IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, et al.,	)	
Plaintiffs,	)	
v.	)	1:13CV660
THE STATE OF NORTH CAROLINA, et al.,	)	
Defendants.	)	

MEMORANDUM ORDER

THOMAS D. SCHROEDER, District Judge.

Before the court is a motion to intervene in this constitutional and statutory challenge to amendments to North Carolina's election laws. Louis M. Duke, Charles M. Gray, Asgod Barrantes, Josue E. Berduo, and Brian M. Miller (collectively the "proposed intervenors"), all 20-year-old registered North Carolina voters, seek intervention of right pursuant to Federal Rule of Civil Procedure 24(a), or, in the alternative, permissive intervention pursuant to Rule 24(b). (Doc. 28.) For the reasons set forth herein, their motion to intervene will be granted.

I. BACKGROUND

On August 12, 2013, Governor Patrick L. McCrory signed into law North Carolina Session Law 2013-381, popularly known as the Voter Information Verification Act or House Bill 589 ("VIVA" or

"HB 589"). (Doc. 28–1 ¶ 40; see 2013 N.C. Sess. Laws 381, http://www.ncga.state.nc.us/Sessions/2013/Bills/House/PDF/H589v9.pdf.) The law enacted several changes to the state's election laws. The original plaintiffs in this case, including the League of Women Voters of North Carolina and several other organizations and individuals (the "League Plaintiffs"), filed a complaint in this court on the same day. (Doc. 1.) The League Plaintiffs challenge HB 589's restriction of early voting, abolition of same-day registration, abolition of out-of-precinct voting, and elimination of the discretion of county boards of elections to direct polls to remain open an additional hour on Election Day. Pursuant to 42 U.S.C. § 1983, they bring claims under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (id. ¶¶ 75–82) and Section 2 of the Voting Rights Act of 1965 ("VRA"), 42 U.S.C. § 1973(a) (id. ¶¶ 83–97).

In a separate case filed on the same day, the North Carolina State Conference of the NAACP and several individual plaintiffs (collectively the "NAACP Plaintiffs") challenged other provisions of HB 589. N.C. State Conference of the NAACP, et al. v. McCrory, 1:13CV658 (M.D.N.C. filed Aug. 12, 2013). The NAACP Plaintiffs challenge the requirement that voters present photo identification, along with the provisions challenged by the League Plaintiffs, pursuant to the VRA. (Doc.

1 in case 1:13CV658 ¶¶ 81–97.) They also contest, among others, HB 589's provisions increasing the number of poll observers and people who may challenge ballots, under both the Fourteenth and Fifteenth Amendments. (Id. ¶¶ 98–119.)

On September 30, 2013, the United States Department of Justice ("DOJ") filed a complaint challenging various provisions of HB 589. United States v. North Carolina, 1:13CV861 (M.D.N.C. filed Sept. 30, 2013). Pursuant to the VRA, DOJ alleged that many provisions of HB 589 – including the photo identification requirement, the reduction of early voting, and elimination of same-day registration and out-of-precinct provisional ballots – have the purpose or effect of abridging the right to vote of African-Americans. (Doc. 1 in case 1:13CV861 ¶¶ 95–100.)

The proposed intervenors filed a motion to intervene in the above-captioned case on November 25, 2013, along with a proposed complaint pursuant to Rule 24(c). (Docs. 28, 28–1.) Like the League Plaintiffs, the proposed intervenors specifically challenge the reduction of early voting (Doc. 28-1 ¶¶ 49–58), the abolition of same-day registration (id. ¶¶ 59–67), the elimination of out-of-precinct provisional voting (id. ¶¶ 68–72), and the elimination of discretion to keep the polls open an extra hour on election day (id. ¶¶ 73–75). However, the proposed intervenors, who are young voters, also challenge two sections not contested by the League Plaintiffs: the

identification requirement (id. ¶¶ 41–48) and the elimination of pre-registration for 16- and 17-year-olds (id. ¶¶ 76–83). They bring their claims under both the Fourteenth and Twenty-Sixth Amendments, pursuant to 42 U.S.C. § 1983. (Id. ¶¶ 90–101.)

On December 13, the United States Magistrate Judge issued an order consolidating the three cases for discovery and scheduling purposes ("scheduling order"). (Doc. 41; Doc. 39 in case 1:13CV658; Doc. 30 in case 1:13CV861.) Following the scheduling order, Defendants (including the State of North Carolina, Governor McCrory, and various state officials in their official capacity, (collectively the "State Defendants")) filed a brief opposing the motion to intervene (Doc. 42), and the proposed intervenors filed a reply (Doc. 51). The motion is now ripe for disposition.

II. ANALYSIS

The proposed intervenors seek to intervene as plaintiffs in this case pursuant to Federal Rule of Civil Procedure 24(a) and (b). The proposed intervenors represent that the League Plaintiffs do not oppose their intervention. (Doc. 28 at 2.) Because the court concludes that the motion should be granted under Rule 24(b)'s permissive intervention standards, there is no need to address the proposed intervenors' arguments that they are entitled to intervention as of right under Rule 24(a).

Under Rule 24(b), the court may permit anyone who "has a claim or defense that shares with the main action a common question of law or fact" to intervene on timely motion. Fed. R. Civ. P. 24(b)(1)(B). "In 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). Where a movant seeks permissive intervention as a plaintiff, the movant must satisfy four requirements: (1) the motion is timely; (2) its claim has a question of law or fact in common with the main action; (3) an independent basis for subject-matter jurisdiction exists; and (4) intervention will not result in undue delay or prejudice to the existing parties. See Shanghai Meihao Elec., Inc. v. Leviton Mfg. Co., 223 F.R.D. 386, 387 (D. Md. 2004). Trial courts are directed to construe Rule 24 liberally to allow intervention, where appropriate. Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986) (noting that "liberal intervention is desirable to dispose of as much of a controversy 'involving as many apparently concerned persons as is compatible with efficiency and due process'" (quoting Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967))); Capacchione v. Charlotte-Mecklenburg Bd. of Educ., 179 F.R.D. 505, 507 (W.D.N.C. 1998) (same).

There is no dispute that the motion is timely. Most significantly, the motion was filed November 25, 2013, well before the scheduling order's January 8, 2014 deadline for amendments to pleadings in these cases. (Doc. 41 at 4.) See, e.g., United States v. Virginia, 282 F.R.D. 403, 405 (E.D. Va. 2012) (holding that a motion to intervene is timely where a case has not progressed past the pleadings stage); cf. MacGregor v. Farmers Ins. Exch., No. 2:10–cv–03088, 2012 WL 5380631, at *2 (D.S.C. Oct. 31, 2012) (motion to intervene untimely when filed more than five months after the passage of the court's deadline to join parties and amend the pleadings). Nor do the State Defendants dispute that the proposed intervenors' claims have a common question of law or fact with the main action. There is an independent basis of subject-matter jurisdiction for the proposed intervenors' claims.[1] Thus, the first three requirements are satisfied.

The State Defendants argue that intervention would complicate the discovery process and consume additional judicial resources, ultimately resulting in an undue delay in adjudication. However, their fears are unfounded. This case

[1] No party has raised, so the court does not reach, the issue whether the proposed intervenors, whom the proposed complaint alleges are registered 20 year-olds, have suffered an injury-in-fact as to, and thus have standing to challenge, HB 589's elimination of pre-registration for 16- and 17-year-olds. (Doc. 28–1 ¶¶ 8–12.) See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992).

has already been consolidated for discovery purposes with two other cases asserting similar claims regarding the legality of HB 589. Should the proposed intervenors' motion be denied, they retain the right to file their own suit, which would likely be consolidated with the existing three cases for discovery purposes in any event. In fact, it is plausible that granting the motion to intervene will decrease the confusion in the discovery process, as opposed to the filing of a new case.

The State Defendants rely on Stuart v. Huff, 706 F.3d 345 (4th Cir. 2013). There, the plaintiffs challenged a North Carolina law requiring certain informed consent procedures prior to the performance of an abortion. Id. at 347; N.C. Gen. Stat. § 90–21.80, et seq. A group of pro-life physicians and others sought to intervene as defendants, even though the North Carolina Attorney General actively defended the statute. Stuart, 706 F.3d at 347. The Fourth Circuit affirmed the district court's denial of permissive intervention on the ground that intervention would complicate the discovery process and delay adjudication on the merits, "without a corresponding benefit to existing litigants, the courts, or the process because the existing [d]efendants [were] zealously pursuing the same ultimate objectives." Id. at 355 (internal quotation marks omitted).

The facts in this case are quite different. The proposed intervenors seek to intervene as plaintiffs, not defendants; they challenge some separate provisions of HB 589; and intervention will not alter the scheduling of discovery or motion practice in these cases. Unlike in Stuart, the proposed intervenors have the option of filing a separate case, which likely would ultimately be consolidated for discovery with these cases. And unlike in Stuart, the proposed intervenors are not seeking to intervene with existing parties who are represented by a government agency in defense of a statute, but are seeking to intervene with private parties. Stuart, 706 F.3d at 350-52.

The court concludes that intervention will not unduly delay or prejudice the adjudication of the existing parties' rights. Thus, the court exercises its discretion to allow permissive intervention in this case.

III. CONCLUSION

IT IS THEREFORE ORDERED that the proposed intervenors' motion to intervene (Doc. 28) is GRANTED.

/s/ Thomas D. Schroeder
United States District Judge

January 27, 2014