

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Martin Cowen, et al.,

Plaintiffs,

vs.

Brad Raffensperger, in his
official capacity as Secretary of
State of the State of Georgia,

Defendant.

Case No. 1:17-cv-04660-LMM

**Plaintiffs' Motion for
Leave to File a
Supplemental Complaint**

The plaintiffs respectfully move the Court under Rule 15(d) of the Federal Rules of Civil Procedure for leave to file a supplemental complaint concerning a recent and significant change to Georgia's ballot-access regime that gives rise to an additional claim for relief in this matter.

Background

During its 2024 legislative session, the Georgia General Assembly adopted Senate Bill 189. The Governor signed the bill on May 6, 2024, and it became Act 697.

Section 3.1 of Act 697 amends O.C.G.A. § 21-2-172 to add a new subsection as follows:

(g) Notwithstanding any provision of law to the contrary, any political party or political body which has obtained ballot access in no fewer than 20 states or territories for the office of presidential elector shall be allowed to qualify candidates for presidential elector and receive access to the general election ballot for the purpose of election of the office of presidential elector.

Subsection 3.1 becomes effective on July 1, 2024.

As a result of this change, presidential-electoral candidates nominated by the Libertarian Party, the Green Party, and the Constitution Party will qualify for ballot access in Georgia in 2024 without having to demonstrate *any* support among the electorate of the office they seek. This development undermines the State's previous justification for the petition requirement at issue in this case and thus gives rise to a new claim for relief stemming from this new disparity.

Legal Standard

Rule 15(d) provides that “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any . . . event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). Leave to supplement should be granted “freely” when the supplemental facts connect to the original pleading. *Nance v. Ricoh Electronics, Inc.*, 381 F. App’x 919, 923 (11th Cir. 2010); *see generally* 6A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1504 (3d ed. 2023).

“The purpose of subdivision (d) is to promote as complete an adjudication of the dispute between the parties as is possible.” Wright & Miller, *supra*, § 1504. Typically, leave to supplement should be granted unless: (1) there has been an undue delay, bad faith, dilatory motive or repeated failures to cure deficiencies by amendments previously allowed; (2) allowing the supplement would cause undue prejudice to the opposing party; or (3) the supplement would be futile. *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001).

Discussion

The Court should grant leave to supplement here because doing so would avoid piecemeal litigation and allow for a prompt and efficient resolution of the entire controversy between the parties without prejudice to the State. Hearing the additional claim now—rather than in new litigation between the same or similar parties—is particularly appropriate here because of the public interest at stake. This interest arises out of the plaintiffs’ efforts to give all of Georgia’s voters a greater range of choices in congressional elections.

There has been no undue delay here, as the bill became law just weeks ago and has not yet even taken effect. Nor is there any bad faith, dilatory motive, or repeated failures to cure deficiencies. The supplemental complaint is just the result of a change in the applicable law over which the plaintiffs had no control.

Allowing the supplement would cause the Secretary no undue prejudice because the alternative—new litigation—would be more time-consuming and costly. And the supplement would not be futile because neither this Court nor the Eleventh Circuit has yet considered the impact of this new law.

Conclusion

For all of these reasons, the Court should grant the plaintiffs leave to file their supplemental complaint and order the Secretary to file a responsive pleading within 21 days thereafter.

Respectfully submitted this 19th day of May, 2024.

/s/ Bryan L. Sells

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Certificate of Compliance

I hereby certify that the forgoing document was prepared in 13-point Century Schoolbook in compliance with Local Rules 5.1(C) and 7.1(D).

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Supplemental Complaint

The plaintiffs respectfully submit this supplemental complaint setting forth events that have occurred since their initial complaint. These events stem from a recent and significant change to Georgia's ballot-access regime and give rise to an additional claim.

Supplemental Facts

1. During its 2024 legislative session, the Georgia General Assembly adopted Senate Bill 189.

2. The Governor signed Senate Bill 189 on May 6, 2024, and the bill became Act 697.

3. Section 3.1 of Act 697 amends O.C.G.A. § 21-2-172 to add a new subsection as follows:

(g) Notwithstanding any provision of law to the contrary, any political party or political body which has obtained ballot access in no fewer than 20 states or territories for the office of presidential elector shall be allowed to qualify candidates for presidential elector and receive access to the general election ballot for the purpose of election of the office of presidential elector.

4. Subsection 3.1 becomes effective on July 1, 2024.

5. The Libertarian Party has obtained ballot access in no fewer than 20 states for the office of presidential elector in every presidential election in the last 50 years.

6. The Libertarian Party has already obtained ballot access in no fewer than 20 states for the office of presidential elector in 2024.

7. As a result of Act 697, at least three political bodies are likely to qualify for ballot access for their candidates for presidential elector from Georgia without the need to demonstrate any support among Georgia voters: the Libertarian Party, the Green Party, and the Constitution Party.

8. In 2024, political body candidates for United States Representative were required to gather between 25,040 and 32,103 valid signatures, depending on the district.

9. The disparity in the signature requirement between political body candidates for United States Representative and political body candidates for presidential elector under Act 697 is not justified by any state interest in requiring that candidates demonstrate a modicum of support among the electorate of the office they seek.

Claim Three

10. The disparity in the signature requirement between political body candidates for United States Representative and political body candidates for presidential elector under Act 697 violates rights guaranteed to the plaintiffs by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, as enforced by 42 U.S.C. § 1983.

Respectfully submitted this 19th day of May, 2024.

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