

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as Acting
Secretary of the Commonwealth, *et al.*,

Defendants.

Case No. 1:22-cv-00339-SPB

**PLAINTIFFS' MOTION TO DROP PARTIES JEAN TERRIZZI, DEBORAH
DIEHL, AND MARJORIE BOYLE**

Plaintiffs respectfully move this Court pursuant to Rules 21 and 41(a)(2) of the Federal Rules of Civil Procedure, to drop Ms. Jean Terrizzi, Ms. Marjorie Boyle, and Ms. Deborah Diehl as plaintiffs in this action without prejudice. This motion is made *only* as to those three individual Plaintiffs. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs Jean Terrizzi, Deborah Diehl, and Marjorie Boyle wish to voluntarily withdraw as plaintiffs in this case.

2. Federal Rule of Civil Procedure 21 provides that “the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21.¹ The trial judge’s discretionary authority to dismiss a party from the case under Rule 21 is only

¹ “Rule 21 is titled ‘Misjoinder and Non-Joinder of Parties.’ However, it may be used to organize problematical issues other than joinder problems. 4 Moore’s Federal Practice § 21.02(1) (‘The courts have properly concluded that they may issue orders under Rule 21 even in the absence of misjoinder and non-joinder of parties, to construct a case for the efficient administration of justice’).” *Off. Comm. of Unsecured Creditors v. Shapiro*, 190 F.R.D. 352, 355 (E.D. Pa. 2000).

“restricted to what is ‘just.’” *DirectTV, Inc. v. Leto*, 467 F.3d 842, 845 (3d Cir. 2006). The court may accordingly drop parties so long as they are not indispensable under Rule 19, and upon finding “that its actions will not prejudice any party.” *Avenatti v. Fox News Network LLC*, 41 F.4th 125, 131 (3d Cir. 2022) (citations omitted). *See also DirectTV, Inc.*, 467 F.3d at 847 (the Court is obliged to “avoid prejudicing any substantial right in exercising its discretion” under Rule 21).

3. There is no time limitation on the district court’s ability to drop a party under Rule 21. *Avenatti*, 41 F.4th at 134. “When there are several plaintiffs in a single suit and one is dismissed out, whether under Rule 21 or any other rule or doctrine, it is as if he had brought a separate suit that was dismissed.” *Elmore v. Henderson*, 227 F.3d 1009, 1011–12 (7th Cir. 2000).

4. The Court also has discretion to dismiss a party’s claims under Rule 41(a)(2) at the plaintiff’s request “on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). The dismissal of a plaintiff’s action is typically without prejudice. *Id.*

5. Though plaintiffs have an “absolute right” to dismiss a case without a court order before an answer or summary judgment motion has been filed, Rule 41(a)(2) provides the court with discretion, upon the Plaintiff’s request, to dismiss an action after either has occurred.² *Disabled in Action of Pennsylvania v. Se. Pennsylvania Transp. Auth.*, 224 F.R.D. 601, 605 (E.D. Pa. 2004); *see also* Fed. R. Civ. P. 41(a)(1). Like Rule 21, the trial court “may, and ordinarily will, permit the plaintiff

² The Third Circuit has noted that Rule 41(a) “does not require dismissal of all claims against all parties.” *Noga v. Fulton Fin. Corp. Emp. Benefit Plan*, 19 F.4th 264, 271 n.3 (3d Cir. 2021) (quoting 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2362 (4th ed. 2020)).

to dismiss his case upon appropriate terms and conditions unless a dismissal will work some plain legal prejudice on the defendant.” *Selas Corp. of Am. v. Wilshire Oil Co. of Texas*, 57 F.R.D. 3, 5 (E.D. Pa. 1972).

6. Plaintiffs Jean Terrizzi, Deborah Diehl, and Marjorie Boyle are among the eight individuals who joined as plaintiffs in this lawsuit and whose claims for relief were included in the Amended Complaint filed on November 30, 2022. Each individual joined this lawsuit as a Pennsylvania voter who faced disenfranchisement due to the lack of a handwritten date or purportedly “incorrect” date on the outer envelope of her mail-in ballot.³ All individual plaintiffs are seeking declaratory and injunctive relief, as well as nominal damages for the violation of their legal right to vote under both the Materiality Provision and the Fourteenth Amendment.

7. Ms. Terrizzi, Ms. Diehl, and Ms. Boyle no longer wish to participate as plaintiffs in this case, and respectfully request the voluntary dismissal of their individual actions.

8. None of these individual plaintiffs’ allegations or claims are necessary to, or indispensable in, adjudicating the claims of the remaining plaintiffs; dropping them as plaintiffs and removing them from the caption will not cause prejudice to any parties in this case. The claims for declaratory and injunctive relief of the remaining individual and organizational plaintiffs will proceed, and Defendants will not be

³ Plaintiff Terrizzi joined this case after learning that her name was on a list published by the Philadelphia County Board of Elections indicating that her mail ballot was among those initially set aside prior to Election Day. Through the course of this litigation, Ms. Terrizzi subsequently learned that her ballot was ultimately canvassed, and she accordingly wishes to be dropped as plaintiff in this case.

prejudiced, nor affected in any meaningful way, because Plaintiffs are all seeking identical claims for relief in this case. Granting the Plaintiffs' motion at this stage will not cause prejudice to any of the parties, nor would it lead to delays in the litigation.

9. On April 3, 2023, undersigned counsel for Plaintiffs notified all counsel of record for all Defendants and Intervenors of Plaintiffs' request to drop Ms. Terrizzi, Ms. Diehl, and Ms. Boyle from the case and asked Defendants and Intervenors to respond by April 5, 2023, to raise any objections or opposition to this request. No party has raised any objection to this request or identified any potential prejudice that would result from the requested relief.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order dropping Jean Terrizzi, Deborah Diehl, and Marjorie Boyle from this case pursuant to Rule 21 and/or 41(a)(2) without prejudice, and removing them from the caption of this case.

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Dated: April 5, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing Motion to Drop Parties Jean Terrizzi, Deborah Diehl, and Marjorie Boyle to be served via electronic mail to all counsel of record.

Dated: April 5, 2023

/s/Stephen Loney
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