

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHIGAN WELFARE RIGHTS
ORGANIZATION, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 1:20-cv-03388-EGS

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
AND STATEMENT OF POINTS AND AUTHORITIES**

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Pursuant to this Court’s June 10, 2022 minute order, Plaintiffs Michigan Welfare Rights Organization (“MWRO”), NAACP, Maureen Taylor, Nicole L. Hill, and Teasha K. Jones, by counsel (collectively, “Plaintiffs”), respectfully move for leave to amend their Amended Complaint (Dkt. 8) by filing the Second Amended Complaint attached hereto as **Exhibit A**.¹ Plaintiffs seek that leave to address the concerns regarding their 52 U.S.C. § 10307(b) claim (“Section 11(b) claim”) raised in the Court’s April 1, 2022 opinion (Dkt. 49) and otherwise to add factual allegations regarding conduct by Defendant Republican National Committee (“RNC”) and Defendants Donald J. Trump and Donald J. Trump for President, Inc. (respectively, “Trump” and the “Trump Campaign”), especially conduct that occurred or evidence that became available after Plaintiffs filed their December 21, 2020 Amended Complaint.

I. Legal Standard.

“The court should freely give leave [to amend a pleading] when justice so requires.” *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (quoting Fed. R. Civ. P. 15(a)(2)) (alteration in original). “[I]t is an abuse of discretion to deny leave to amend unless there is sufficient reason, such as undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by previous amendments or futility of amendment.” *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (per curiam) (citation omitted) (cleaned up).

At the motion to dismiss stage, complaints generally should not be dismissed with prejudice absent an opportunity to amend. *See, e.g., In re McCormick & Co., Inc., Pepper Prods. Mktg. & Sales Prac. Litig.*, 275 F. Supp. 3d 218, 223 (D.D.C. 2017) (noting “dismissal with prejudice is warranted only when a trial court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency” and providing

¹ A redline showing the differences between Plaintiffs’ Amended Complaint and their proposed Second Amended Complaint is attached hereto as **Exhibit B**.

leave to amend) (quoting *Belizan v. Hershon*, 434 F.3d 579, 583 (D.C. Cir. 2006) (internal quotation marks omitted)). Granting such leave is consistent with the principle that “[d]ismissal with prejudice is the exception, not the rule, in federal practice because it operates as a rejection of the plaintiff’s claims on the merits and [ultimately] precludes further litigation.” *Rudder v. Williams*, 666 F.3d 790, 794 (D.C. Cir. 2012) (internal quotation marks omitted).

II. Justice Requires Granting Leave to Amend.

There is no “sufficient reason” to deny leave to amend here. Plaintiffs are moving within a reasonable time and with proper motivation; they have not previously failed to cure any pleading deficiency identified by this Court; and amendment would not be futile.

A. Plaintiffs Have Not Unduly Delayed, Are Acting from Proper Motivation, and Have Not Previously Failed to Cure Any Pleading Deficiency.

Plaintiffs have not delayed unduly in seeking leave to file a Second Amended Complaint (“SAC”). The Court entered its order granting dismissal of Plaintiffs’ Section 11(b) claim (Dkt. 48) on March 31, 2022 and its related opinion (Dkt. 49) on April 1, 2022. Because the Court’s order and opinion held Plaintiffs’ 42 U.S.C. § 1985(3) claim in abeyance, Dkt. 49 at 59, and did not specify when and whether Plaintiffs had leave to amend their Section 11(b) claim, on May 16, 2022, Plaintiffs moved the Court for clarification as to whether they had leave to amend their Section 11(b) claim and, if so, whether, in the interests of judicial economy, they could wait to file the SAC until the Court ruled on their § 1985(3) claim, Dkt. 52 at 11. The Court denied the motion in a June 10, 2022 minute order that instructed Plaintiffs to file by June 16, 2022 any motion for leave to file an amended or supplemental complaint. Plaintiffs therefore file the instant motion.

This motion arises not from bad faith or dilatory motive but rather from Plaintiffs’ reasonable and legitimate desire to file a complaint amended to include factual allegations that

address the standing concerns regarding their Section 11(b) claim raised in the Court's April 1, 2022 opinion, Dkt. 49 at 42, and to otherwise add factual allegations relevant to their claims, especially conduct occurring after they filed their Amended Complaint on December 21, 2020 or evidence that became available after that date.

Plaintiffs have not previously failed to cure any deficiencies identified by the Court in their Amended Complaint or, indeed, in any complaint in this matter. Plaintiffs have only once amended a complaint in this matter, an amendment as a matter of right pursuant to Fed. R. Civ. P. 15(a) filed before any Defendant filed a responsive pleading or a motion under Fed. R. Civ. P. 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1)(B). Plaintiffs have not previously sought leave to amend their Amended Complaint.

B. Amendment Would Not Be Futile.

Plaintiffs' proposed SAC fully addresses the standing concerns raised in the Court's April 1, 2022 opinion. As this Court recognized, "Plaintiffs have sufficiently pled a risk of future harm to voting rights involving the same actors in this case" to defeat mootness. Dkt. 49 at 29, 39. However, this Court concluded that the allegations in the Amended Complaint were too speculative to support standing. *Id.* at 39. In reaching that conclusion, the Court emphasized the Supreme Court's language regarding the requirement of "imminent" harm for equitable relief. *See id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). As the Supreme Court and D.C. Circuit have explained, the imminence requirement is satisfied where there is a "substantial risk" of future harm. *See, e.g., Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013); *Attias v. Carefirst, Inc.*, 865 F.3d 620, 627 (D.C. Cir. 2017). Courts in this District have stressed that "substantial risk" is the touchstone for analyzing imminence. *See, e.g., Richardson v. Trump*, 496 F. Supp. 3d 165, 178 (D.D.C. 2020). Plaintiffs' proposed SAC contains additional factual allegations showing that, unless the Court grants the injunctive relief sought under their Section

11(b) claim, there is a substantial risk that they will suffer future harm caused by Defendants.

For the Plaintiffs and their members, threats, intimidation, and coercion by Defendants and their agents that create a climate of fear and uncertainty regarding whether the individual Plaintiffs' votes in upcoming elections will be "counted properly and included in the appropriate totals of votes cast" imperils their right to vote and is thus a concrete harm in violation of Section 11(b). 52 U.S.C. § 10310(c)(1); *see also Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964). As also noted in the Amended Complaint, Plaintiffs already suffered such harms during the 2020 Presidential election. The individual Plaintiffs live in Michigan, a state where Defendants have repeatedly undertaken efforts to disenfranchise voters through targeted harassment, intimidation, and efforts to prevent the complete counting and certification of validly cast ballots. Dkt. 8 ¶¶ 8–10, 24, 33, 38–39; SAC ¶¶ 8–10, 25, 34, 39–41. Further, the individual Plaintiffs are Black voters particularly targeted by those baseless allegations of election fraud. Dkt. 8 ¶¶ 8–10, 24, 43–49; SAC ¶¶ 8–10, 25, 46. The situation is similar for organizational Plaintiffs, both because such conduct imperils their members' right to vote and, in the case of the NAACP, because it has been forced to divert resources to protect its members' right to vote. Dkt. 8 ¶ 84; SAC ¶ 129.

The SAC adds allegations further showing that, unless this Court grants injunctive relief, such harms are both imminent and, indeed, *ongoing*. Defendants' illegal attempts to disenfranchise the individual Plaintiffs and the members of the organizational Plaintiffs have continued since Plaintiffs filed their Amended Complaint, and the harms from that conduct are also continuing, including the substantial risk of disenfranchisement resulting from coercion and intimidation of state and local election officials and the concomitant drain on the NAACP's resources as it attempts to counteract those risks. SAC ¶¶ 128–130.

For example, although former President Trump has every reason to know his claims of

widespread election fraud are at odds with reality—even his own Attorney General called them “completely bogus and silly,” “crazy stuff,” and “bullshit,” *id.* ¶ 67—his efforts to overturn the results of the 2020 election are still ongoing. Those efforts include:

- pressuring the Speaker of the Wisconsin Assembly to nullify the 2020 election results in March 2022, *id.* ¶ 112, which the Speaker is not legally permitted to do;
- continuing in 2022 to pressure, behind the scenes, Alabama Representative Mo Brooks and other lawmakers to “rescind” the 2020 presidential election results, *id.* ¶ 113, which there is no legal basis for doing; and
- backing candidates in 2022 elections in order to have a “new Legislature” in Michigan that would, baselessly, try to undermine the 2020 presidential election results, and backing other 2022 candidates because they endorse his false claims that the 2020 presidential election was stolen from him, *id.* ¶ 114.

Such conduct is consistent with other improper pressure and coercion Defendants and their agents applied to election officials that occurred after or came to light after Plaintiffs filed their December 21, 2020 Amended Complaint, including:

- pressuring Arizona election officials to stop counting validly cast votes and, on December 24, 2020, to get the election results “fixed up” in Trump’s favor, *id.* ¶ 60;
- in January 2021 baselessly threatening Georgia Secretary of State Brad Raffensperger with criminal charges if he refused to “find” enough non-existent Trump votes to swing Georgia’s electoral votes to former President Trump, *id.* ¶ 59; and
- on January 6, 2021, inciting followers to use violence and the threat of violence in the United States Capitol building to disrupt the Congress’ certification of the states’ electoral votes, *id.* ¶¶ 1, 95–108.

Further, the onslaught of threats and intimidation directed at election officials by Defendants and their agents following the 2020 presidential election creates ongoing harms and poses substantial risk of future harms. Those threats and intimidation have led both to an exodus of election officials as they retire early or simply quit and to fears among election officials that political leaders will interfere with how they do their jobs in future elections, including by pressuring those officials to certify election results in favor of a specific candidate or party. *Id.* ¶ 35. Those fears are far from speculative. One in six election officials has experienced job-related threats, and thirty percent of officials know of one or more election workers who have already left their jobs because of the threats and intimidation. *Id.* ¶ 36.

Even though—or, indeed, *because*—baseless claims of election fraud have already imperiled the proper counting of validly cast votes and continue to undermine the electoral system by intimidating officials tasked with counting those votes, Defendants have continued to amplify false claims about the 2020 election. As noted above, former President Trump has repeatedly advocated illegal action to overturn the 2020 election. *Id.* ¶¶ 101–108, 112–114. RNC Chairwoman Ronna McDaniel has publicly stated there were “lots of problems with the election” and raised questions about the legitimacy of the results. *Id.* ¶ 116. On February 4, 2022, the RNC passed a resolution censuring Republican legislators Liz Cheney and Adam Kinzinger for their involvement in investigating the January 6 insurrection in which participants used violence and terror to try to prevent Congressional certification of the election results. *Id.* Insurrectionists involved in planning the attack stated they understood former President Trump’s statements as “marching orders” to interfere with the certification process. *Id.* ¶ 97. The RNC’s censure resolution, defended by RNC Chairwoman McDaniel, described the insurrection as “legitimate political discourse,” and criticized the investigation as “persecution of ordinary citizens.” *Id.*

¶ 116.

Not only are Defendants engaged in ongoing efforts to subvert the 2020 election results, as reflected in the proposed SAC, the RNC and state Republican organizations are undertaking large-scale “election integrity” efforts, spearheaded by individuals who have publicly encouraged election interference and intimidation during the 2020 election results, to interfere with voting and vote counting in 2022. *Id.* ¶¶ 117–119. For example, Michigan Republican Party Co-Chair and RNC member Meshawn Maddock, a so-called “alternate elector” who participated in the coordinated effort to undermine Michigan’s (and other states’) 2020 election certification by submitting false election “certifications” purporting to show that former President Trump won the election, is now involved in recruiting thousands of poll watchers to “flood the system” in forthcoming elections. *Id.* ¶ 119. In Texas, state Republican officials have administered virtual trainings likely to encourage poll watchers to assume that votes cast by voters of color are presumptively illegitimate by instructing those poll watchers that “fraud is occurring” in “densely populated, largely Black, Latino, and Asian neighborhoods.” *Id.* Election watchdog groups and legal experts warn that the RNC’s efforts to recruit and install partisans who believe in Defendants’ false election fraud narrative in positions that should be occupied by unbiased officials, thus risking “chaos” in jurisdictions with large numbers of voters of color, including Detroit. *Id.* ¶ 118. Presumably the effort to install these partisans will be made easier by the widespread resignations and retirements of unbiased officials. *See id.* ¶¶ 35, 36.

Indeed, election officials who subscribe to Defendants’ false election fraud narrative are already beginning to interfere with the orderly functioning of the electoral system. On June 15, 2022, the New Mexico Supreme Court had to issue a writ of mandamus because the Otero County Commission baselessly refused to fulfill its nondiscretionary statutory obligation to

approve the canvass and report the results of the 2022 primary election. *Id.* ¶ 120. The commission, whose members include a Cowboys for Trump co-founder who was convicted of illegally entering restricted U.S. Capitol grounds during the January 6 insurrection and who subscribes to former President Trump’s groundless claims to have won the 2020 presidential election, justified their misconduct by citing debunked conspiracy theories that the voting machines used in the primary election were somehow unreliable. *Id.*

Further, aside from the question of standing and imminent harm, Plaintiffs should be allowed to update the Amended Complaint to provide additional information relevant to their claims, especially information regarding conduct occurring after they filed their Amended Complaint and evidence that became available after they filed it. For example, additional recent evidence makes clear that, far from merely engaging in and encouraging “legitimate political discourse,” Defendants have engaged in illicit conduct designed to subvert vote counting and election certification. Recent testimony by David Shafer, Chairman of the Georgia Republican Party and RNC member, revealed that in battleground states, the Trump Campaign directly coordinated the creation of “alternate slates of electors”—*i.e.*, groups with no legal status that were created to interfere with, and cast doubt upon, the certification of election results by the actual, legally appointed electors. *Id.* ¶¶ 75–77. Defendants took pains to hide those efforts from public view. Robert Sinners, the Trump Campaign’s elections operations director for Georgia, sent an email instructing the fake electors in Georgia to maintain “complete secrecy” and to misrepresent to security guards why they were entering the Georgia Capitol. *Id.* ¶ 76.

Plaintiffs’ proposed SAC makes even clearer that Defendants’ attempts to disenfranchise Plaintiffs in violation of Section 11(b) have continued well after the 2020 presidential election and have done so in ways that create imminent and ongoing harms to Plaintiffs. Thus, especially

given that “Plaintiffs’ bar at the motion to dismiss stage is low . . . [because t]hey must only ‘plausibly allege’ standing,” the newly pleaded factual allegations on that point make clear that Plaintiffs have standing to bring their Section 11(b) claim and leave to amend would not be futile. *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11, 28 (D.D.C. 2020) (citation omitted). This Court should grant Plaintiffs leave to file their proposed SAC.

III. Local Civil Rule 7(m) Certification.

Pursuant to LCvR 7(m), on the morning of June 15, 2022, Plaintiffs’ counsel contacted Defendants’ counsel via email to let them know that Plaintiffs anticipated filing this motion on June 16, 2022 and asked whether Defendants oppose the relief sought herein. Counsel for all Defendants stated that their clients will oppose this motion.

IV. Conclusion.

WHEREFORE, Plaintiffs respectfully request that this Court grant leave to file the Second Amended Complaint attached hereto as Exhibit A.

Dated: June 16, 2022

Respectfully submitted,

/s/ Jason M. Bradford

Jason M. Bradford (D.D.C Bar No. IL0073)

Full counsel information on cover page.

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on June 16, 2022, I electronically filed the foregoing Plaintiffs' Motion for Leave to File Second Amended Complaint and Statement of Points and Authorities with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel and parties of record.

Dated: June 16, 2022

/s/ Jason M. Bradford

Jason M. Bradford

Counsel for Plaintiffs

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