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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

LEGISLATIVE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINTS

Case No.: 220901712

Honorable Dianna Gibson

LEGISLATIVE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINTS

Legislative Defendants oppose Plaintiffs' motions for leave to file supplemental complaints adding seven new claims. The Utah Supreme Court remanded this case to decide one claim. Plaintiffs' additional claims will prejudice Defendants. And the added claims are futile for the reasons stated in Legislative Defendants' simultaneously filed opposition to Plaintiffs' pending motions for preliminary injunction.

BACKGROUND

1. In July 2024, the Utah Supreme Court remanded Plaintiffs' case for the limited purpose of adjudicating Plaintiffs' Count V claim regarding their right to "alter or reform" the government by citizens' initiative. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶220, — P.3d—.

2. Now back before this Court, Plaintiffs have asked to amend their complaint three times to add a total of 11 new claims. ***First***, Plaintiffs asked to amend their complaint to add four additional claims; Legislative Defendants consented while reserving all rights and defenses. *See* Jt. Stip. (Aug. 30, 2022).

Second, on September 5, 2024, Plaintiffs moved for leave to supplement their complaint to add six more claims without any prior notice to Defendants. Those six new claims would allege that Amendment D's ballot summary is misleading and violates various constitutional and statutory provisions. *See* 1st-Suppl.-Compl. ¶¶67-113. Plaintiffs seek to declare the ballot summary invalid, enjoin Defendants from placing Amendment D on the 2024 November ballots, declare Amendment D invalid if any voter receives a ballot including the amendment, and order the Lieutenant Governor to notify all county clerks of the injunction. 1st-Suppl.-Compl. Prayer for Relief.

***Third*,** on September 7, 2024, Plaintiffs moved for leave to file yet another supplemental complaint—again, without prior notice to Defendants. Plaintiffs seek to add one more claim, alleging that

Amendment D failed to comply with Article XXIII's publication requirement. *See* 2d-Suppl.-Compl. ¶¶31-40. Plaintiffs seek substantially similar relief as they do in the first supplemental complaint. *See* 2d-Suppl.-Compl. Prayer for Relief. If Plaintiffs are allowed to amend, this case would balloon from five claims to fifteen all in a matter of less than wo weeks.

3. Plaintiffs filed corresponding preliminary injunction motions on September 5 and September 7, 2024. Defendants expedited response is due today.

4. Plaintiffs also filed a motion for summary judgment. Defendants' response to the summary judgment motion and any new claims—whether it is 4 new claims or 11—is currently due October 18, 2024.

ARGUMENT

The Court should deny Plaintiffs motions for leave to file two supplemental complaints adding Counts 9 to 16. Rule 15(d) states that "the court may, on just terms, permit a party to file a supplemental pleading." Utah R. Civ. P. 15(d). This Court has broad discretion to "deny" because Rule 15(d) only says that the Court "'may' allow a supplemental pleading." *Harvey v. Ute Indian of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶56, 416 P.3d 401. There is "no absolute right to expand the case with a supplemental pleading." 35A Corpus Juris Secundum – Fed. Civ. Proc. §409 (2024). Factors such as "untimeliness," "prejudice, "bad faith," and "futility" of the supplemental claims make it "unjust" to grant supplementation. *Harvey*, 2017 UT 75, ¶56.

Considering those factors here, leave to file supplemental claims should be denied for the following reasons.

First, allowing supplemental claims has already prejudiced Defendants and will continue to prejudice Defendants. Whether to grant a motion to supplement turns "primarily" on whether the opposing party would be "unavoidabl[y] prejudice[d] 'by having an issue adjudicated for which he had not had time to prepare.'" *Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc.*, 970 P.2d 1273, 1282 (Utah

1998); *Kelly v. Hard Money Funding, Inc.*, 87 P.3d 734, 744 (Utah 2004) (The opposing party "suffer[s] undue prejudice by having to litigate new issues for which it had received little notice.").

Here, prejudice to Defendants is manifest given the nature of Plaintiffs' supplemental claims. They are seeking to stop a proposed amendment from going to the people for an up-or-down vote in November. They ask to remove Amendment D from already certified ballots. If the Court were to grant that relief, then the case is effectively over as to those supplemental claims. Defendants shouldn't be required to "hav[e] [the] issue[s] adjudicated" in full in an expedited preliminary-injunction motion posture that lasted less than a week. *Aurora Credit*, 970 P.2d at 1282; *cf. Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("generally inappropriate … to give a final judgment on the merits" through preliminary injunctions).

All of these procedural maneuvers are manifestly "unjust"—not only to Defendants, but also 1.7 million Utah voters who won't haven't had their say on Amendment D. This fact is confirmed by Utah voters who submitted declarations in support of Legislative Defendants' simultaneously filed opposition to Plaintiffs' preliminary injunction motions (attached as Exhibit G to that opposition brief). As Legislative Defendants explain in their opposition brief, "'serious disruptions'" will result in the State's administration of the November 2024 election if nearly final ballots must be changed, or Plaintiffs' claims otherwise cast doubt about whether Utahns' votes will count. This year's election doesn't just include Amendment D. It includes a close presidential contest, races for U.S. Senate and House of Representatives seats, races for state and local offices, judicial retentions, and other constitutional amendments. As the Lieutenant Governor's office has averred, "Altering the ballot after all of these things have already been certified for the ballot, jeopardizes the orderly election for all candidates and issues, not just Amendment D." Decl. of Shelly Jackson ¶29, Utah Lieutenant Gov. Resp. to Pls. PI Mot. (Sept. 6, 2024). The equities *greatly* disfavor an injunction in such circumstances, *see In*

re Cook, 882 P.2d 656, 659 (Utah 1994), and they also make Plaintiffs' supplemental claims "unjust," Utah R. Civ. P. 15(d).

Second, Plaintiffs' supplemental claims will be "unjust" because they have diverted resources to litigate Plaintiffs' remanded claims and threaten to delay the proceedings. "Undue or further delay of the action when other parties are prepared to proceed to a determination of the original action … justif[ies] denying leave to file a supplemental pleading." Wright & Miller, 6A Fed. Prac. & Proc. §1510 (3d ed.). In *Harvey*, for example, the Utah Supreme Court affirmed the denial of leave to supplement when the parties completed motion-to-dismiss briefings. 2017 UT 75, ¶57. The fact that the parties "would have had to go back and re-brief and argue their motions" was sufficient to deny leave. *Id.* Under the same principles, leave is properly denied when "the litigation is … ripe for the Court to set a briefing schedule for summary judgment." *Sai v. Transportation Sec. Admin.*, 155 F. Supp. 3d 1, 7 (D.D.C. 2016). This Court had just set the briefing schedule for summary-judgment motions for Plaintiffs' Claim V when Plaintiffs surprised Defendants and this Court with seven new claims and accompanying preliminary-injunction motions. Plaintiffs' added claims detract from "the 'economic and speedy disposition,'" *id.*, of the remand proceedings intended to adjudicate Plaintiffs' Claim V.

Third, Plaintiffs' supplemental claims are futile for the reasons explained in Legislative Defendants' opposition to the motions for preliminary injunction. Plaintiffs incorporate by reference all arguments regarding the equitable considerations and lacking merit of Plaintiffs' new claims, detailed today in Legislative Defendants' opposition brief. *See* Utah R. Civ. P. 10(c) (allowing adoption by reference).

CONCLUSION

For all these reasons, the Court should deny Plaintiffs' motion for leave to file supplemental complaints.

Dated: September 11, 2024

Respectfully submitted,

/s/ Tyler R. Green

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CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: September 11, 2024 */s/ Tyler R. Green*