UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

LEAGUE OF WOMEN VOTERS OF VIRGINIA, et al., **Plaintiffs,** **v.** **VIRGINIA STATE BOARD OF ELECTIONS, et al.** **Defendants.**	**Case No. 6:20-cv-00024-NKM**

PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiffs respectfully move the Court under Federal Rule of Civil Procedure 15(a)(2) for leave to file the attached proposed Second Amended Complaint to add three additional individual plaintiffs and update information by the two existing individual plaintiffs in the case. Defendants neither consent to nor oppose this amendment, and Intervenor-Defendant Republican Party of Virginia ("RPV") does not consent to the amendment. Because Plaintiffs have filed this motion within the 45-day period allowing parties to seek leave without showing good cause, *see* Dkt. No. 74 at 6, because Rule 15(a) requires that the Court "freely give leave when justice so requires" and because this amendment would not unduly prejudice the other parties, the Court should grant Plaintiffs' motion.

Rule 15(a) of the Federal Rules of Civil Procedure provides that the "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). And the "general policy embodied in the Federal Rules favoring resolution of cases on their merits" also supports freely allowing amendments. *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980).

As such, the Fourth Circuit has directed that "absence of prejudice, though not alone determinative, will normally warrant granting leave to amend." *Id.* Even an extended delay in seeking amendment standing alone, "without any specifically resulting prejudice, or any obvious design by dilatoriness to harass the opponent, should not suffice as reason for denial." *Id.* In "exercising its discretion in the matter the Court should focus 'on prejudice or futility or bad faith as the only legitimate concerns in denying leave to amend, since only these truly relate to protection of the judicial system or other litigants.'" *Island Creek Coal Co. v. Lake Shore, Inc.*, 832 F.2d 274, 279 (4th Cir. 1987) (quoting *Davis*, 615 F.2d at 613). Even where amendment "would require the gathering and analysis of facts not already considered by the opposing party, [] that basis for a finding of prejudice essentially applies where the amendment is offered shortly before or during trial." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986).

In this case, Plaintiffs' amendment only adds three individual plaintiffs—Gayle Hardy, Carol Petersen, and Tracy Safran—and revises allegations from the two existing individual plaintiffs. The new plaintiffs are Virginia voters from different parts of the Commonwealth who will face significant burdens and risks if they are compelled to find a witness to vote in November, particularly because of preexisting medical conditions that make them highly vulnerable to severe complications from COVID-19. *See* Ex. A ¶¶ 14–19. Each presents a unique story and picture of the types of burdens and risks that many Virginia voters who live by themselves will face due to the witness requirement during the COVID-19 pandemic.

Amending the complaint to add these plaintiffs will not prejudice the existing parties in any material way. Neither Defendants nor Intervenor-Defendant RPV has yet sought any discovery in this case and no substantive motions are currently being briefed or pending with the Court. Therefore, adding these new Plaintiffs will not cause the other parties to redo work they

have already done in the case. And even if it would, trial in this case is set for May 2021—approximately 11 months from now—and thus "the gathering and analysis of facts not already considered" by the other parties is not a basis for prejudice because the amendment is not being "offered shortly before or during trial." *Johnson*, 785 F.2d at 510; *see also U.S. for & on Behalf of Mar. Admin. v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 889 F.2d 1248, 1255 (2d Cir. 1989) (holding that "the adverse party's burden of undertaking discovery, standing alone, does not suffice to warrant denial of a motion to amend a pleading").

Moreover, Plaintiffs have not unreasonably delayed in seeking this amendment or done so for any improper purpose. Plaintiffs' amendment comes within just weeks of the parties' Rule 26(f) conference and service of initial disclosures and less than three months after Plaintiffs filed this case. And all three of the new proposed plaintiffs have been in contact with Plaintiffs' counsel within the last few weeks and have retained us only in the past week, meaning that Plaintiffs have not been dilatory in their efforts to amend.

Because justice requires the Plaintiffs to present the claims of all proposed plaintiffs on the merits, and because there will be no unfair prejudice to the other parties, Plaintiffs respectfully ask the Court to grant them leave to file the attached Second Amended Complaint.

Dated: June 29, 2020

Respectfully submitted,

/s/ Davin M. Rosborough_______________

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CERTIFICATE OF SERVICE

I certify that on June 29, 2020, I served a copy of the foregoing Plaintiffs' Motion for Leave to File Second Amended Complaint via filing with the Court's CM/ECF system, which sent copies of this document to Counsel of Record.

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