

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway)	
)	
Plaintiff,)	
)	Case No.: <u>2:18-cv-69-AWA-RJK</u>
)	
v.)	
)	
City of Virginia Beach,)	
)	
Defendant.)	
)	

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION TO FILE AN AMENDED
COMPLAINT AND WITHDRAW OTHER PENDING MOTIONS**

Pursuant to Local Rule 7, Plaintiff respectfully submits this Brief in support of her motion to file an amended complaint and withdraw other pending motions. As this Court is aware, Plaintiff has been seeking counsel to represent her in this matter since it was filed in November 2017. As of this month, Plaintiff Holloway has retained the undersigned counsel at Campaign Legal Center, a nonprofit election law organization that specializes in minority voting rights, to represent her. As such, pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff moves this Court to allow her to file an amended complaint, which may add parties, with the assistance of knowledgeable counsel.

Plaintiff asks this Court to allow her up to 60 days to work with her counsel to submit the amended complaint. Plaintiff submits this motion in advance of the proposed amended complaint so as to advise the Court at the earliest opportunity that an amended complaint is forthcoming and therefore the Court need not address the numerous outstanding motions in this case. In addition to moving to file an amended complaint, Plaintiff moves to withdraw her pending motions to certify a class, for a preliminary injunction, and to reconsider the appointment of counsel (ECF Nos. 34, 35, 37) without prejudice. Plaintiff believes the class and preliminary injunction motions are best

addressed, if at all, after her complaint is amended. The appointment of counsel motion is now moot. Further, if this motion to amend is granted, Plaintiff moves to withdraw all her outstanding motions, including her prior motions to amend and add parties (ECF Nos. 28, 32, 33, 41, 43, and 46). Finally, if Plaintiff's motion to amend is granted, this Court need not address Defendant's pending motion to dismiss now since it will become moot upon filing of the amended complaint.

Under Fed. R. Civ. P. 15(a)(2), the Court "should freely give leave [to amend a complaint] when justice so requires." Since there is a "federal policy in favor of resolving cases on their merits," *United States ex rel. Carter v. Halliburton Co.*, 315 F.R.D. 56 (E.D.Va. 2016) (citing *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006)), "courts should deny leave to amend in only three circumstances: (1) bad faith on the part of the moving party; (2) prejudice to the opposing party; or (3) futility." *Id.* (citing *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *Foman v. Davis*, 371 U.S. 178, 182 (1962)). None of those three reasons apply here and justice weighs heavily in favor of granting the motion.

First, Plaintiff has not acted in bad faith. To the contrary, she has engaged in a good faith search for counsel since she initially filed this case. As she represented to this Court repeatedly, she sought to prosecute this case according to the rules and case law to the best of her ability but believed legal counsel was necessary to properly litigate this matter. Now that she has retained counsel, it is in the interest of justice to allow her to file an amended complaint that will benefit from the advice and assistance of counsel.

Second, the Defendant will not be prejudiced by the Court allowing Plaintiff to amend her complaint. Prejudice is best measured by "the time remaining between the amendment and resolution of the case on the merits." *United States ex rel. Carter*, 315 F.R.D. at 61-62. While this case was filed ten months ago, it is still in its nascent stages. This Court has not yet ruled on the

Defendant's Motion to Dismiss or Plaintiff's prior motion to amend her complaint. It will not prejudice Defendant to allow Plaintiff to replace her prior motion with a motion to file an amended complaint drafted by her newly retained counsel. Finally, the amended complaint will "not surprise Defendants." *Id.* at 62. It will address the same fundamental challenge to Virginia Beach's at-large election system, which unlawfully dilutes minority voting power in violation of Section 2 of the Voting Rights Act.

Finally, Plaintiff's amendments will not be futile. To the contrary, after investigation, Plaintiff's counsel believe that an amended complaint will only strengthen her position and satisfy all of the requirements for a proper Section 2 claim.

For the foregoing reasons, Plaintiff moves this Court to grant her motion, order her to file an amended complaint within 60 days, and note the withdrawal of all her other outstanding motions.

Respectfully submitted,

/s/ Charquia Wright

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2018. I transmitted the foregoing document to the named parties' emails by means of an electronic filing pursuant to the ECF system.

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