UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., THE ANDREW GOODMAN FOUNDATION, INC., MEGAN NEWSOME, AMOL JETHWANI, MARY ROY a/k/a JAMIE ROY, DILLON BOATNER, ALEXANDER ADAMS and ANJA RMUS, Plaintiffs, v. LAUREL M. LEE, in her official capacity as the Florida Secretary of State, Defendant.	Case No. 4:18-cv-00251 (MW/CAS)

PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Rule 15(c), Federal Rule of Civil Procedure, and this Court's Order dated June 18, 2019, ECF No. 123, Plaintiffs respectfully request leave of Court to file a Supplemental Complaint, in the form attached hereto as Exhibit A (the "Supplemental Complaint"), and as grounds therefor state:

INTRODUCTION

Plaintiffs brought this action to address the unconstitutional harm caused by a 2014 advisory opinion (the "2014 Opinion") issued by the Florida Secretary of State (the "Secretary") interpreting Fla. Stat. § 101.657(1)(a) (the "Early Voting

Statute"), which had the discriminatory purpose and effect of making it substantially more difficult for Florida's young voters to access early voting. The Secretary claimed that the absence of on-campus early voting was not due to the 2014 Opinion's clear prohibition of it, but more likely was reflective of other unrelated concerns, such as a lack of sufficient parking on college and university campuses. *See* Resp. in Opp. to Mot. for Fees at 7, ECF No. 84; *see also* July 16, 2018 Hearing Tr., ECF No. 62, 30:7-31:13, 85:24-87:24. In its order granting Plaintiffs' motion for a preliminary injunction (the "Preliminary Injunction Order"), the Court found the Secretary's arguments regarding the advisory nature and limited scope of the 2014 Opinion to be "disingenuous and [. . .] unpersuasive." *See* ECF No. 65 at 12 n.6; *see also id.* at 12-14, 14 n.7.

In a thoughtful and detailed 40-page opinion, the Court concluded that the 2014 Opinion "violates the First, Fourteenth, and Twenty-Sixth Amendments to the U.S. Constitution." *Id*. at 3. The Court required the Secretary to issue a new directive advising all of the State's supervisors of elections (the "supervisors") "that the interpretation of the Early Voting Statute that excludes from consideration as early voting sites any facilities related to, designed for, affiliated with, or part of a college or university, is unconstitutional and, accordingly, the supervisors of elections retain discretion under the Early Voting Statute to place early voting sites" at any type of location authorized by law, "including any such site as may be

related to, designed for, affiliated with, or part of a college or university," and append a copy of the Court's Order to that directive. *See id.* at 38-40.

The Secretary complied by issuing Directive 2018-01 ("the 2018 Directive") and the result was an immediate night-and-day difference in early voting access for Florida's young voters. Although the Preliminary Injunction Order was issued mere months before early voting began for the 2018 general election, after the supervisors had already finalized their early voting plans, several supervisors across the state acted quickly to open early voting sites on 11 college campuses. Nearly 60,000 voters cast early ballots in that election at those locations, including many young voters who were participating in an election for the very first time.

The 2014 Opinion effectuated an on-campus early voting ban in two ways: first, by explicitly prohibiting early voting at any "college- or university-related facilities," and second, by concluding, without any basis or explanation (much less a constitutionally justifiable one) that the University of Florida's Reitz Union specifically could not be used, because "[t]he terms 'convention center' and 'government-owned community center' cannot be construed so broadly as to include the Reitz Union or any other college- or university-related facilities." ECF No. 24-1, at 2, 3; *see also* ECF No. 36, at 8-9; ECF No. 102, at 3-5, 8, 29. Of the 2014 Opinion, the Court concluded, it is difficult to conceive of more "ham-

handed efforts to abridge the youth vote than [the Secretary's] affirmative prohibition of on-campus early voting." ECF No. 65, at 34.

Needless to say, efforts to abridge the youth vote need not be ham-handed to be effective. Following the entry of the Court's Preliminary Injunction Order and the success of the on-campus early voting sites that directly followed as a result, the act has been somewhat refined, but the efforts to erect roadblocks to make it more difficult for young voters to access early voting in Florida continue. For her part, the Secretary has persisted on a course of conduct that appears to deliberately obfuscate the question of whether and where early voting may be offered on Florida's university and college campuses, including in Directive 2019-01 ("the 2019 Directive), her most recent official communication to the supervisors on the issue. *See* Pls.' Op. to Mot. for Reconsideration, ECF No. 118, at 8-10, 11-14, 18-21 (explaining that the 2019 Directive emphasizes preliminary nature of Court's ruling, refuses to acknowledge wrongdoing, and appears to reembrace 2014 Opinion's position that the Reitz Union and similar on-campus facilities are not proper sites for early voting); *see also* Order, ECF No. 111, at 9 (finding 2019 Directive "only goes so far" and "[i]mportantly, it leaves open whether the position articulated in [the 2014 Opinion]—i.e., that a college or university facility (like the Reitz Union) cannot qualify as one of the statutorily-listed early-voting sites because of its college or university affiliation—is still permissible"); *see also id.*

(concluding that, with the 2019 Directive, the Secretary has "now surely muddied" the waters); ECF No. 114-2 (exhibit attached to Secretary's motion for reconsideration on issue of mootness containing correspondence in which supervisor expresses continued confusion as to the meaning of 2019 Directive).

At the same time, two Republican legislators, one in the State House and one in the State Senate, in an abrupt deviation from legislative procedures and against the advice of the supervisors themselves, acted simultaneously to introduce a never-before-seen, eleventh-hour amendment to the Early Voting Statute. The amendment imposes minimum parking requirements on early voting sites—a provision that directly echoes the (demonstrably unfounded) justification that the Secretary gave for the lack of campus early voting that this Court found to be pretextual—in what can only be logically explained as an attempt to avoid this Court's Preliminary Injunction Order and reverse the access to early voting for tens of thousands of young voters that followed as a direct result.

Against this backdrop, Plaintiffs seek the Court's leave to file a supplemental complaint pursuant to Federal Rule of Civil Procedure 15(d). Supplementation is proper in this case, because Plaintiffs' new factual allegations and claims concern events that took place after the filing of the Amended Complaint, and they are directly related to—indeed, inextricably intertwined with—the Amended Complaint and Preliminary Injunction Order in this action.

Permitting supplementation would also facilitate the efficient resolution of both Plaintiffs' current claims and the interwoven new claims that have since arisen. For each of these reasons, as discussed further below, Plaintiffs request that the Court grant their motion.

BACKGROUND

The factual and procedural history of this action is set forth briefly above and in greater length in the Court's Preliminary Injunction Order, ECF No. 65, Plaintiffs' Motion to Determine Entitlement to Fees, ECF No. 79, at 3-11, Plaintiffs' Motion for Summary Judgment, ECF No. 102, at 7-17, the Court's Order on Motion for Summary Judgment, ECF No. 111, at 2-6, Plaintiffs' Opposition to the Secretary's Motion for Reconsideration, ECF No. 118, at 6-14, and Plaintiffs' Emergency Motion to Continue Telephonic Hearing, ECF No. 122, at 2-4.

The Supplemental Complaint modifies the current governing Amended Complaint in five ways. *First*, it adds factual allegations summarizing the Court's Preliminary Injunction Order and the dramatic impact of that Order on access to early voting for Florida's young voters in the 2018 general election. *See* Supp. Compl., Ex. A., at ¶¶ 98-113. *Second*, it adds factual allegations tracing the Secretary's shifting and ambiguous statements regarding the permissibility of on-campus early voting sites during and after the Court's consideration of Plaintiffs'

preliminary injunction motion, as well as evidence recently introduced in these proceedings by the Secretary herself that supervisors remain confused about their ability to offer early voting on campus. *See id.* at ¶¶ 114-141. *Third*, it outlines the legislative history of Senate Bill 7066, which was signed into law by Governor DeSantis on June 28, 2019, and which amended the Early Voting Statute to add the parking restriction that provides the basis for Plaintiffs' new claims (the "Permitted Parking Prohibition"). The Supplemental Complaint also details the Secretary's invocation of on-campus parking issues as a justification for the Secretary's facially discriminatory 2014 Opinion, and the Court's reasoned rejection of such justification as "reeking of pretext." *See id.* at ¶¶ 142-217. *Fourth*, the Supplemental Complaint amends Plaintiffs' 1st and 14th Amendment claim and 26th Amendment claim as currently set forth in the Amended Complaint to expressly incorporate the Supplemental Complaint's factual allegations regarding the Secretary's actions postdating the filing of the Amended Complaint. It also adds a new 1st and 14th Amendment claim and a new 26th Amendment claim regarding the Permitted Parking Prohibition. *See id.* at ¶¶ 218-271. *Fifth*, the Supplemental Complaint adds three new individual young voter plaintiffs, updates factual allegations regarding the existing organizational and individual plaintiffs, and removes plaintiff Megan Newsome.[1] *See id.* at ¶¶ 14-44.

[1] Ms. Newsome recently began a doctoral degree program at an out-of-state

The Supplemental Complaint also updates other factual allegations in the Amended Complaint, including changing references from former Secretary Kenneth Detzner to the current Secretary Laurel M. Lee, changing the future tense to the past tense where appropriate, and adding references to certain relevant events and actions that occurred after the filing of the Amended Complaint.

LEGAL STANDARD

Federal Rule of Civil Procedure 15(d) permits the court to, "[o]n motion and reasonable notice" and "on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." The Advisory Committee Notes to the 1963 Amendment state that Rule 15(d) "is intended to give the court broad discretion in allowing a supplemental pleading" and courts customarily have treated requests to supplement under the Rule liberally. *See W. Alabama Women's Ctr. v. Miller*, 318 F.R.D. 143, 148 (M.D. Ala. 2016) (citing *U.S. ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1, 7 (1st Cir. 2015); *see also Harris v. Garner*, 216 F.3d 970, 984 (11th Cir. 2000) (noting "the liberal allowance of amendments or supplements to . . . pleading under Rule 15"). This liberality is reminiscent of the way in which courts have treated requests to amend under Rule 15(a)'s leave

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university, and does not plan to vote early in person in Florida in the foreseeable future.

"freely give[n]" standard. *See Gadbois*, 809 F.3d at 7. Courts consider a number of factors, none of which is dispositive. These include whether there has been undue delay, whether the nonmovant would be prejudiced, whether the supplementation would be futile, and whether supplementation facilitates the efficient resolution of current claims as well as any new ones. *See W. Alabama Women's Ctr.*, 318 F.R.D. at 148. The bottom line is whether the supplementation would promote "the efficient administration of justice[.]" *See id.* (citing *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28–29 (4th Cir.1963)).

ARGUMENT

Plaintiffs' Supplemental Complaint meets each of the express requirements of Rule 15(a), and will allow a prompt and efficient resolution of the entire controversy between Plaintiffs and the Secretary, avoiding the need for piecemeal litigation. The Supplemental Complaint is timely and the Secretary will suffer no prejudice by having to litigate new factual allegations and claims that are inextricably intertwined with the current action.

First, there can be no serious dispute that the Supplemental Complaint is based upon events that happened after the date of Amended Complaint and has "some relation" to the Amended Complaint. The Supplemental Complaint adds allegations regarding the Secretary's actions taken and statements made in this very litigation after the filing of the Amended Complaint. The same is true of the

allegations relating to the Permitted Parking Prohibition, which was enacted after the entry of the Preliminary Injunction Order, and amends the very statute at issue. Most significantly, the "focal point" of both the Amended Complaint and Supplemental Complaint is the same: ensuring that the Secretary's enforcement and implementation of requirements for the location of early voting sites does not unconstitutionally burden or invidiously discriminate against young voters. *See, e.g.*, *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-CV-00896, 2015 WL 13034990, at *8 (S.D. Ohio Aug. 7, 2015) *aff'd in part and rev'd on other grounds*, 837 F.3d 612, 625 (6th Cir. 2016) (holding that although supplemental complaint challenging rules for counting absentee and provisional ballot did not challenge voter ID requirements, which were at issue in the first complaint, the focal points of both complaints were the same: ensuring all ballots, but particularly provisional and absentee ballots more likely to be utilized by indigent voters, are not unfairly excluded); *W. Alabama Women's Ctr.*, 318 F.R.D. at 151 (holding that challenge to newly enacted restriction on particular abortion procedure was sufficiently related to existing action challenging regulation requiring hospital admission privileges for abortion providers).

In addition, the Permitted Parking Prohibition's subject matter—an entirely unique and unprecedented parking-based limitation on locations that may serve as an early voting facility that was introduced at the eleventh hour, never subject to

public comment or meaningful debate, and that was *not* requested or supported by the supervisors themselves—echoes almost exactly the key justification offered by the Secretary for the policy challenged in this action. Indeed, as the Supplemental Complaint sets out in greater detail, the Legislature's procedurally irregular and otherwise unexplained adoption of the Permitted Parking Prohibition came only after this Court rejected as pretextual the Secretary's campus parking-based justification for her facially discriminatory early voting policy (and at the same time the Secretary was attempting—and failing—to convince this Court that this litigation was moot).[2] As a result, there is not merely "some relation" between this action and the Permitted Parking Prohibition; the question of the Legislature's intent in amending the Early Voting Statute to add that restriction is inextricable from these proceedings.

Second, supplementation will promote the efficient administration of justice and will in no way prejudice the Secretary. The claims in the Amended Complaint and Supplemental Complaint plainly bear a substantial legal and evidentiary relationship to each other, and the resolution of all claims in the context of this ongoing litigation will be more efficient and expeditious than litigating two

[2] The Permitted Parking Prohibition was introduced for the first time only one day after the Court rejected the Secretary's argument that this action was moot, and ordered further proceedings on Plaintiffs' motion for summary judgment. *See* Supp. Compl., Ex. A., at ¶¶ 152-158.

different actions. *See W. Alabama Women's Ctr.*, 318 F.R.D. at 149. Here, the Supplemental Complaint contains allegations regarding both the Secretary's issuance of the facially discriminatory 2014 Opinion, as well as related and highly relevant actions undertaken by the Secretary and the Legislature since the filing of the Amended Complaint. Taken together, these actions are part of a continued, persistent effort to prohibit or discourage the use of college campus facilities as early voting sites with the purpose of making it more difficult for young voters to access early voting.[3] The Amended Complaint and Supplemental Complaint both allege the same type of constitutional claims, and the Court would apply the same analytical framework to the Supplemental Complaint that it utilized to adjudicate the motion for preliminary injunction.

Moreover, there is a substantial overlap in evidence already presented to the Court in the preliminary injunction hearing and the evidence that the Court would consider in adjudicating the Supplemental Complaint, including evidence of the

[3] The Supplemental Complaint alleges in particular that the Legislature enacted the Permitted Parking Prohibition at least in part to attempt to circumvent the Court's Preliminary Injunction Order, which enjoined the Secretary from prohibiting or discouraging the use of otherwise valid early voting sites because of their affiliation with a college or university. Courts have found supplementation particularly appropriate where the supplemental complaint alleges a course of conduct that has continued after a court's entry of injunctive relief, albeit in a different or more subtle form. *See, e.g.*, *Griffin v. Cty. Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 226 (1964) (allowing supplemental pleading regarding events "alleged to have occurred as a part of continued, persistent efforts" to circumvent the court's prior holding requiring desegregation of public schools).

burdens and impact of discriminatory early voting rules upon young voters, and evidence of the weak and pretextual justifications advanced by the Secretary (and now, the Legislature) for the prohibition or discouragement of campus facilities as early voting sites. The current posture of the litigation also supports supplementation. *See W. Alabama Women's Ctr.* v, 318 F.R.D. at 150. The parties have not yet engaged in discovery, which was suspended after the Court issued its Preliminary Injunction Order so that the Secretary could focus on the 2018 election and so the parties could explore settlement possibilities. Then, Plaintiffs moved for summary judgment, arguing—before the Legislature amended the Early Voting Statute to add the Permitted Parking Prohibition—that the Court could issue a final judgment on the extensive record submitted at the preliminary injunction stage. As Plaintiffs recently explained in their motion to continue the hearing on their summary judgment motion, the Legislature's actions significantly alter the landscape, making summary judgment, at least in full, likely premature at this stage. *See* ECF No. 122, at 6. But in any event, conducting discovery on the related claims set forth in the Supplemental Complaint would also have the benefit of addressing any concern the Court may still have regarding the development of the factual record in this action even as it relates to Plaintiffs' original claims. *See, e.g.*, Order, ECF No. 111, at 11-13.

Finally, the Secretary will suffer no prejudice from supplementation. Plaintiffs have moved expeditiously to supplement the Amended Complaint and in accordance with this Court's deadline, putting the Secretary on notice of the basis of its new allegations even before SB 7066 was signed into law, and moving to supplement within days of the Governor's signature. Nor will permitting supplementation cause undue delay; indeed, compared to the alternative of filing a new action, supplementation is likely to result in a faster resolution of the disputes between the parties. Moreover, the Secretary has already taken the position that discovery would be necessary if Plaintiffs' motion for summary judgment were denied. *See* Joint Status Report, ECF No. 125, at 2. Given that the Secretary is already prepared to conduct discovery on the allegations in the Amended Complaint, the Secretary cannot claim to be substantially prejudiced by conducting discovery on the largely overlapping factual issues raised by the Supplemental Complaint.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court's leave to file their Supplemental Complaint. In the event that the Court grants Plaintiffs' motion, Plaintiffs further respectfully request a status and scheduling conference with the Court at its earliest convenience to discuss amending the current

scheduling order in light of the new developments set forth in the Supplemental Complaint.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that this Motion complies with the size, font, and formatting requirements of Local Rule 5.1(C), and it contains 3,163 words, within the requirements of Local Rule 7.1(F).

The undersigned further certifies that, pursuant to Local Rule 7.1(B), he conferred with counsel for the Secretary, Mohammed Jazil, who has notified undersigned counsel that the Secretary opposes the relief sought in this Motion.

Dated: July 8, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Frederick S. Wermuth
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