IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Paul Goldman,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 3:21-CV-420**
	)	
Ralph Northam, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PROSPECTIVE PLAINTIFF JOSHUA STANFIELD'S MOTION FOR JOINDER AS PLAINTIFF

Pro se Movant, Joshua Stanfield ("Stanfield") seeks to insert himself in this case on the grounds that his rights under the federal and Virginia Constitution have been violated.[1] ECF No. 22. Stanfield uses the wrong procedural vehicle to join the suit, incorrectly relying on Federal Rule of Civil Procedure 20 as the basis for his motion. Even if his motion were analyzed under Rule 24, the proper rule for a party seeking intervention, his attempt still fails. Stanfield makes no showing that Goldman will not represent the same claims he makes. Accordingly, Stanfield should not be permitted to intervene "because doing so would unduly prejudice the parties by opening the doors of this suit to any Virginia voter inclined to join." *League of Women Voters v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460, 462 (W.D. Va. 2020).

LEGAL STANDARD

An individual may be added as a plaintiff to an existing matter through one of two ways:

[1] This appears to be the basis for Stanfield's claim, though it is not made clear from his Motion. Stanfield asserts that he is a resident of Yorktown, Virginia and that an alleged deviation in population between the House of Delegates district in which Yorktown is located from that of House of Delegates District 3 raises "common questions of law regarding Equal Protection Clause concerns and whether *Cosner* is still good law."

Rule 20 joinder or Rule 24 intervention.

Rule 20(a) provides the grounds on which an individual may be joined on the motion of **an existing party**,

> Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.

Rule 24 governs a movant's ability to intervene in an ongoing federal action by intervention, either as of right or permissively.

To intervene by right, on timely motion, the court must permit anyone who:

> (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, **unless existing parties adequately represent that interest**.

Fed. R. Civ. P. 24(a) (emphasis added).

A court also has the discretion to permit joinder, even when the movant does not have right to party status. However, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

ARGUMENT

I. Stanfield may not *sua sponte* join himself to this case.

Rule 20 does not allow a party to seek party plaintiff status. Instead, Rule 20 permits a party to be joined as a plaintiff **on motion of an existing party to the action**.

Joinder is the process by which one or more parties or claims are added to a lawsuit by a party that is *already* before the court. Neither Plaintiff nor Defendants have moved to join Stanfield. As such, Rule 20 cited by Stanfield does not apply and his Joinder Motion should be

dismissed. *Even if* Rule 20 was applicable and as acknowledged by Stanfield, the purpose of Rule 20 "is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits," *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007). Stanfield's joinder would only serve to muddy the waters of the claims in this dispute by unnecessarily complicating the resolution of this matter.

II. Stanfield also fails to satisfy the criteria for Rule 24 intervention.

As stated *supra*, intervention is the process by which a third party is permitted to join a lawsuit of their own volition. Even if this Court were to look past the fact that Stanfield improperly asks to join this action under Rule 20, he should not be permitted to intervene in the action under Rule 24.

The party moving for intervention of right under Rule 24(a) bears the burden of establishing their right to intervene in the case. *Matter of Richman*, 104 F.3d 654, 658 (4th Cir. 1997); *Penn. Nat. Mut. Cas. Ins. Co. v. Perlberg*, 268 F.R.D. 218, 225 (D. Md. 2010). The intervening party's motion must be denied unless it can demonstrate intervention is warranted under each of the factors. *N.C. State Conf. of NAACP v. Cooper*, 332 F.R.D. 161, 165 (M.D.N.C. 2019); *United Guar. Residential Ins. Co. of Ia. V. Phila. Sav. Fund Soc'y*, 819 F.2d 473, 474 (4th Cir. 1987). Whether a movant has satisfied the requirements for intervention of right is committed to the discretion of the district court. *Liberty Mut. Fire Ins. Co. v. Lumber Liquidators, Inc.*, 314 F.R.D. 180, 183 (E.D. Va. 2016) (quoting *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976)).

A. Stanfield fails to demonstrate the three prongs of the intervention of right test.

Rule 24(a)(2), permitting intervention "of right," mandates that a court permit a movant to intervene upon a timely motion when that movant "claims an interest related to the property or

transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, **unless existing parties adequately represent the interest**." (emphasis added). Intervention by right requires the movant to demonstrate, "(1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant's interest is not adequately represented by existing parties to the litigation." *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013) (citing *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991)). Even if Stanfield could meet the first two prongs of the intervention by right test, he clearly fails to meet the third prong of the test.

Rule 24(a) first requires a prospective intervenor to demonstrate "an interest in the subject matter of the action," which the Supreme Court has characterized as necessitating "a significantly protectable interest." *Donaldson v. United States*, 400 U.S. 517, 531 (1971). The Fourth Circuit has found this standard to have been met where a putative intervenor "stand[s] to gain or lose by the direct legal operation of the district court's judgment on [Plaintiffs'] complaint." *Teague*, 931 F.2d at 261. Plaintiff Goldman seeks relief as to the entire Commonwealth. Am. Compl. p.13(D). There is no determinable distinction between how Goldman's interests will be differently served than Stanfield's or to how this Court's decision will vary with respect to both individuals. They both request the same relief: that a House of Delegates race be set for 2022 off the normal cycle.

Regardless of whether Goldman is successful in his claim, this Court's decision would have ramifications for the entirety of the Commonwealth. Stanfield does not allege that he will make any argument that is different than what Plaintiff Goldman has already alleged. Accordingly, any determination of the Court will affect all Virginia voters as a whole and Stanfield will not lose any right if Goldman does not succeed on his claim. Again, Goldman is seeking relief statewide.

There is no need illustrated by Stanfield to potentially interject himself or any voter in the Commonwealth into the proceedings, thereby creating uncertainty regarding the November 2, 2021 election.

Similarly, Stanfield's proposed grounds for involvement in this suit fail on the remaining two prongs of the intercession by right determination. Stanfield fails to demonstrate his interest is not adequately represented by existing parties to the litigation. While the right to vote may indeed be "personal," that does not make Stanfield's purported interest in this case particularized to him such that he may intervene in this action under Rule 24. "The fact remains, despite its 'personal' nature, the right to vote—and any interest in protecting that right from dilution or debasement—is no different as between any other eligible Virginian, and indeed, any other eligible American. It may be personal, but it is also universal to those that qualify for the franchise." *League of Women Voters v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460, 465 (W.D. Va. 2020). Stanfield makes no such showing, and, in fact, largely adopts Plaintiff Goldman's arguments. *See e.g.* Joinder Motion pp. 3-5. Stanfield fails to demonstrate how he, as an alleged resident of Yorktown, will require specific relief. He does not show why he is unable to protect his own interests.

B. Stanfield is not entitled to permissive intervention.

Stanfield also fails to present a compelling case that the Court should exercise its discretion to permit intervention. Under Rule 24(b)(1)(B), "permissive intervention," a court **may** permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." (emphasis added). But "[i]n exercising its discretion," the Court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "Thus, where movants seek permission to intervene under Rule 24(b), they must establish each of the following elements: (1) that their motion is timely; (2)

that their claims or defenses have a question of law or fact in common with the main action; and (3) that intervention will not result in undue delay or prejudice to the existing parties." *RLI Ins. Co. v. Nexus Servs., Inc.*, No. 5:18-cv-00066, 2018 WL 5621982, at *5 (W.D. Va. Oct. 30, 2018). The decision whether to allow permissive intervention similarly lies "within the sound discretion of the trial court." *Smith v. Pennington*, 352 F.3d 884, 892 (4th Cir. 2003).

Stanfield did not attempt to join this suit until nearly three months after it was filed and voting in the November 2, 2021 election had already begun. (cite to 24.2). Further, Stanfield's Joinder Motion was filed a month after decennial census information was made available for the Commonwealth on August 16, 2021. For these reasons, Stanfield's Joinder Motion is not timely.

Here, intervention will result in undue delay or prejudice to the existing parties. The Federal Court in the Western District of Virginia denied an attempt by eligible voters to intervene in a suit concerning the 2020 election by emphasizing that the interest the Prospective Intervenors purport is at stake in this case is one that is common to at least any Virginian who has registered to vote. *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 U.S. Dist. LEXIS 76765 (W.D. Va. Apr. 30, 2020) To open the floodgates on this lawsuit to any voter in the state who would like to intervene would be detrimental to the electoral process and take away from needed state resources to carry out the November 2, 2021 election. See *Farm Labor Organizing Comm. v. Stein*, No. 1:17-cv-1037, 2018 WL 3999638, at *23 (M.D.N.C. Aug. 21, 2018); *Ohio Valley Envtl. Coal., Inc. v. McCarthy*, 313 F.R.D. 10, 31 (S.D. W. Va. 2015) (denying intervention because it would invite other individuals to petition for permissive intervention and the Court could not "draw a meaningful line that prevents all [of them] from gaining permissive intervention in this case, since all would have an argument for intervention just as tenable"); *Santillanes,* 2006 WL 8444081, at *3.

Permitting the Prospective Intervenor to enter this litigation would risk converting this lawsuit into a public forum, clearly prejudicing the individual parties in this suit and causing needless complication and delay to their proceedings. Even if the Court were to deny any such future motions for lack of timeliness, the consumption of judicial resources in doing so risks unduly prejudicing the parties in this action. *Ohio Valley Envtl. Coal*., 313 F.R.D. at 31.

So too here. Addition of Stanfield would set the precedent that voters from across the Commonwealth would be permitted to intervene and unnecessarily complicate a suit in which the claims made by the named plaintiff are no different than those that could be asserted by any Virginia voter.

CONCLUSION

In light of the foregoing, Defendants respectfully request Stanfield's Joinder Motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on September 29, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. A true copy was also sent, via first class mail, to:

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