

**United States District Court
Northern District of Georgia
Gainesville Division**

Fair Fight, Inc., Scott Berson, Jocelyn Heredia, and Jane Doe,

*Plaintiffs and
Counter-Defendants,*

v.

True the Vote, Inc., Catherine Engelbrecht, Derek Somerville, Mark Davis, Mark Williams, Ron Johnson, James Cooper, and John Does 1-10,

*Defendants
and Counter-Plaintiffs,*

Fair Fight Action, Inc.,

Counter-Defendant.

Civ. No. 2:20-cv-00302-SCJ

Defendants' Motion for Leave to File Counterclaim

Defendants True the Vote, Inc., Catherine Engelbrecht, Derek Somerville, Mark Williams, Ron Johnson, and James Cooper move this Court for an order pursuant to Federal Rule of Civil Procedure 15 for leave to file a Counterclaim as part of their Answer to Plaintiffs' First Amended Complaint. Rule 15(a)(2)

**Defs.' Mot. for Leave
Counterclaim**

provides that, 21 days after service of a motion under 12(b), a party's pleadings may be made "with the opposing party's written consent or the court's leave." In a discovery dispute hearing held on April 9, 2021, this Court held that Defendants/Counter-Plaintiffs were required to seek leave of the Court to file the Counterclaim that was part of Defendants' previously filed Answer to Plaintiffs' First Amended Complaint. *See* ECF No. 82. Plaintiffs oppose this Motion.

Defendants' proposed Answer to Plaintiffs' First Amended Complaint and Counterclaim is attached hereto as Exhibit A. Defendants propose to: (1) remove the first four counterclaims previously pled in ECF No. 40, instead asserting them as part of the amended answer's defenses; (2) add James Cooper as a Counter-Plaintiff; and (3) add Stacey Abrams as a Defendant.

"The court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). While this Court has discretion to decide whether to grant such leave, this discretion is limited by the general policy that Rule 15(a) should be liberally construed. *See Espey v. Wainwright*, 734 F.2d 748, 750 (11th Cir. 1984). Without a substantial reason to deny a motion for leave, such as undue delay, bad faith, dilatory motive on the part of the movant, or undue prejudice to

the opposing party, “the discretion of the district court is not broad enough to permit denial.” *See id.* (internal citations omitted).

Here, these proceedings will not be subject to undue delay if this motion is granted. Pursuant to the joint discovery plan, ECF No. 54, discovery is ongoing until June 8, 2021.¹ The removal of four counterclaims and the assertion of same as defenses will not delay any pending motion before the Court. Nor will the addition of James Cooper as a Counter-Plaintiff and Ms. Stacey Abrams as a Defendant cause undue delay, considering the Court’s position on pending motions. Likewise, Defendants do not make any of the proposed changes to the previously filed counterclaims in bad faith. The addition of James Cooper as a Counter-Plaintiff is done to correct an error made in Defendants original Answer and Counterclaims. Likewise, Defendants have considered in good faith that it is more appropriate to name Ms. Abrams as a Defendant than to seek non-party discovery from her. In short, granting Defendants’ motion for leave will allow for the “justice” contemplated under the federal rules.

WHEREFORE, Counter-Plaintiffs request that the Court grant their

¹ This Court granted Plaintiffs’ motion to stay discovery related to counterclaims until after it decides the Plaintiffs’ pending motion to dismiss.

Motion for Leave to File their Answer to the Plaintiffs' First Amended Complaint
and Counterclaim.

Dated: April 9, 2021

/s/ Ray Smith, III
Ray Smith, III, GA # 662555
rsmith@smithliss.com

SMITH & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, GA 30328
Telephone: (404) 760-6000
Facsimile: (404) 760-0225
Local Counsel for Defendants

Respectfully Submitted,

James Bopp, Jr.,* IN # 2838-84
jboppjr@aol.com
Jeffrey P. Gallant,* VA # 46876
jgallant@bopplaw.com
Courtney Turner Milbank,* IN#
32178-29
cmilbank@bopplaw.com
Melena Siebert,* IN # 35061-15
msiebert@bopplaw.com
THE BOPP LAW FIRM, PC
1 South 6th Street
Terre Haute, Indiana 47807
Telephone: (812) 232-2434
Facsimile: (812) 235-3685
Lead Counsel for Defendants
**Admitted Pro hac vice*

Certificate of Compliance

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1(B).

Respectfully submitted on April 9, 2021

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Local Counsel for Defendants

Certificate of Service

I hereby certify that the foregoing document was served electronically on April 9, 2021, upon all counsel of record via the United States District Court for the Northern District of Georgia, electronic filing system.

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Local Counsel for Defendants