

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' MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (collectively, "Plaintiffs") move for leave to file their First Amended Complaint. For the reasons stated herein, Plaintiffs respectfully request that this Court grant their motion.

BACKGROUND

On November 12, 2020, Plaintiffs initiated this action by filing the operative 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). The existing Plaintiffs, a Medicaid participant and state employee health plan members, seek to add two plaintiffs to the suit.

Shauntae Anderson¹ is a Medicaid participant and Leanne James² is a public employee and a Public Employees Insurance Agency member. Like the other Plaintiffs, Ms. Anderson and Ms. James seek to challenge the state's exclusion of gender-confirming care in the Medicaid and state employee health plans, respectively. The amendments Plaintiffs propose will not result in any delay to this proceeding. Plaintiffs have moved to amend before the jointly agreed-upon deadline for moving to amend, accepted by this Court in its Scheduling Order. (ECF No. 75 ¶ 1.) Additionally, none of the factors that might merit denial of leave to amend are present: the new putative plaintiffs, Ms. Anderson and Ms. James, seek to vindicate their rights in good faith, and permitting them to raise claims similar to the ones that survived Defendants' motions to dismiss (ECF No. 57) would not be futile. Plaintiffs' motion to amend the complaint should be granted.

LEGAL STANDARD

“Rule 15(a) establishes a liberal amendment policy.” *Felman Prod., Inc. v. Indus. Risk Insurers*, No. CIV.A. 3:09-0481, 2010 WL 3119338, at *2 (S.D.W. Va. July 28, 2010). It 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). This principle “gives effect to the federal policy in favor of resolving cases on the merits instead of disposing of them on technicalities.” *Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 379 (4th Cir. 2012). Leave to amend a pleading generally “should be granted unless it would result in

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 proposed Amended Complaint, putative 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.

prejudice to the opposing party, the motion was brought in bad faith, or permitting amendment would be futile.” *Scott Hutchison Enterprises, Inc.*, 2016 WL 10789587, at *1; *see also Mayfield*, 674 F.3d at 379 (citation omitted) (same).

ARGUMENT

Plaintiffs’ motion is timely under the case schedule and they seek to amend in good faith. Moreover, the requested amendments are not futile. For these reasons, Plaintiffs’ request for leave to amend is proper and should be granted.

I. PLAINTIFFS HAVE ACTED TIMELY AND IN GOOD FAITH, AND THE AMENDMENT WILL NOT PREJUDICE DEFENDANTS.

“Rule 15(a) analysis ‘focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party.’” *Stewart v. Coyne Textile Servs.*, 212 F.R.D. 494, 497 (S.D.W. Va. 2003). Here, Plaintiffs have acted in good faith by bringing this motion well before the October 8, 2021 deadline provided for in the Scheduling Order. (ECF No. 75 ¶ 1.) Nor will Defendants be prejudiced by the inclusion of Ms. Anderson and Ms. James, whose claims arise from similar conduct to that alleged by existing plaintiffs. *See Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006) (noting that a defendant is not prejudiced by an amendment adding new claims based on same actions giving rise to original claims). Moreover, the amendments will not result in delay to this proceeding because Plaintiffs’ timely filing should allow discovery to continue on the same timeframe provided in the Scheduling Order, and Defendants have not yet served discovery on Plaintiffs. (ECF No. 75 ¶ 1.) In circumstances such as these, where no prejudice to an opposing party can be shown, the motion for leave should be freely granted. *See Scott v. Family Dollar Stores*, 733 F.3d 105, 117-19 (4th Cir. 2013) (finding, *inter alia*, no prejudice from amendment even when discovery is underway).

II. PLAINTIFFS’ MOTION IS NOT FUTILE.

“Leave to amend [...] should only be denied on the ground of futility when the proposed amendment is clearly insufficient or frivolous on its face.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986). Here, Plaintiffs’ amendments are neither insufficient nor frivolous; in fact, the claims they seek to bring are substantively identical to the ones this Court allowed to proceed in rejecting motions to dismiss by Defendants Cheatham, Crouch, Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services. (ECF No. 57.) As stated, Ms. Anderson and Ms. James seek to vindicate their rights in good faith, and permitting them to raise claims similar to the ones that survived Defendants’ motions to dismiss (ECF No. 57) would not be futile.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Leave to file a First Amended Complaint.

* * *

Dated: ~~September 22, 2021~~ September 23, 2021

/s/ Walt Auvil

Walt Auvil, WVSB No. 190
THE EMPLOYMENT LAW CENTER, PLLC
1208 Market Street
Parkersburg, WV 26101
Phone: 304-485-3058
Facsimile: 304-485-6344
auvil@theemploymentlawcenter.com

Anna P. Prakash, MN Bar No. 0351362*
Nicole J. Schladt, MN Bar No. 0400234*
NICHOLS KASTER, PLLP
IDS Center, 80 South 8th Street
Suite 4600
Minneapolis, MN 55402
Phone: 612-256-3200
Facsimile: 612-338-4878
aprakash@nka.com
nschladt@nka.com

Sasha Buchert, OR Bar No. 070686*
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304
Phone: 202-804-6245
Facsimile: 202-429-9574
sbuchert@lambdalegal.org

Attorneys for Plaintiffs

* Admitted Pro Hac Vice

Respectfully submitted,

Avatara Smith-Carrington, MD Bar*
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Phone: 214-219-8585
Facsimile: 214-219-4455
asmithcarrington@lambdalegal.org

Tara L. Borelli, GA Bar No. 265084*
Carl Charles, NY Bar No. 5427026*
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
158 West Ponce De Leon Ave., Ste. 105
Decatur, GA 30030
Phone: 470-225-5341
Facsimile: 404-506-9320
tborelli@lambdalegal.org
ccharles@lambdalegal.org

Nora Huppert, CA Bar No. 330552*
LAMBDA LEGAL DEFENSE AND EDUCATION
FUND, INC.
4221 Wilshire Boulevard, Suite 280
Los Angeles, CA 90010
Phone: 213-382-7600
Facsimile: 213-351-6050
nhuppert@lambdalegal.org

