

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

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRAD RAFFENSPERGER, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

**CURLING PLAINTIFFS' MOTION FOR
LEAVE TO FILE A THIRD AMENDED COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiffs Donna Curling, Donna Price, and Jeffrey Schoenberg (the "Curling Plaintiffs") respectfully move this Court for leave to file a Third Amended Complaint (the "TAC"). A copy of the TAC is attached as Exhibit A.¹

BACKGROUND

1. On September 15, 2017, Plaintiffs filed the Second Amended Complaint ("SAC"). (Dkt. No. 70.)
2. To expedite the Court's resolution of this matter, by notice and stipulation dated June 11, 2019, Curling Plaintiffs voluntarily dismissed certain

¹ For the Court's convenience, a redline comparison of the TAC and the Second Amended Complaint is attached as Exhibit B.

claims against certain Defendants. (Dkt. Nos. 222-223.)

3. On July 29, 2019, a Notice of Intent to Award was issued on July 29, 2019, naming Dominion Voting Systems, Inc. as the vendor from which Georgia intended to purchase a new voting system. (*See* Dkt No. 575.)

4. Following the expiration of the required protest period, on August 9, 2019, Georgia issued a final Notice of Award, naming Dominion Voting Systems, Inc. as the successful offeror. (*See id.*)

5. Additionally, on August 9, 2019, the Georgia Secretary of State (“GA SOS”) certified that the Dominion Voting System met all applicable provisions of the Georgia Election Code and GA SOS’ rules, and identified the system, software, and equipment to be purchased from Dominion. (*See id.*)

6. On August 15, 2019, the Court issued its order granting in part and denying in part Plaintiffs’ Motions for Preliminary Injunction (the “Order”). (Dkt. No. 579.)

7. On August 16, 2019, Counsel for Curling Plaintiffs provided all parties to this action a copy of the TAC and requested their consent to filing the TAC. At the time of filing Curling Plaintiffs had not received consent from any party to amend their complaint. Given the timeline for the intended implementation of Georgia’s new voting system, Curling Plaintiffs are filing this

motion now to avoid any delay. Curling Plaintiffs will alert the Court if the parties consent to the proposed TAC prior to the deadline for any opposition.

ARGUMENT

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that a party may amend its pleadings with the Court's leave and that the "court should freely give leave when justice so requires." *Id.*; see *Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 401, 406-407 (11th Cir. 1989) ("Rule 15(a) severely restricts the district court's freedom, directing that leave to amend shall be freely given when justice so requires.").

The lenient standard of Rule 15 is met here. The TAC adds claims related to GA SOS's proposed implementation of a voting system relying on ballot-marking devices ("BMDs") that produce a 2D barcode scanned for tabulation, along with a written summary of a voter's selections.² These claims involve overlapping issues and facts, and identical parties. Given this overlap, the parties can rely in part on existing discovery. Moreover, resolution of these claims will rely on testimony and evidence similar to that already presented to this Court. Because the Court is intimately familiar with these issues, it will be far more efficient to resolve these

² In addition to adding claims related to BMDs, the TAC updates the named defendants based on resignations and subsequent elections, and updates the factual assertions to reflect the passage of time.

claims in this case, rather than requiring Curling Plaintiffs to file and open a new case. Further, the relief sought with respect to the new BMD claims is intimately tied to the relief already requested, and partially granted, by this Court.

Additionally, Curling Plaintiffs have sought leave to amend their complaint at the earliest possible opportunity. Defendants did not issue a final Notice of Award and certify the specific equipment to be purchased for GA SOS's new voting system until August 9, 2019, just one week ago. *C.f. Hester v. Int'l Union of Operating Engineers, AFL-CIO*, 941 F.2d 1574, 1579 (11th Cir. 1991) (affirming denial of motion for leave to amend given lengthy passage of time)

Finally, the filing of the TAC will not prejudice Defendants. Trial in this matter is scheduled for January, and discovery has not closed, leaving sufficient time for discovery related to these additional claims.

For the foregoing reasons, Plaintiff respectfully requests that this Court grant this Motion and order the Clerk to docket the attached proposed TAC.

Dated: August 16, 2019

Respectfully submitted,

/s/ David D. Cross
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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ David D. Cross
David D. Cross

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2019, a copy of the foregoing **CURLING PLAINTIFFS' MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/ David D. Cross
David D. Cross