

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

RUTHELLE FRANK, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as
Governor of the State of Wisconsin, et al.,

Defendants.

Civil Action no. 2:11-cv-01128(LA)

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Plaintiffs submit this memorandum of law in support of their motion for leave to file a supplemental pleading pursuant to Fed. R. Civ. P. 15(d). Plaintiffs seek leave to file a supplemental complaint (Exhibit A) to add a plaintiff¹ who in 2016 unsuccessfully sought a permanent state identification card from the Wisconsin Division of Motor Vehicles (DMV) through its petition process (“IDPP”) and whose vote was not counted in the November 2016 general election. Plaintiffs also seek to voluntarily dismiss certain Plaintiffs from this case.

PROCEDURAL HISTORY

Plaintiffs have previously moved to file supplemental complaints. On July 19, 2016, this Court granted Plaintiffs’ motion to file a supplemental complaint to add Plaintiffs Melvin Robertson, Leroy Switlick, and James Green. *See Frank v. Walker*, 196 F. Supp. 3d 893 (E.D.

¹ Plaintiffs seek to add one additional Plaintiff at this time. Upon information and belief, thousands of voters did not vote in November 2016 because of the voter ID law. *See* Press Release, Ken R. Mayer and Scott McDonell, Voter ID Study Shows Turnout Effects in 2016 Presidential Election (Sept. 25, 2017), available at <https://elections.wisc.edu/news/voter-id-study/Voter-ID-Study-Release.pdf>. Plaintiffs also are aware of other potentially affected voters, but the DMV Defendants have (in state court) filed a lawsuit which is currently preventing Plaintiffs from contacting those individuals.

Wis. 2016). This court granted Plaintiffs' motion because "not allowing [proposed Plaintiffs] to become parties in this case would only increase the risk of duplicative litigation" and because "[i]t is better to have their claims and the claims of the existing plaintiffs, all of which are virtually identical, litigated as part of a single action." *Frank*, 196 F. Supp. 3d at 899. On November 10, 2016, the Court also granted Plaintiffs' motion to supplement the complaint to add Plaintiff Andrew Voegele. *See Frank v. Walker*, No. 11-C-1128, 2016 WL 6651323, at *1 (E.D. Wis. Nov. 10, 2016).

ARGUMENT

Supplemental pleadings are designed to cover matters that occur subsequently but still pertain to the original claim. Rule 15(d) provides that the Court "may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the due date of the pleading to be supplemented." *See, e.g., United States v. Russell*, 241 F.2d 879, 882 (1st Cir. 1957). Supplemental pleadings can be used to add new plaintiffs if they were affected by recent events. *See Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 226-27 (1964).

The standards governing Rule 15(d) motions are subject to the same standards to amend the complaint, which generally examine whether there is prejudice to Defendants. *See Glatt v. Chi. Park Dist.*, 87 F.3d 190, 194 (7th Cir. 1996). Leave to supplement the complaint "should be freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any other parties to the action." *Merrill v. Briggs & Stratton Corp.*, No. 10-CV-00700, 2014 WL 12656903, at *2 (E.D. Wis. Apr. 30, 2014) (citing 6A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1006 (3d ed.)). Leave to file

supplemental pleadings should be granted when the pleadings bear “some relationship” to existing pleadings, because “forc[ing] plaintiffs to file new lawsuits to litigate what are essentially continuations of their original suits would waste judicial resources.” *Habitat Educ. Ctr., Inc. v. Kimbell*, 250 F.R.D. 397, 402 (E.D. Wisc. 2008) (citations omitted). Plaintiffs’ supplemental complaint concerns matters that directly relate to Plaintiffs’ claims regarding Defendants’ imposition of substantial hurdles to issuing state ID cards, disparate treatment of voters, and a manifest lack of public education and outreach. The proposed supplemental complaint alleges, for example, that Brenda Wells sought to obtain permanent ID in order to vote in the November 2016 election, could not obtain permanent ID, and continues to lack permanent ID for voting. The supplemental complaint also seeks to dismiss certain Plaintiffs, including several who have passed away or moved out of Wisconsin.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court grant their motion for leave to file a supplemental complaint.

Dated this 28th day of December 2017,
Respectfully submitted,

/s/ Karyn L. Rotker

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General Information

Court	United States District Court for the Eastern District of Wisconsin; United States District Court for the Eastern District of Wisconsin
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:11-cv-01128