

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

Richmond Division

PAUL GOLDMAN,
Pro se Plaintiff,

v.

Civil No. 3:21-cv-420 (DJN)

RALPH NORTHAM, *et al.*,
Defendants.

MEMORANDUM ORDER
(Denying Motion for Joinder)

This matter comes before the Court on *pro se* Prospective Plaintiff Joshua Stanfield's ("Stanfield") Motion for Joinder, moving to join the case as a plaintiff. (ECF No. 22.) For the reasons set forth below, the Court hereby DENIES the Motion for Joinder.

I. BACKGROUND

A. Plaintiff's Second Amended Complaint

Article II, §§ 6 and 6-A of the Constitution of Virginia require the Virginia Redistricting Commission ("the Commission") to redraw the electoral districts for the House of Delegates for the November 2, 2021 election using the population data from the 2020 Census. (2d Am. Compl. (ECF No. 18) ¶¶ 78, 81-82.) According to the Commission's website, the new electoral districts for the House of Delegates will come into effect for the November 2, 2021 general election. (2d Am. Compl. ¶ 82.) However, the Commonwealth of Virginia allegedly intends to hold this year's upcoming general election using a state reapportionment law enacted during the 2011 Special Session, which was based on 2010 Census data and later adjusted after a legal challenge using that data. (2d Am. Compl. ¶¶ 68-77 (citing Va. Code § 24.2-304.3; *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 786 (2017).)

Pro se Plaintiff Paul Goldman (“Plaintiff”) resides in Virginia. (2d Am. Compl. ¶ 55.) He plans to vote in House of Delegates District 68 during the 2021 election, and he “is contemplating . . . run[ing] for the House of Delegates in a constitutionally drawn 68th district (or whatever . . . the district wherein he would reside).” (2d Am. Compl. ¶¶ 56-57.) Plaintiff identifies as Defendants Ralph Northam (“Northam”), the Virginia State Board of Elections (“the Board”), Robert Brink (“Brink”), John O’Bannon (“O’Bannon”), Jamilah D. LeCruise (“LeCruise”) and Christopher Piper (“Piper”) (collectively, “Defendants”). (2d Am. Compl. at 1.) Plaintiff sues Northam, Brink, O’Bannon, LeCruise and Piper in their official capacities. (2d Am. Compl. at 1.)

Northam serves as the Governor of Virginia. (2d Am. Compl. ¶ 60.) The Board has its headquarters in Virginia and exists to “ensur[e] ‘legality and purity in all elections’ and to ‘ensure that major risks to election integrity are . . . addressed as necessary to promote election uniformity, legality and purity.’” (2d Am. Compl. ¶¶ 61, 66 (citing Va. Code. § 24.2-103(A).) Brink, O’Bannon and LeCruise (“the Board members”) serve as the Chair, Vice Chair and Secretary of the Board, respectively.¹ (2d Am. Compl. ¶¶ 62-64.) Piper serves as the Commissioner of the Virginia Department of Elections. (2d Am. Compl. ¶ 65.) The Virginia Department of Elections — which Plaintiff has not named as a defendant — functions as the Board’s “operational arm” and carries out its duties. (2d Am. Compl. ¶ 67.) Northam, Brink,

¹ The Board has five members: Brink, the Chairman; O’Bannon, the Vice Chair; LeCruise, the Secretary; and Donald W. Merricks (“Merricks”) and Angela Chiang (“Chiang”), two general Board members. *SBE Board Members*, Va. Dep’t of Elections, <https://www.elections.virginia.gov/board/board-members/> (last visited Oct. 4, 2021). Plaintiff does not name Merricks or Chiang as Defendants in the Second Amended Complaint. (Am. Compl. at 1.)

O'Bannon, LeCruise and Piper have their offices in Richmond, Virginia, and citizenship in Virginia. (2d Am. Compl. ¶¶ 60, 62-65.)

Plaintiff attaches to his Second Amended Complaint spreadsheets that he received from the Commission showing the current total population in state House of Delegates, state Senate and congressional districts based on the results of the 2020 Census. (2d Am. Compl. Ex. 1. at 1-6.) According to that data, House of Delegates District 68, where Plaintiff currently resides, has a population of 85,223 people.² (2d Am. Compl. ¶ 58.) This district has a population 19.8% larger than that of House of Delegates District 3, which has a population of 71,122. (2d Am. Compl. Ex. 1. at 3-4.) Plaintiff alleges that, because of this deviation, holding the 2021 House of Delegates election using the current electoral maps violates both the state and federal constitutions. (2d Am. Compl. ¶¶ 121-43.) In Count I, Plaintiff alleges a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. (2d Am. Compl. ¶¶ 121-34.) In Count II, Plaintiff alleges a violation of Article II, §§ 6 and 6-A of the Constitution of Virginia. (2d Am. Compl. ¶¶ 135-43.)

Based on these claims, Plaintiff requests that the Court declare that Defendants violated the Constitution of Virginia by choosing to conduct the 2021 general election using an old legislative district map based on outdated Census data, declare that those who win election to the House of Delegates serve one year terms, order Defendants to hold new elections for the House of Delegates on the date of the November 2022 general election using a reapportionment plan

² Plaintiff states in the Second Amended Complaint that House of Delegates District 68 has a population of 85,233. (2d Am. Compl. ¶ 58.) The data that he attaches to the Second Amended Complaint show that that District has a population of 85,223. (2d Am. Compl. Ex 1 at 4.)

based on the 2020 Census data, and order any other required relief, including reimbursement of costs, attorney's fees and other appropriate measures. (2d Am. Compl. at 13.)

B. Stanfield's Motion for Joinder and Defendant's Response

On September 23, 2021, Stanfield filed the instant Motion to join this case as a plaintiff, alleging the same claims and requesting the same relief as Plaintiff. (Mot. for Joinder at (ECF No. 22).) In his Motion, Stanfield notes that in August 2021, he analyzed the 2020 U.S. Census data and requested the relevant population data on Virginia legislative districts, which he provided to Plaintiff. (Mot. for Joinder at 2-3.) While considering this data, Stanfield noticed that his House of Delegates district, District 93, has a population 58% larger than that of House of Delegates District 87. (Mot. for Joinder at 3.) Consequently, he believes that he has grounds to raise the same claims as Plaintiff under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article II, §§ 6 and 6-A of the Constitution of Virginia. (Mot. for Joinder at 3.) He therefore moves for permissive joinder pursuant to Federal Rule of Civil Procedure 20(a)(1). (Mot. for Joinder at 3-9.)

On September 29, 2021, Defendants responded to Stanfield's Motion. (Defs.' Mem. in Opp. to Prospective Pl. Joshua Stanfield's Mot. for Joinder as Pl. ("Defs.' Resp.") ECF No. 26.) Defendants argue that Stanfield used the incorrect legal mechanism to move to join the suit, and that he should have moved for intervention under Rule 24. (Defs.' Resp. at 1.) They continue that even if Stanfield had moved to intervene, he still does not meet the standard set forth under Rule 24. (Defs.' Resp. at 1.)

C. Procedural History

In June 2021, Plaintiff filed his original Complaint (ECF No. 1), alleging violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article II, §§

6 and 6-A of the Virginia Constitution. (Pl.'s Compl. ("Compl.") (ECF No. 1) ¶¶ 81-99.) Plaintiff named Northam, the Board, the Board members, Piper and Jessica Bowman ("Bowman"), whom Plaintiff identified as the Deputy Commissioner of the Board, as Defendants. (Compl. at 6.) In July 2021, Plaintiff filed his First Amended Complaint. (ECF No. 3.) On August 3, 2021, Defendants moved to dismiss the First Amended Complaint for lack of jurisdiction and failure to state a claim. (ECF No. 12.) Defendants also noted that Bowman no longer worked for the government of Virginia. (Mem. in Supp. of Defs.' 1st Mot. to Dismiss ("Defs.' First Mem.") ¶ 9 (ECF No. 13).)

On September 10, 2021, Plaintiff then filed for leave to amend his Complaint a second time, which the Court granted. (Mot. for Leave to File Am. Compl. at 1-2 (ECF No. 16); Order, Sept. 10, 2021 ("Order") at 1 (ECF No. 17).) The Second Amended Complaint became the operative complaint in this action. (Order at 1.) Plaintiff dropped Bowman from his Second Amended Complaint, and she was dismissed from the case. (2d Am. Compl. at 2.) Plaintiff also moved for an expedited hearing on the Second Amended Complaint. (ECF No. 19.) On September 14, 2021, the Court denied his Motion for an Expedited Hearing. (ECF No. 21.)

On September 23, 2021, Defendants moved to dismiss the Second Amended Complaint for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) (Defs.' Mot. to Dismiss 2d Am. Compl. ("Mot. to Dismiss") at 1-2 (ECF No. 23)), asserting that sovereign immunity shielded them from suit (Defs.' Mem. in Supp. of Mot. to Dismiss 2d Am. Compl. ("Defs.' 2d Mem.") at 5-11 (ECF No. 24)). On September 30, 2021, Plaintiff responded to the Motion to Dismiss and attached a "Sworn Statement of Facts" to his Response. (Resp. to Defs.' Mot. to Dismiss ("Pl.'s Resp.") (ECF No. 27); Pl.'s Sworn Statement of Facts (ECF No. 27-1).)

On September 23, 2021, Defendants moved to dismiss the Second Amended Complaint for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) (Mot. to Dismiss 2d Am. Compl. (“Mot. to Dismiss”) at 1-2 (ECF No. 23)), asserting that sovereign immunity shielded them from suit (Defs.’ Mem. in Supp. of Mot. to Dismiss 2d Am. Compl. (“Defs.’ 2d Mem.”) at 5-11 (ECF No. 24)). On September 30, 2021, Plaintiff responded to the Motion to Dismiss. (Resp. to Defs.’ Mot. to Dismiss (“Pl.’s Resp.”) (ECF No. 27); Pl.’s Sworn Statement of Facts (ECF No. 27-1).)

On September 23, 2021, Stanfield filed the instant Motion to join this case as a plaintiff, alleging the same claims and requesting the same relief as Plaintiff. (Mot. for Joinder (ECF No. 22).) The Court ordered Defendants to respond to Stanfield’s Motion for Joinder by September 29, 2021, and ordered Stanfield to reply to Defendants’ response to his Motion by October 4, 2021. (Order, Sept. 24, 2021 (ECF No. 25).) On September 29, 2021, Defendants filed their Response to Stanfield’s Motion for Joinder. (ECF No. 26.) Stanfield filed his reply on October 6, 2021. (Stanfield’s Reply at 1 (ECF No. 29).)

II. ANALYSIS

“Rule 24 is, strictly speaking, the proper vehicle for a non-party to insert itself into ongoing litigation.” *Johnson v. Qualawash Holdings, L.L.C.*, 990 F. Supp. 2d 629, 636 (W.D. La. 2014). Federal courts possess the authority to construe motions for joinder as motions to intervene. *Faust v. Vilsack*, 2021 WL 2383232, at *1 (E.D. Wis. June 10, 2021); *cf. Johnson*, 990 F. Supp. 2d at 636 (noting that federal courts may construe motions by non-parties based on failure to join a required party under Rule 19 as motions to intervene under Rule 24). As a non-party, Stanfield cannot move to join himself as a party under Rule 20. Thus, the Court will construe his Motion as a motion to intervene under Rule 24.

As an initial matter, Stanfield has failed to follow the filing requirements for a motion to intervene. Rule 24(c) requires a non-party to serve its motion to intervene “on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c). Stanfield did not file a pleading setting out the claim or defense on which he seeks to intervene. But even if Stanfield had complied with this requirement, he does not meet the requirements for intervention as of right under Rule 24(a) or permissive intervention under Rule 24(b).

A. Intervention as of Right Pursuant to Rule 24(a)

Rule 24(a) sets out the rules for intervention as of right and states that, on a timely motion, the court may permit any non-party to intervene that:

- (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). As the party moving for intervention, Stanfield bears the burden of establishing his right to intervene. *In re Richman (Richman v. First Woman's Bank)*, 104 F.3d 654, 658 (4th Cir. 1997). To do so, Stanfield must show “(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.” *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991). The party moving for intervention must prove each of these three elements to prevail on their motion. *United Guar. Residential Ins. Co. of Iowa v. Phila. Sav. Fund Soc'y*, 819 F.2d 473, 474 (4th Cir. 1987). The district court has the

discretion to permit or deny intervention. *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976). As explained below, Stanfield does not satisfy this test.

First, Stanfield clearly has an interest in the subject matter of the litigation, and the action might impair the protection of that interest.³ An individual has an interest in an action when he has a “‘significantly protectable interest’ in the litigation.” *Lee v. Va. Bd. of Elections*, 2015 WL 51789993, at *2 (E.D. Va. Sept. 4, 2015) (citing *Teague*, 931 F.2d at 261). In other words, he must “stand to gain or lose by direct legal operation of the district court’s judgment . . . on [the] complaint.” *Teague*, 931 F.2d at 260. Second, to satisfy the next requirement of the Rule 24 test, the movant must demonstrate that failure to permit intervention would impair his interest. *Richman*, 104 F.3d at 659.

Like Plaintiff, Stanfield asserts that Defendants have violated the Virginia Constitution by allegedly proceeding with an election using maps drawn based on outdated data from the last decennial census, and that his House of Delegates district has a disproportionately greater population than others in Virginia in violation of the Equal Protection Clause of the Fourteenth Amendment. (Mot. for Joinder at 7.) He also requests that the Court mandate that Delegates elected in this year’s election serve one-year terms and that another House of Delegates election take place next year, off the usual cycle. (Mot. for Joinder at 5-6.) Stanfield may possess a particularized interest in the size of his House of Delegates district under the Equal Protection Clause as a voter in that specific district. *See Reynolds v. Sims*, 377 U.S. 533, 561 (1964) (noting that the right to vote is personal, and in cases challenging a state legislative apportionment, “the

³ Stanfield does not assert that a statute furnishes him the unconditional right to intervene in this action pursuant to Rule 24(a)(1), and the Court has not found a statute that would give him that right, so it will not address this provision of the Rule.

judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens.”)

However, any Virginia voter could assert the same interest that Stanfield does in enforcing the Virginia Constitution's requirement that the legislature be reapportioned every ten years in accordance with the most recent Census data. Courts routinely deny motions to intervene by voters who assert generalized interests common to all voters. (Defs.' Resp. at 5 (quoting *League of Women Voters v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460, 465 (W.D. Va. 2020)); see also *Lee*, 2015 WL 51789993, at *3 n.7 (finding that voters seeking intervention asserted generalized interests in upholding the constitutionality of certain Virginia election laws and denying them intervention).

Moreover, regardless of the generality of his interests, Stanfield has not shown that Plaintiff cannot adequately represent his interests. As Stanfield himself states, his “right to relief arises under precisely the same transactions and occurrences as that of Plaintiff Goldman.” (Mot. for Joinder at 5.) Plaintiff has vigorously litigated this case, including filing two amended complaints (ECF Nos. 3, 18), requesting an expedited hearing (ECF No. 19) and responding to Defendants' Motion to Dismiss in a 19-page, single-spaced document with an attached statement of facts (ECF No. 27). Plaintiff and Stanfield make the same legal arguments and request the same relief. (Mot. for Joinder at 5.) Nothing suggests that Plaintiff will not continue to adequately represent Stanfield's interests as a voter in a relatively populous House of Delegates district, or as a Virginia voter concerned about the Commission's delay in drawing an updated legislative apportionment plan. For that reason, the Court will deny Plaintiff intervention as of right.

B. Permissive Intervention Pursuant to Rule 24(b)

Rule 24(b) states that on a timely motion, a court may permit a non-party to intervene if that party

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b).

Further, “[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, a movant must demonstrate “(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.*, 2018 WL 5621982, at *5 (W.D. Va. Oct. 30, 2018). “[A] decision on a Rule 24(b) motion lies within the sound discretion of the trial court.” *Hill v. W. Elec. Co.*, 672 F.2d 381, 385-86 (4th Cir. 1982).

Assuming, *arguendo*, without deciding, that Stanfield filed his Motion in a timely fashion and that his claims rest on common questions of fact and law, the Court will still deny Stanfield permissive intervention.⁴ As discussed above, although every single Virginian may not be able to assert the exact same Equal Protection claim as Plaintiff and Stanfield, the thousands of Virginia voters who live in disproportionately populous districts could assert such a claim.

⁴ The Court notes that Stanfield himself admits that he requested a copy of the 2020 Census data from, among others, the Commission and the Department on August 13, 2021, analyzed the 2020 Census data on August 17, 2021, sent Plaintiff his analysis on August 18, 2021 and received the data that he requested from the Commission on August 19, 2021. (Mot. for Joinder 2-3.) However, he waited to file his Motion for Joinder for over a month until September 21, 2021. (Mot. for Joinder at 1.)

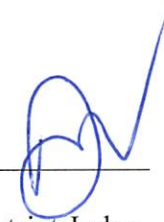
Further, all Virginia voters could contest Defendants' alleged decision to proceed with this year's general election using electoral maps based on the last decennial census, which Plaintiff and Stanfield assert violates the Virginia Constitution. (2d Am. Compl. ¶¶ 121-43; Mot. for Joinder at 3.) And as the court explained in *League of Women Voters of Virginia*, "[t]he Court is not inclined to open the floodgates on this lawsuit to any voter in the state who would like to intervene" and transform this action into a public forum. 458 F. Supp. 3d at 467. The Court could conceivably allow every interested voter to move to intervene and then deny each of their motions, but that would waste judicial time and resources as well as unduly prejudice the existing parties. *Ohio Valley Env't Coal., Inc. v. McCarthy*, 313 F.R.D. 10, 31 (S.D.W. Va. 2015). For these reasons, the Court will also deny Stanfield permissive intervention.

IV. CONCLUSION

For the reasons set forth above, the Court hereby DENIES Stanfield's Motion for Joinder (ECF No. 22).

Let the Clerk file a copy of this Memorandum Order electronically and notify all counsel of record.

It is so ORDERED.


_____/s/_____
David J. Novak
United States District Judge

Richmond, Virginia
Dated: October 6, 2021