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.	)	

PROSPECTIVE PLAINTIFF JOSHUA STANFIELD'S MOTION TO INTERVENE AND RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PROSPECTIVE PLAINTIFF'S MOTION FOR JOINDER

In light of his *pro se* status, and pursuant to the Federal Rules of Civil Procedure, Prospective Plaintiff Joshua Stanfield hereby moves the Court for permission to intervene as a matter of right under Rule 24(a). Alternatively, Prospective Plaintiff requests that the Court grant permissive intervention through Rule 24(b).

I.
ARGUMENT

Prospective Plaintiff, as a *pro se* movant, should be granted procedural leniency and allowed to move the court for permission to intervene pursuant to Rule 24. This leniency is recognized by federal courts nationwide and is critical to maintaining the rationale behind the Local Rule 83.1(M) ghostwriting certification. Prospective Plaintiff satisfies the criteria for intervention through Rule 24(a) and Rule 24(b), as his request is timely, he demonstrates an interest in the subject matter, disposition of the action without his presence would impair his ability to protect his interests, the existing parties to the action do not adequately represent his interests, there exist common questions of law and fact with the main action, and intervention will not result in undue delay or prejudice to the existing parties. Out of respect for the Court's time, Prospective Plaintiff incorporates

the Factual Background of his Motion for Joinder as Plaintiff and Memorandum of Law in Support.

A. PROSPECTIVE PLAINTIFF'S *PRO SE* STATUS JUSTIFIES PROCEDURAL LENIENCY

Prospective Plaintiff shares the fundamental opinion of the U.S. District Court for the Southern District of Texas when it states, "To be certain, the right to file a lawsuit *pro se* is one of the most important rights under our Constitution and laws." *Elmore v. McCammon*, 640 F. Supp. 905 (S.D. Tex. 1986). Understanding that *pro se* litigants lack the legal training, expertise, and experience of lawyers, federal courts rightfully apply less stringent standards to *pro se* pleadings than to those from lawyers. Indeed, the Court in *Puckett v. Cox*, 456 F.2d 233 (6th Cir. 1972) stated explicitly that a *pro se* filing "requires a less stringent reading than one drafted by a lawyer." Even more, "A *pro se* litigant is therefore not held to the strict pleading requirements demanded of attorneys." *Tillery v. Va. Peninsula Reg'l Jail*, 1:20cv751 (RDA/TCB) (E.D. Va. Nov. 17, 2020) citing *Estelle v. Gamble*, 429 U.S. 97, 106-07 (1976) and *Figgins v. Hudspeth*, 584 F.2d 1345 (4th Cir. 1978), cert. denied, 441 U.S. 913 (1979).

In *White v. White*, 886 F.2d 721 (4th Cir. 1989), the Court was clear in insisting that the district court "must, however, hold the *pro se* complaint to less stringent standards than pleadings drafted by attorneys and must read the complaint liberally." "Where a complaint is filed by a prisoner acting *pro se*, however, that complaint must be construed liberally no matter how unskillfully it is pleaded." *Raiford v. Lieutenant Branch*, 1:20cv687 (RDA/IDD) (E.D. Va. Sep. 8, 2021) citing *Haines v. Kerner* 404 U.S. 519 (1972). "Where a plaintiff pleads *pro se* in a suit for the protection of civil rights the court should endeavor to construe the plaintiff's pleading without regard for technicalities." *Picking v. Pennsylvania R. Co.*, 151 F.2d 240 (3rd Cir. 1945) citing *Ghadiali v. Delaware State Medical Society*, D.C.Del., 48 F. Supp. 789, 790, and *Allen v. Corsano*, D.C.Del., 56 F. Supp. 169, 170. "Where, as here, a plaintiff is unrepresented, 'pleadings should not be scrutinized with such technical nicety that a meritorious claim should be defeated, and even if the claim is insufficient in substance, it may be amended to achieve justice.'" *Brown v. Kleinholz*, 1:14cv1064 (CMH/TCB) (E.D. Va. Sep. 26,

2017) citing *Leeke v. Collins*, 574 F.2d 1147, 1151 (4th Cir.), cert. denied, 439 U.S. 970 (1978), citing *Rice v. Olson*, 324 U.S. 786 (1945).

The case law does not distinguish between *pro se* litigants and *pro se* movants, and Defendants have not challenged Prospective Plaintiff's *pro se* status or the veracity of his Local Rule 83.1(M) certification filed alongside his Motion for Joinder as Plaintiff. In Defendants' discussion of Rule 20's applicability to Prospective Plaintiff's situation, Defendants *do not challenge* Prospective Plaintiff's assertions that his right to relief arises under the same transactions and occurrences as that of Plaintiff, that there are common questions of law and fact, and that joinder would not cause expense.[1] Although Defendants quote *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007) as to the fundamental purpose of Rule 20, namely preventing multiple lawsuits, Defendants never address Prospective Plaintiff's core argument to this point in his Motion for Joinder: "Joinder of Prospective Plaintiff allows the Court to resolve the issues at hand in an expedited fashion, as it would prevent Prospective Plaintiff from filing his own independent complaint concerning the same transactions, occurrences, and common questions of law and fact."[2]

Defendants further claim without elaboration that Prospective Plaintiff's joinder "would only serve to muddy the waters of the claims in this dispute,"[3] again ignoring the waste of the Court's time and resources that would accompany Prospective Plaintiff's filing of his own independent complaint concerning the same occurrences and questions of law. Given the leniency federal courts rightfully grant to *pro se* litigants, the Court would be right and just in granting Prospective Plaintiff leniency to move to intervene pursuant to Rule 24.

B. LENIENCY FOR *PRO SE* LITIGANTS UNDERGIRDS LOCAL RULE 83.1(M)

[1] Defendants' Memorandum in Opposition to Prospective Plaintiff Joshua Stanfield's Motion for Joinder as Plaintiff, Argument I.
[2] Prospective Plaintiff Joshua Stanfield's Motion for Joinder as Plaintiff and Memorandum of Law in Support, II(D).
[3] Defendants' Memo in Opposition, Argument I.

Leniency for *pro se* litigants provides the foundation for the justification of Local Rule 83.1(M)'s ghostwriting certification. In *Johnson v. Bd. of County Com'rs County of Fremont*, 868 F. Supp. 1226 (D. Colo. 1994), the Court states: "The *pro se* litigant would be granted greater latitude as a matter of judicial discretion in hearings and trials" and "pleadings seemingly filed *pro se* but drafted by an attorney would give him the unwarranted advantage of having a liberal pleading standard applied whilst holding the plaintiffs to a more demanding scrutiny." The latitude granted to *pro se* litigants therefore underpins the potential unfairness and imbalance that ghostwriting certification requirements seek to remedy.

Judge Morgan confirms this logic in his analysis in *Laremont-Lopez v. Southeastern Tidewater Opportun. Center*, 968 F. Supp. 1075 (E.D. Va. 1997): "When, however, complaints drafted by attorneys are filed bearing the signature of a plaintiff outwardly proceeding *pro se*, the indulgence extended to the *pro se* party has the perverse effect of skewing the playing field rather than leveling it. The *pro se* plaintiff enjoys the benefit of the legal counsel while also being subjected to the **less stringent standard reserved for those proceeding without the benefit of counsel**. This situation places the opposing party at an unfair disadvantage, interferes with the efficient administration of justice, and constitutes a misrepresentation to the Court." [Emphasis added]. To refuse to apply a less stringent standard in Prospective Plaintiff's case would therefore undermine the necessity of Local Rule 83.1(M) broadly.

C. PROSPECTIVE PLAINTIFF SATISFIES THE CRITERIA FOR RULE 24 INTERVENTION OF RIGHT

Rule 24(a), which governs intervention of right, states that the court may permit anyone to intervene upon timely motion who "is given an unconditional right to intervene by a federal statue" or "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). Intervention of right requires Prospective Plaintiff demonstrate "1) a timely request; 2) an interest in the subject matter; 3) that disposition of the action without its presence would impair its ability to protect its

interests; and 4) its interests are not adequately represented by the existing parties to the action." *Liberty Mut. Fire Ins. Co. v. Lumber Liquidators, Inc.*, 314 F.R.D. 180, 93 Fed. R. Serv. 3d 1585 (E.D. Va. 2016) citing *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999) and *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991).

(1) Timeliness

Prospective Plaintiff's request is timely. The Fourth Circuit has found that "Rule 24 is silent as to what constitutes a timely application and the question must therefore be answered in each case by the exercise of the sound discretion of the court." *Black v. Central Motor Lines, Inc.*, 500 F.2d 407 (4th Cir. 1974). "In order to properly determine whether a motion to intervene in a civil action is sufficiently timely, a trial court in [the Fourth Circuit] is obliged to assess three factors: first, how far the underlying suit has progressed; second, the prejudice any resulting delay might cause the other parties; and third, why the movant was tardy in filing its motion." *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 286 (4th Cir. 1989)). "[A] motion to intervene after entry of a decree should be denied except in extraordinary circumstances." *Delaware Valley Citizens' Council for Clean Air v. Commonwealth of Pennsylvania*, 674 F.2d 970, 974 (3rd Cir. 1982). Where intervention is of right, "the timeliness requirement of Rule 24 should not be as strictly enforced as in a case where intervention is only permissive." *Brink v. DaLesio*, 667 F.2d 420, 428 (4th Cir.1981). "The purpose of the requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *United States v. S. Bend Community Sch. Corp.*, 710 F.2d 394 (7th Cir. 1983).

Defendants in their August 3, 2021 Memorandum of Support of Defendants' Motion to Dismiss argue that Plaintiff lacks standing because he does not demonstrate an injury in fact. Defendants state: "Indeed, Plaintiff's alleged injury does not exist, as census data has not yet been received by Defendants from the U.S. Census Bureau..."[4] Throughout the month of August, Prospective Plaintiff went to extraordinary lengths to acquire the data *Defendants themselves* claimed was necessarily to establish standing, including submitting Freedom of Information Act requests, purchasing the necessary

[4] Memorandum in Support of Defendants Motion to Dismiss, Argument I(A).

equipment and software, and running database analyses per U.S. Census Bureau instructions.[5] Prospective Plaintiff could not reasonably know for sure whether or not he could satisfy standing requirements, as articulated by Defendants, until he received the necessary data from the state. Prospective Plaintiff received that data from the Virginia Redistricting Commission on August 19, 2021.

Even more, Plaintiff filed his first complaint on June 28, 2021. He then filed an Amended Complaint on July 6. On September 10, Plaintiff filed a second Amended Complaint. Prospective Plaintiff did not know if Plaintiff would file an *additional* amended complaint until the Court indicated, it its September 10 Order, that it "will not grant any further amendments." The Court then denied Plaintiff's Motion for Expedited Hearing on September 13, suggesting the Court was not pursuing an accelerated schedule. It was at this time, with official 2020 U.S. Census data and Plaintiff's final Amended Complaint available for review, that Prospective Plaintiff could reasonably determine whether or not to move for joinder and begin preparing his filings.

The Court has not yet ruled on Defendants' September 23 Motion to Dismiss, no decree has been entered, and there is no chance of Prospective Plaintiff derailing the lawsuit. Finally, the Court included Prospective Plaintiff in its September 24 Scheduling Order, and Defendants do not suggest they incurred any undue prejudice or delay in preparing and filing their Memorandum in Opposition to Prospective Plaintiff Joshua Stanfield's Motion for Joinder as Plaintiff.

(2) Interest in the Subject Matter

Rule 24(a) requires Prospective Plaintiff demonstrate an interest in the subject matter; the Court in *Donaldson v. United States*, 400 U.S. 517 (1971) states "What is obviously meant there is a significantly protectable interest." In order to establish a "significantly protectable interest" in the subject matter of the litigation, a party must "stand to gain or lose by the direct legal operation of the district court's judgment." *Teague v. Bakker*, 931 F.2d 259 (4th Cir. 1991). Furthermore, the interest must be "direct and substantial." *In the Matter of Richman*, 104 F.3d 654 (4th Cir. 1997).

[5] Prospective Plaintiff's Motion for Joinder, I.

Prospective Plaintiff indeed stands to directly gain or lose as a result of the Court's judgment. In order to download, populate, and analyze the 2020 U.S. Census data in accordance with the Census Bureau's online instructions – in an effort to determine standing based on Defendants' August 3 Memorandum of Support of Defendants' Motion to Dismiss – Prospective Plaintiff purchased $701.18 in software and equipment. Prospective Plaintiff would not have made these purchases had Defendants not made a standing argument, an argument Defendants conspicuously abandon in their September 23 Motion to Dismiss and Memorandum in Support. If the Court issues a judgment in the present case without adding Prospective Plaintiff as Plaintiff, Prospective Plaintiff will directly lose the money spent on determining standing, a sum that is substantial relative to Prospective Plaintiff's income and assets.

(3) Impairment of Ability to Protect Interests & Inadequate Representation of Interests

Defendants incorrectly state that both Plaintiff and Prospective Plaintiff "request the same relief,"[6] a misstatement that could have been avoided had Defendants accepted Prospective Plaintiff's September 13 good-faith request to meet and confer. Prospective Plaintiff has not thus far requested specific relief and takes issue with requested remedies (E) and (F) of Plaintiff's September 10 Amended Complaint.

Remedy (F) requests "[s]uch other relief as the Court deems required, including reimbursement of costs, attorney fees and other measures where appropriate."[7] Since Prospective Plaintiff is neither an employee of nor a contractor for Plaintiff, Prospective Plaintiff's interest in acquiring the $701.18 in costs incurred cannot be adequately represented by Plaintiff. Even more, unless added to the case, Prospective Plaintiff cannot protect his own monetary interest either.

Remedy (E) requests the Court "[o]rder the Defendants to ensure that the Commonwealth of Virginia hold new elections for the House of Delegates on the date of November 2022 general elections under a constitutionally crafted reapportionment plan consistent with the 2020 U.S. Census."[8] Prospective Plaintiff takes the Court seriously in

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[6] Defendants' Memo in Opposition, Argument II(A).
[7] Plaintiff's Amended Complaint for Declaratory Judgment, Remedy.
[8] *Ibid.*

Cosner v. Dalton, 522 F. Supp. 350 (E.D. Va. 1981) when it states "...Virginia's citizens are entitled to vote *as soon as possible* for their representatives under a constitutional apportionment plan." [Emphasis added]. Prospective Plaintiff is not convinced that November 2022 is the soonest that Virginia citizens could have an opportunity to vote for their representatives under a constitutional plan. Since Plaintiff is no longer permitted to amend his complaint, he cannot adequately represent Prospective Plaintiff's interest as it pertains to relief.

D. IN THE ALTERNATIVE, PROSPECTIVE PLAINTIFF SATISFIES THE CRITERIA FOR RULE 24 PERMISSIVE INTERVENTION

Rule 24(b)(1), which governs permissive intervention, states that the court may permit anyone to intervene upon timely motion who "is given a conditional right to intervene by federal statute" or "has a claim or defense that shares with the main action a common question of law or fact." Rule 24(b)(3) states: "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice adjudication of the original parties' rights." Whether or not a party is allowed to permissively intervene is left to the discretion of the court, and "[p]ermissive intervention is left to the broad discretion of the Court and should be construed liberally in favor of intervention." *Savannah Riverkeeper v. U.S. Army Corps of Eng'rs*, No. CV 9:12-610-RMG, 2012 WL 13008326, at *2 (D.S.C. Aug. 14, 2012). Permissive intervention requires the satisfaction of three criteria: "(1) the motion is timely; (2) the defenses or counterclaims have a question of law or fact in common with the main action; and (3) intervention will not result in undue delay or prejudice to the existing parties." *Carcano v. McCrory*, 315 F.R.D. 176, 94 Fed. R. Serv. 3d 1445 (M.D.N.C. 2016).

Prospective Plaintiff's request, for the reasons stated in I(C)(1) above, is timely. As elaborated in II(B) of Prospective Plaintiff's Motion for Joinder, Prospective Plaintiff shares with Plaintiff numerous questions of fact and law: "the question of whether or not Virginia officials must make a "good faith effort" in a reapportionment year to remain compliant with the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; the question of whether or not *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981) remains good law; the question of an Equal Protection Clause violation as a

result of unequally weighted district populations; the question of whether or not violations of Article II, Section 6 and 6-A of the Constitution of Virginia have occurred; and the question of whether or not tardy U.S. Census data obliterates the Equal Protection Clause rights of citizens." Prospective Plaintiff, as indicated in his Motion for Joinder, does not seek to add new claims.[9]

Finally, Prospective Plaintiff's intervention will not result in undue delay or prejudice to the existing parties. The addition of parties always creates delay, yet "in determining whether extra time would be an undue delay, the court must balance the delay threatened by intervention against the advantages promised by it." *Ohio Valley Environmental Coalition, Inc. v. McCarthy*, 313 F.R.D. 10, 93 Fed. R. Serv. 3d 690 (S.D.W. Va. 2015).

In *League of Women Voters v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460 (W.D. Va. 2020), the Prospective Intervenors' crossclaim was key to the denial of permissive intervention, as it would "unnecessarily expand the scope of the litigation in this case" and "their decision to wait to file their eventual motion for a preliminary injunction or temporary restraining order in furtherance of their proposed crossclaim, even provisionally, weighs against any finding of timeliness under this requirement." In the present case, Prospective Plaintiff makes no crossclaim.

In *Ohio Valley Environmental Coalition, Inc.*, Plaintiffs (OVEC) opposed the proposed intervention, and Defendants (EPA) took no position. In *League of Women Voters*, in the case of four of the seven Prospective Intervenors, "Counsel for Plaintiffs and Defendants both indicated their opposition to Applicants' intervention."[10] In the present case, Plaintiff does not object to Prospective Plaintiff's intervention.

Defendants lean heavily on the "floodgates" metaphor, which has evolved significantly since appearing in footnote 11 of *Ohio Valley Environmental Coalition, Inc.* and referencing "[opening] the flood gates for WVCA's intervention in almost any case challenging an EPA decision pertaining to the CWA." The Court in *Ohio Valley Environmental Coalition Inc.* then contemplates that the members of WVCA, an association of coal companies, could individually attempt to intervene: "If such were the

[9] Prospective Plaintiff's Motion for Joinder, II(C).
[10] Motion to Intervene of the Republican Party of Virginia, Vicki Burns, Vince Falter, Mildred H. Scott, and Thomas Turner, Case 6:20-cv-00024-NKM filed 4/24/2020.

case, the Court could not draw a meaningful line that prevents all NPDES permit holders from gaining permissive intervention in this case, since all would have an argument for intervention just as tenable as WVCA's." Judge Moon in *League of Women Voters* adopts this metaphor, stating, "The Court also has already emphasized 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. The Court is not inclined to open the floodgates on this lawsuit to any voter in the state who would like to intervene."

Unlike in *League of Women Voters* and *Ohio Valley Environmental Coalition Inc.*, the present case only involves one Prospective Intervenor. Unlike the WVCA, Prospective Plaintiff does not pose a threat of repetitive intervention in future cases and is not an association of individual constituents. And unlike the interests of Prospective Intervenors in *League of Women Voters*, Prospective Plaintiff's interest is not shared by every registered voter of the Commonwealth. That is to say, the Court could absolutely draw a meaningful line between Prospective Plaintiff's interest and those of the hypothetical movants in the strictly imaginary "floodgates" scenarios.

Because Prospective Plaintiff's motion is timely, the defenses or counterclaims have a question of law or fact in common with the main action, and intervention will not result in undue delay or prejudice to the existing parties, Prospective Plaintiff satisfies the requirements of permissive intervention.

II.
CONCLUSION

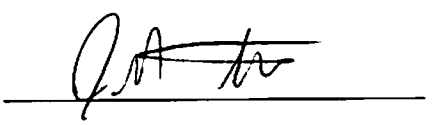
Prospective Plaintiff Joshua Stanfield's Motion to Intervene should be granted, as he satisfies the criteria laid out in Rule 24(a), Rule 24(b)(1), and in the pertinent case law. Furthermore, in light of the clarity and simplicity of the *Cosner* decision, the lack of response from the Virginia Attorney General to Virginia Delegate Lee J. Carter's April 2021 request for opinion on the constitutionality of the ongoing 2021 elections[11], and the fact that Virginians are currently voting for representatives without knowing the term

[11] See Norman Leahy's "The problem with Virginia's election that no one wants to talk about" in *The Washington Post*, September 15, 2021: www.washingtonpost.com/opinions/2021/09/15/problem-with-virginias-election-that-no-one-wants-talk-about/

lengths they will serve, it is in the common sense interest of justice for the Court to resolve this case – for the sake of the Commonwealth and the integrity of our elections. Finally, Prospective Plaintiff begs forgiveness from the Court for any errors in customary formatting, style, or argumentation in this motion. Prospective Plaintiff is not a lawyer, has not attended law school, and has submitted Local Rule 83.1(M) certification that no attorney prepared or assisted in the preparation of this motion.

Dated this 4th day of October, 2021.

Respectfully submitted,



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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on October 4, 2021, I mailed this Motion to Intervene and Response to Defendants' Memorandum in Opposition to Prospective Plaintiff's Motion for Joinder to the Clerk of the Court in paper form via USPS First Class Mail. A true copy of said motion was also sent, via USPS First Class Mail, to:

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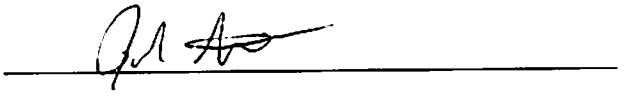

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UNITED STATES DISTRICT COURT
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LOCAL RULE 83.1(M) CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of PROSPECTIVE PLAINTIFF JOSHUA STANFIELD'S MOTION TO INTERVENE AND RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PROSPECTIVE PLAINTIFF'S MOTION FOR JOINDER
(Title of Document)

Joshua Stanfield
Name of *Pro Se* Party (Print or Type)

Signature of *Pro Se* Party

Executed on: 10.4.2021 (Date)

OR

The following attorney(s) prepared or assisted me in preparation of _____.
(Title of Document)

(Name of Attorney)

(Address of Attorney)

(Telephone Number of Attorney)
Prepared, or assisted in the preparation of, this document

(Name of *Pro Se* Party (Print or Type)

Signature of *Pro Se* Party

Executed on: _____ (Date)