IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION No. 1:15-cv-00559

THE CITY OF GREENSBORO, LEWIS A. BRANDON III, JOYCE JOHNSON, NELSON JOHNSON, RICHARD ALAN KORITZ, SANDRA SELF KORITZ, AND CHARLI MAE SYKES, Plaintiffs, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, Defendant.	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiffs respectfully submit the following memorandum in support of their Motion for Leave to File an Amended Complaint.

STATEMENT OF THE CASE

Plaintiffs, individual residents and the City of Greensboro, commenced this action on July 13, 2015, seeking to preserve their constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiffs ask this court to enjoin permanently the implementation of Session Law 2015-138, a law that dramatically restructures the Greensboro City Council and how municipal elections are conducted in that jurisdiction. The law was passed and ratified

July 2, 2015. Plaintiffs are bringing this action because the law violates the Equal Protection principles of the United States and North Carolina Constitutions.

On November 4, 2014, Defendants filed their Answer (D.E. #50). Defendant-Intervenors filed their Answer on November 6, 2015 (D.E. #54). On December 18, 2015, Magistrate Judge Webster entered an order granting the parties' Joint 26(f) Report (D.E. #57), which, in relevant part, set a deadline of January 8, 2016, for Plaintiffs' to seek leave to amend their complaint.

STATEMENT OF RELEVANT FACTS

Plaintiffs seek to enjoin the further use and implementation of Session Law 2015-138, which dramatically restructured the districts which elect city council members mid-decade and which deprive the citizens of Greensboro of their right to govern themselves locally via the referendum process. The law was hastily passed on July 2, 2015, when filing for municipal elections in Greensboro was set to open on July 27, 2015. Plaintiffs moved expeditiously to challenge the law and to seek preliminary injunction relief, filing suit on July 13, 2015. The Court granted the requested relief on July 23, 2015, and elections were conducted under the existing system for the 2015 municipal elections.

Plaintiffs allege that districts designed by Session Law 2015-138 create population deviations that violate the established equal protection principles of one-person, one-vote in the federal and state constitutions. Plaintiffs now also allege that District 2 packs black voters into that district, based on the color of their skin, without justification. If elections are conducted under this new law, the equal protection rights of Plaintiffs and voters across Greensboro will be irreparably harmed. For this reason, Plaintiffs seek

prospective, equitable relief and seek to join one individual plaintiff and add one substantive cause of action to their complaint.

ARGUMENT

I. LEAVE TO AMEND COMPLAINTS SHOULD BE FREELY GRANTED BARRING BAD FAITH, PREDJUDICE TO THE DEFENDANTS OR FUTILITY.

Under Rule 15(a) of the Federal Rules of Civil Procedure, "a party may amend the party's pleadings only by leave of court or by written consent of the parties; and leave to amend a complaint shall be freely given when justice so requires." The Supreme Court has made clear that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182. (1962). The Court explained: "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Id*. One author has noted, in regard to the corresponding state rule, that "No other rule has received a more liberal interpretation, and amendments to pleadings are freely allowed absent a showing of material prejudice." 1 Wilson, NORTH CAROLINA CIVIL PROCEDURE, p. 290 (2d ed. 1995) (commenting on corresponding state rule).

The Fourth Circuit has consistently held that prejudice, bad faith or futility are the only grounds for denying a motion to amend a complaint. *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006) (en banc); *Davis v. North Carolina*, 180 F. Supp. 2d 774, 776 (E.D.N.C. 2001). In *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999),

the Fourth Circuit commented on the Rule's directive that leave to amend be freely granted when justice requires it:

> The Supreme Court has declared that "this mandate is to be heeded." . . . The law is well settled "that leave to amend a pleading 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." . . . Delay alone is an insufficient reason to deny leave to amend. . . . Rather, the delay must be accompanied by prejudice, bad faith, or futility.

Edwards at 242 (citations omitted; emphasis in original).

Plaintiffs have moved expeditiously to amend their complaint and have acted in good faith. Plaintiffs seek leave to amend their complaint within the agreed-upon timeframe established by the joint discovery plan. (D.E. 57, December 18, 2015). As the proposed amendment is not offered in bad faith, would not prejudice the other parties, and is not futile, leave should be granted to file the amended complaint.

II. PLAINTIFFS ARE ENTITLED TO AMEND THEIR COMPLAINT

A. Plaintiffs Have Not Acted in Bad Faith in Seeking to Amend Their Complaint.

Plaintiffs' initial complaint was filed a mere 12 days after the passage of the challenged law, and that haste was required because filing was to open for districts under the revised city council redistricting plan on July 27, 2015. Plaintiffs sought injunctive relief from the implementation of Session Law 2015-138 for the 2015 municipal elections, and Judge Eagles granted that relief on July 23, 2015, upon a showing that

Plaintiffs were likely to succeed on the merits and that all the other conditions precedent for a preliminary injunction were satisfied (D.E. # 35).

With more time to analyze the direct and circumstantial evidence of the General Assembly's intent in passing Session Law 2015-138, Plaintiffs have determined that District 2 is a racial classification unjustified by any compelling governmental interest. Mr. Warren seeks to vindicate his right to be free from unjustified racial classifications. Plaintiffs are acting in good faith and cautiously, based on the facts and circumstances as they have come to understand them, to vindicate their constitutional rights and seek the relief to which they are entitled.

B. Amending the Complaint to Add A Plaintiff and an Additional Cause of Action Will Not Prejudice Opposing Parties

The proposed amendment will not prejudice the opposing parties because (1) discovery has not truly commenced and (2) the additional substantive claim is limited to one district within the challenged redistricting plan. In the parties' joint discovery plan, entered less than a month ago, the parties agreed that a standard discovery plan would be followed. The deadline for completion of all discovery, general and expert, is April 22, 2016. The parties agreed that "Plaintiffs should be allowed until January 8, 2016, to request leave to join additional parties and to amend pleadings." (D.E. #56 at 4). The case will be ready for trial by August 22, 2016. At this date, the parties have yet to promulgate any discovery requests upon each other, and no depositions have been scheduled or taken. Plaintiffs' proposed order allows ample time for Defendant and

Defendant-Intervenors to amend their answer in response to the amended complaint without being prejudiced in any way.

Furthermore, any additional discovery that would be warranted by the substantive amendment is highly related to the types of inquiry already necessitated by Plaintiffs' existing causes of action. That is, especially with regard to Plaintiffs' one-person, one vote-claim, the intent of the legislature is at issue. The same is true with the racial predominance question on District 2. Thus, opposing parties will not be prejudiced by any significant change in the scope of discovery needed in this action.

C. Amending the Complaint to Add A Plaintiff and an Additional Cause of Action Is Not Futile

The substantive amendment proposed by Plaintiffs—alleging that District 2 is an unconstitutional racial gerrymander—would not be a futile amendment. In their proposed amended complaint, Plaintiffs have described with specificity the presence of all the elements of an unconstitutional racial gerrymander are present in District 2. District 2 was drawn with race as the predominant factor, subjugating traditional redistricting criteria. District 2 was not narrowly tailored to advancing a compelling state interest. African-American candidates have achieved substantial success in at-large elections in Greensboro, proving that racially polarized voting is not legally significant. Thus, the Voting Rights Act does not compelling the drawing of District 2 as enacted. Assuming that these allegations are true, as must be done at this stage of the proceedings, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), Plaintiffs have identified

circumstances that are a proper subject of relief and ought to be afforded an opportunity to test those claims on the merits.

CONCLUSION

As the Plaintiffs are not acting in bad faith, the proposed amendments cause no prejudice to the Defendant, and the amendments are not futile, Plaintiffs respectfully request this Court grant their motion for leave to file their amended complaint.

Respectfully submitted this the 8th day of January, 2016.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this day electronically filed the foregoing **Memorandum in Support of Motion for Leave to Amend Complaint** in the above-titled action with the Clerk of the Court using the CM/ECF system, which will serve via electronic mail the following:

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Respectfully submitted this 8th day of January, 2016.

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