive joinder is liberally granted unless it would result in “prejudice, expense, or delay.” 7 Charles Alan Wright et al., *Federal Practice & Procedure* § 1652 (3d ed. 2018).

The claims asserted by Dr. Doe arise from the same series of occurrences and share common questions of law and fact with the claims alleged in the Complaint. Dr. Doe provides a full range of obstetric services to her patients, including pre-viability abortion care. Dr. Doe seeks to bring claims against the laws challenged in the Complaint on behalf of herself and her patients. These laws directly affect her ability to provide abortion care in Virginia, unduly burdening her patients’ ability to access such care. In addition, some of the challenged laws, including Va. Code Ann. §§ 18.2-73 (the “Hospital Requirement”) and 18.2-71 (the “Felony Abortion Statute”), would confer criminal liability for any violation directly upon Dr. Doe. But for the threat of prosecution under the Hospital Requirement and the Felony Abortion Statute, Dr. Doe would seek to provide abortions, including procedures prior to and after 13 weeks, 6 days from the woman’s last menstrual period, in a physician’s office or other appropriate medical facility not currently licensed as a “hospital” or “abortion facility.” Dr. Doe is also subject to criminal and civil penalties, as well as potential loss of her medical license, for violating the challenged Mandatory Two-Trip Delay Law and provisions of the challenged Licensing Scheme.

Further, Rule 21 provides that parties may be added by order of the court at any time. Fed. R. Civ. P. 21. Like leave to amend pursuant to Rule 15(a), leave to add a party under Rule 21 should be freely and routinely given absent prejudice to an existing party, undue delay, bad faith, or futility. *See Murray v. State Farm Fire & Cas. Co.*, 870 F. Supp. 123, 125 n.5 (S.D. W. Va. 1994); *see also* Charles Alan Wright et al., 7 *Federal Practice & Procedure* § 1681 (3d ed. 2018)

(Rule 21 “provides the courts with a valuable procedural device that can be used to avoid multiple litigation and to promote liberal joinder of parties.”). Adding Dr. Doe as plaintiff at this early stage of litigation, before any discovery has commenced or any deadline has been set, would neither prejudice Defendants nor cause undue delay. Rather, adding her as plaintiff at this stage would promote judicial efficiency and avoid the need for additional litigation in the future.

Plaintiffs meet the requirements of Rules 15, 20, and 21 to amend their Complaint to join an additional party. The claims of all existing Plaintiffs and the additional Plaintiff arise from the same series of occurrences, emerging from the same facts and conduct, as alleged in the Proposed Amended Complaint. *See* Exhibit A. Plaintiffs seek to add Dr. Doe in good faith, and her addition at this early stage would not prejudice Defendants or cause any undue delay. Therefore, Plaintiffs’ motion should be granted, and Dr. Doe should be joined as a Plaintiff to this action. A proposed Order is attached as Exhibit B.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request leave of Court to file the Amended Complaint to add Dr. Jane Doe as a Plaintiff.

Dated: August 16, 2018

Respectfully submitted,

/s/ Gail M. Deady

Jenny Ma\*  
Gail M. Deady (VSB No. 82035)  
Amy Myrick\*  
CENTER FOR  
REPRODUCTIVE RIGHTS  
199 Water Street, 22nd Floor  
New York, New York 10038  
Phone: (917) 637-3600  
Fax: (917) 637-3666  
Email: jma@reprorights.org  
gdeady@reprorights.org

*Attorneys for Plaintiffs Falls  
Church Medical Center,  
LLC; Whole Woman's Health  
Alliance; and All Women's  
Richmond, Inc.*

Jennifer Sandman\*  
PLANNED PARENTHOOD  
FEDERATION OF  
AMERICA  
123 William Street, 9th Floor  
New York, New York 10038  
Phone: (212) 261-4584  
Fax: (212) 247-6811  
Email:  
jennifer.sandman@ppfa.org

*Attorney for Plaintiff Virginia  
League for Planned  
Parenthood*

Claire G. Gastanaga (VSB  
No. 14067)  
Eden B. Heilman\*\*  
AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
VIRGINIA, INC.  
701 E. Franklin Street,  
Suite 1412  
Richmond, Virginia 23219  
Phone (804) 644-8080  
Fax: (804) 649-2733  
Email: claire@acluva.org

*Attorneys for all Plaintiffs*

\*Admitted *Pro Hac Vice*.

\*\*Motion for Admission *Pro Hac Vice* to be filed.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2018, a true and correct copy of the foregoing Plaintiffs' Memorandum of Law in Support of Motion to Join an Additional Party and Amend Complaint was served on counsel for Defendants represented by the Office of the Attorney General via the Eastern District of Virginia's Electronic Filing System and mailed to Defendant Robert Tracci pursuant to Federal Rule of Civil Procedure 5(b).

Matthew R. McGuire  
Deputy Solicitor General  
Office of the Attorney General  
202 North Ninth Street  
Richmond, VA 23219  
mmcguire@oag.state.va.us

Robert N. Tracci  
Commonwealth's Attorney for the County of Albemarle  
410 East High Street  
Charlottesville, VA 22902  
rtracci@albemarle.org

Dated: August 16, 2018

By: /s/ Gail M. Deady

Gail M. Deady (VSB No. 82035)  
CENTER FOR REPRODUCTIVE RIGHTS  
199 Water Street, 22nd Floor  
New York, NY 10038  
Phone: (917) 637-3600  
Fax: (917) 637-3666  
Email: gdeady@reprorights.org