

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CHRISTOPHER FAIN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WILLIAM CROUCH, *et al.*,

Defendants.

CIVIL ACTION NO. 3:20-cv-00740

HON. ROBERT C. CHAMBERS, JUDGE

PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (collectively, "Plaintiffs") respectfully move this Court for leave to amend their complaint by filing the First Amended Complaint attached hereto as Exhibit A. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs initiated this action on November 12, 2020 with the filing of the class action complaint (ECF No. 1), alleging that the exclusion of coverage for gender-confirming healthcare in West Virginia state health insurance plans violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; and the comparability and availability requirements of the federal Medicaid Act, 42 U.S.C. §§ 1396a(a)(10)(A)-(B). Plaintiffs sought declaratory and injunctive relief and, in their individual capacities, damages.

2. Plaintiffs seek to add two plaintiffs to the suit. Shauntae Anderson¹ is a Medicaid participant and Leanne James² is a public employee and a PEIA member. Like the other Plaintiffs, they seek to challenge the state's exclusion of coverage for gender-confirming care.

3. This motion is timely filed before the October 8, 2021 deadline in the Scheduling Order to amend the pleadings. (ECF No. 75 ¶ 1.)

4. Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that “[t]he court should freely give leave [to amend the pleadings] when justice so requires.” *Scott Hutchison Enterprises, Inc. v. Cranberry Pipeline Corp.*, No. CV 3:15-13415, 2016 WL 10789587, at *1 (S.D.W. Va. Sept. 21, 2016); see also *Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 379 (4th Cir. 2012) (citation omitted); *Equal Rights Ctr. v. Niles Bolton Associates*, 602 F.3d 597, 603 (4th Cir. 2010) (citation omitted). “Generally, leave to amend a pleading should be granted unless it would result in prejudice to the opposing party, the motion was brought in bad faith, or permitting amendment would be futile.” *Id.*

5. None of the factors that might merit denial of leave to amend are present in this case. These amendments will result in no delay to this proceeding because Plaintiffs have timely filed this motion before the deadline in the Case Schedule. The new putative plaintiffs seek to vindicate their rights in good faith, and permitting them to raise claims similar to the ones that survived Defendants’ motions to dismiss would not be futile.

¹ Ms. Anderson is currently in the process of changing her legal name, which is reflected in the caption of the proposed amended complaint.

² As alleged in the attached proposed First Amended Complaint, plaintiff Leanne James anticipates seeking leave to raise claims under Title VII of the Civil Rights Act of 1964 as soon as she has finished exhausting them with the United States Equal Employment Opportunity Commission.

6. In circumstances such as these, “Rule 15’s declaration that leave ‘shall be freely given when justice so requires,’ is a clear mandate the courts have been instructed to obey.” *Short v. W. Virginia Div. of Corr. & Rehab.*, No. CV 3:20-0552, 2021 WL 1148219, at *2 (S.D.W. Va. Mar. 25, 2021).

* * *

Dated: September 23, 2021

/s/ Walt Auvil

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CERTIFICATE OF SERVICE

I, Walt Auvil, do hereby certify that on this 23rd day of September 2021, I electronically filed a true and exact copy of *Plaintiffs' Motion for Leave to File First Amended Complaint* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Walt Auvil

Walt Auvil, WWSB No. 190