

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>JOSEPH HAYDEN, on behalf of himself and all individuals similarly situated,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>GEORGE PATAKI, Governor of the State of New York, CAROL BERMAN, Chairperson, New York State Board of Elections, and GLEN S. GOORD, Commissioner of New York State Department of Correctional Services,</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">Case No.: 00 Civ. 8586 (LMM)</p>
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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO FILE PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Plaintiff JOSEPH HAYDEN, through his counsel, comes before this Court pursuant to Rule 15(a) of the Federal Rules of Civil Procedure for an order allowing the filing of his First Amended Complaint in this matter, adding additional claims and additional parties to his original *pro se* Complaint, based upon the reasons set forth below.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On September 18, 2000, Plaintiff Joseph Hayden filed a *pro se* Complaint against various State officials challenging the constitutionality and legality of New York State's disfranchisement statute. On January 5, 2001, and February 28, 2001, the Chairperson of the New York State Board of Elections and the Governor, respectively, filed their answers to the *pro se* Complaint. No further pleadings and no Motions have been filed with respect to the Complaint, and no Scheduling Order has been entered in the case. Plaintiff Hayden, through

counsel, now seeks to file a First Amended Complaint, adding class allegations, additional grounds for relief, and additional claims pertaining to the statute's impact on the voting strength of New York's minority communities, and removing a previously named Defendant.

ARGUMENT

PLAINTIFF'S MOTION TO AMEND THE COMPLAINT SHOULD BE GRANTED BECAUSE PLAINTIFF MEETS THE REQUIREMENTS OF RULE 15(A)

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a party's pleading "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Leave to amend should be given "absent evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility." Monahan v. New York City Dep't of Corr., 214 F.3d 275, 283 (2d Cir. 2000) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). Indeed, "[t]he rule in this circuit has been to allow a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith." Block v. First Blood Assoc., 988 F.2d 344, 350 (2d Cir. 1993). "This relaxed standard applies with particular force to *pro se* litigants." Pangurn v. Culberston, 200 F. 3d 65, 70 (2d Cir. 1999).¹ Here, where Plaintiff Joseph Hayden seeks to amend his *pro se* Complaint, originally filed September 18, 2000, and where no discovery has been conducted, no scheduling order has been entered, and no dispositive motions have been filed, Plaintiff meets the requirements of Rule 15(a) and the Motion to Amend the Complaint should be granted.

First, Defendants suffer no prejudice if the Amendment is allowed. In determining what constitutes prejudice, courts in this Circuit generally consider whether "the assertion of the new

¹ The decision of whether to grant a motion to amend is within the sound discretion of the court. John Hancock Mutual Life Ins. Co. v. Amerford Int'l Corp., 22 F.3d 458, 462 (2d Cir. 1994).

claim or defense would ‘(i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction.’” Monahan, 214 F.3d at 284 (quoting Block, 988 F.2d at 350). Here, while Defendants have filed appearances in the form of an answer, they have filed no dispositive motions and have not yet engaged in any discovery. In short, this case has laid dormant since the filing of the original Complaint. Thus, Defendants will have to expend minimal additional resources because of the Amendment, and the Amendment will in no way delay the resolution of this dispute. Should the Amendment not be allowed, however, Plaintiff may be foreclosed, on grounds of claim and issue preclusion, from bringing the additional claims that he now seeks to bring. Accordingly, while Defendants suffer no prejudice if the Court allows the Amendment, Plaintiff suffers significant prejudice should the Court deny the Motion to Amend.

Second, Plaintiff has not acted in bad faith in filing this Amended Complaint. Plaintiff Hayden’s purpose in filing the Amendment is to add class allegations and expand the claims for relief in his challenge to New York State’s disfranchisement statute. A *pro se* litigant’s failure to recognize all potential causes of action at the outset does not demonstrate bad faith. Raikhy v. AMC Computer Corp., 01 Civ. 7007, 2002 U.S. Dist. LEXIS 11940, *4 (July 2, 2002). Furthermore, Plaintiff seeks to amend his Complaint to remove a previously named Defendant. Accordingly, there is no indication that Plaintiff’s Motion to Amend is made in bad faith.

Moreover, there has been no undue delay in filing the Amended Complaint. While Plaintiff filed the original Complaint in September 2000, no action has been taken on his case since its filing, other than the appearance of Defendants through their filing of answers. In the intervening period, Plaintiff Hayden has been released from prison and has sought and retained

counsel. Given the inaction on this case and Plaintiff's retention of counsel, Plaintiff has not been unduly dilatory in seeking this Amendment.²

Finally, the filing of the Amended Complaint is not futile, as Plaintiff's Amended Complaint states several valid bases for finding that the New York State disfranchisement statute is both unconstitutional and in violation of the federal Voting Rights Act.

Accordingly, as Defendants suffer no prejudice from allowing the Amendment, as Plaintiff has neither filed the Motion to Amend in bad faith nor unduly delayed in filing this Motion, and as there is no futility in his filing the Amendment, Plaintiff respectfully urges the Court to grant the Motion to Amend the Complaint.

² Even if the Court finds that Plaintiff has delayed in filing this Amendment, delay, absent bad faith or prejudice, is not a sufficient basis for denying leave to amend. See Block, 988 F.2d at 350; In re Horizon Cruises Litig., 101 F. Supp. 2d 204, 215 (S.D.N.Y. 2000). As shown, supra, neither of these elements is present here.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully urges the Court to grant his Motion to File the First Amended Complaint and file the proposed First Amended Complaint accompanying this Motion and Supporting Memorandum.

DATED: January 15, 2003

Respectfully submitted,

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