

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS; TEXAS LEAGUE OF UNITED
LATIN AMERICAN CITIZENS; LEAGUE OF
UNITED LATIN AMERICAN
CITIZENS COUNCIL 102; and COMMON
CAUSE,

Plaintiffs,

v.

ROBERT S. HOWDEN, in his official capacity
as the Texas Secretary of State; PAUL ADAMS,
in his official capacity as Dallas County
Elections Department Administrator; FRANK
PHILLIPS, in his official capacity as Denton
County Elections Administrator; and KALEB
BREAUX, in his official capacity as Collin
County Elections Administrator,

Defendants.

Case No. 1:26-cv-00729-ADA

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE
A FIRST AMENDED COMPLAINT**

Plaintiffs respectfully file this reply in support of their motion for leave to file a first amended complaint pursuant to Fed. R. Civ. P. 15(a). For the reasons discussed below, none of Defendants' objections to Plaintiffs' motion for leave to amend are availing. Plaintiffs' motion for leave to amend their complaint will cause no undue delay or undue prejudice, is not futile, is not made in bad faith or with a dilatory motive, and denial of the motion would substantially prejudice Plaintiffs. In addition to the lack of merit to Defendants' substantive oppositions, Defendants filed out of time.

On July 29, 2026, Plaintiffs moved for leave to amend their complaint against all Defendants and attached a proposed Amended Complaint. ECF Nos. 43, 43-1. On August 11 and 12, respectively, Defendants Phillips and Breaux and Defendant Howden filed their responses in opposition to Plaintiffs' motion for leave to amend their complaint. ECF Nos. 46, 47. Defendant Adams does not oppose the motion for leave to amend.

Plaintiffs' proposed amended complaint adds no new claims or parties and otherwise leaves Plaintiffs' core arguments intact. ECF No. 46 at 2-3. The proposed amended complaint updates the caption, removing Brazoria County and adding Secretary Howden, and adds additional relevant facts, including Plaintiffs' July 6 NVRA Notice Letter to Defendant Howden and information about an affected Common Cause member. *See* ECF No. 43 at 2-3. Defendants Phillips and Breaux oppose the motion for leave to amend because they claim it would result in undue delay, undue prejudice, and would be futile. ECF No. 46 at 3. Defendant Howden takes issues with the form of Plaintiffs' motion and raises only the issue of futility. ECF No. 47 at 3-4.

ARGUMENT

I. Granting Plaintiffs' motion for leave to amend causes no undue delay or prejudice and is not futile.

The Court should grant Plaintiffs' motion because each factor governing the grant of

motions for leave to amend weighs in Plaintiffs' favor.

A. Plaintiffs' motion for leave to amend causes no undue delay.

Granting Plaintiffs' motion will not unnecessarily delay this litigation. In Defendants Phillips's and Breaux's own words, "[a]dmittedly, this case is relatively new." ECF No. 46 at 3. Defendants' motions to dismiss, stay discovery, and transfer venue are still pending; discovery has yet to start; and no scheduling order exists. Nor will Defendants Phillips and Breaux need to respond to the majority of Plaintiffs' additional allegations in the amended complaint, many of which implicate the Secretary of State, not County Defendants. While Defendants Phillips and Breaux reference the "disruption and costs of litigation," they provide no concrete way in which granting Plaintiffs' motion for leave to amend would inflict either of those harms. *Id.*

Defendants suggest both that Plaintiffs are "revamping their entire lawsuit" and yet filing a proposed amended complaint that "adds very little, if anything, substantively." ECF No. 46 at 3-4. It cannot be that Plaintiffs are both "revamping" their lawsuit but adding hardly anything of substance. *Id.* In truth, Plaintiffs make modest additions to the core factual allegations of the original Complaint, while not adding any new parties or claims. Plaintiffs' additional factual allegations will cause no undue delay.

B. Plaintiffs' motion for leave to amend creates no undue prejudice for Defendants.

Plaintiffs' proposed amended complaint would not substantially alter Defendants' notice of the nature of the case. *See* ECF No. 43 at 4. As discussed *supra*, Defendants Phillips and Breaux recognize that the fundamental nature of Plaintiffs' claims and arguments remain the same. ECF No. 46 at 3-4. And though there may be a second round of motions to dismiss briefing, Defendants ignore that undue delay and undue prejudice do not result from merely being required to brief

again.¹ See *N. Cypress Med. Ctr. Operating Co. v. Aetna Life Ins. Co.*, 898 F.3d 461, 478 (5th Cir. 2018) (finding no “undue delay” even after some discovery had occurred); *Dussouy v. Gulf Coast Inv. Co.*, 660 F.2d 594, 598 (5th Cir. 1981) (“Instances abound in which appellate courts on review have required that leave to amend be granted after dismissal or entry of judgment.”).²

C. Plaintiffs’ motion for leave to amend is not futile.

Plaintiffs’ motion for leave to amend is not futile because it includes additional allegations supportive of Plaintiffs’ standing and cures an alleged³ defect as to Plaintiffs’ NVRA Public Disclosure Provision claim asserted by Defendant Howden. Defendants’ renewed arguments about the political question doctrine, subject matter jurisdiction, and Plaintiffs’ standing do not change that.

Defendants’ objections about futility rest on matters already briefed and do not relate to the modifications made in Plaintiffs’ proposed amended complaint. See ECF Nos. 25, 27, 28, 33, 34. An amendment to a complaint is considered futile if “the amended complaint would fail to state a claim upon which relief could be granted.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000). Here, the amendments to the complaint are not futile, because the amended complaint states a claim for violations of 8(b) and 8(i) of the NVRA. Defendants, rather than explain why the amended complaint fails to state a claim, rehash their motion to dismiss

¹ In addition, of the five arguments County Defendants make in their motion to dismiss, four are entirely unaffected by Plaintiffs’ additions in their proposed amended complaint. ECF No. 25 at 4. Thus, the prejudice that Defendants claim is, at most, being required to refile their motion in a barely altered form.

² Defendants further take issue with Plaintiffs’ attempt to schedule a Rule 26(f) conference. ECF No. 46 at 4. Their arguments miss the mark. The scheduling of such a conference is required by the Federal Rules of Civil Procedure and Local Rule CV-16.

³ As Plaintiffs argued in their motion for leave to amend and in their reply in opposition to Defendant Howden’s motion to dismiss, Plaintiffs already provided notice to Defendant Secretary of State through their January 14, 2026 letter requesting records concerning voter removal. See ECF Nos. 34 at 15-16, 43 at 5.

arguments. For example, Defendants reiterate their motion to dismiss standing arguments, rather than explain how Plaintiffs' proposed amended complaint, which identifies an affected Common Cause member, could possibly be futile. Rehashed arguments about the prior complaint do not make an amendment futile. ECF No. 46.

In addition, Plaintiffs' motion for leave to amend their complaint is not futile because the proposed amended complaint cures what Defendant Howden alleges is improper NVRA notice.⁴ ECF No. 47 at 5. Defendant Howden provides no support for his bare assertion that Plaintiffs cannot amend or supplement a complaint with a post-filing NVRA notice. Indeed, courts routinely and properly permit plaintiffs to "cure NVRA notice defects by amending their complaint." *Voice of the Experienced v. Ardoin*, 813 F. Supp. 3d 600, 642 (M.D. La. 2025); *see also Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045 (9th Cir. 2015); *Diaz v. Sec'y of Fla.*, No. 04-15539, 2005 WL 2402748, at *1 (11th Cir. Sep. 29, 2005); *Tenn. Conf. of NAACP v. Lee*, 730 F. Supp. 3d 705 (M.D. Tenn. 2024); *League of Women Voters of Fla., Inc. v. Byrd*, No. 23-165, 2023 WL 11763040, at *5 (N.D. Fla. July 10, 2023); *Pub. Int. Legal Found., Inc. v. Bellows*, 588 F. Supp. 3d 124, 129 (D. Me. 2022); *Jud. Watch, Inc. v. Pennsylvania*, 524 F. Supp. 3d 399 (M.D. Pa. 2021); *Tex. League of United Latin Am. Citizens v. Whitley*, No. 19-ca-074, 2019 WL 7938511 (W.D. Tex. Feb. 27, 2019); *Pub. Int. Legal Found., Inc. v. Bennett*, No. 18-00981, 2018 WL 2722331, at *5 (S.D. Tex. June 6, 2018); *Delgado v. Galvin*, No. 12-10872, 2014 WL 1004108, at *9 (D. Mass. Mar. 14, 2014).

In addition, requiring Plaintiffs to refile their NVRA Public Disclosure Provision claim in

⁴ Defendant Howden complains, as did Defendants Phillips and Breaux in their motions to dismiss, that Plaintiffs did not attach their July 6 NVRA Notice Letter as an exhibit to the proposed amended complaint. Defendant Howden, like Defendants Phillips and Breaux, fail to identify any case law requiring an NVRA notice letter be attached as an exhibit. Plaintiffs have complied with the NVRA's notice requirements. Plaintiffs attach the July 6 NVRA notice letter as an exhibit here for the Court's convenience. *See* Exhibit A.

a separate action—relying on many of the same facts at issue here—would not support judicial economy. Defendant Howden’s arguments to the contrary fail. *See Ardoyn*, 813 F. Supp. 3d at 644-45 (requiring plaintiffs to file a separate lawsuit based on overlapping facts and issues would “not further the purpose of the [NVRA’s] notice requirement.”).

The purpose of the NVRA’s notice provision is not to erect procedural barriers or obstacles to NVRA lawsuits, but instead to give defendants enough information to address problems with compliance. After that point, a defendant’s responsibility is to cure the violation. *See Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 795 (W.D. Tex. 2015). Defendant Secretary of State has now had notice of the alleged NVRA violation—refusal to comply with the Public Disclosure Provision, Section 8(i)—for over 7 months and continues to refuse to provide Plaintiffs with the requested public records. Despite Defendant Howden’s arguments to the contrary, allowing Plaintiffs to amend their complaint to allege additional NVRA notice to Defendant Howden would indeed cure any alleged NVRA notice deficiencies.

D. Not allowing Plaintiffs leave to amend their complaint would substantially prejudice Plaintiffs.

Denying Plaintiffs the opportunity to amend their complaint to include additional facts supporting Plaintiffs’ standing and NVRA Public Disclosure Provision claim would substantially and needlessly prejudice Plaintiffs. The sufficiency of Plaintiffs’ allegations should be addressed based on the fulsome allegations provided in the proposed amended complaint. Again, no prejudice results to Defendants here because Plaintiffs allege no new claims and add no new parties, and the case has yet to progress to discovery.

II. Plaintiffs’ motion should be construed and granted as motion for leave to file an amended complaint, or in the alternative a motion for leave to file a supplemental complaint.

Plaintiffs’ proposed amended complaint is properly construed as an amended, not

supplemental complaint. Though some of the amendments post-date the complaint, not all do. *See* ECF No. 43-1 at 10, ¶ 45; 37-8, ¶¶ 193-94. But regardless of how the pleading is construed, the motion should be granted because Plaintiffs meet the standards either to amend or to supplement.

Under Federal Rule of Civil Procedure 15(d), courts “may permit” a party to supplement their complaint if there are transactions, occurrences, or events that have happened since the filing of the original complaint. *Burns v. Exxon Corp.*, 158 F.3d 336, 343 (5th Cir. 1998). The Court should not deny Plaintiffs’ motion for leave to amend merely because it was styled as a motion for leave to amend instead of a motion for leave to supplement. The distinction between the two is “sometimes ignored completely.” *See Dean v. Ford Motor Credit Co.*, 885 F.2d 300, 302 (5th Cir. 1989) (quoting 6 C. Wright & A. Miller, *Federal Practice & Procedure*, § 1504 at 541 (1971)). Courts analyze a motion for leave to supplement using the same factors as a motion for leave to amend and “the discretion exercised in deciding whether to grant leave to amend is similar to that for leave to file a supplemental pleading.” *Lewis v. Knutson*, 699 F.2d 230, 239 (5th Cir. 1983).

Plaintiffs meet the requirements for leave either to amend or to supplement. The caption of Plaintiffs’ motion and proposed pleading does not change the fact that no undue delay or prejudice, no futility, and no bad faith or a dilatory motive exists. As the Fifth Circuit has made clear, courts should only deny motions for leave to supplement where: (1) the plaintiffs fail to allege transactions or occurrences or events which have happened since the date of the original complaint, (2) where plaintiffs delay significantly in moving for leave to supplement, or (3) where supplementation would add parties or claims and require defendants to significantly re-litigate the case.⁵ Courts in this circuit and district otherwise typically grant motions for leave to amend or

⁵ *See, e.g., Burns*, 158 F.3d at 343 (affirming denial of leave to supplement when no new events or transactions had occurred in the ten years since filing the original complaint); *Gentilello v. Rege*, 627 F.3d 540, 546 (5th Cir. 2010) (affirming denial of leave to supplement where plaintiff waited nine months after the action giving rise to new claim and four months after pleading deadline in

supplement where the interests of justice and Rule 15 factors weigh in favor of plaintiffs. *See, e.g., Am. C.L. Union of Miss., Inc. v. Finch*, 638 F.2d 1336 (5th Cir. 1981) (reversing denial of motion for leave to supplement); *In re Cassava Scis. Inc. Sec. Litig.*, No. 1:21-cv-00751-DAE, 2024 WL 4916373 (W.D. Tex. June 12, 2024) (granting motion for leave to supplement where defendants fail to contest multiple Rule 15 factors and where the remaining factors weigh in favor of plaintiff).

None of those issues described above are present here, and all Rule 15 factors weigh in Plaintiffs' favor. Plaintiffs here sought timely leave to amend, or in the alternative supplement, their complaint, filing their motion and proposed amended complaint 23 days after sending the July 6 NVRA Notice letter to Defendant Howden. Plaintiffs' additional alleged events meet the standard under Rule 15(d) and by no means require re-litigation of a case that has yet to progress to a scheduling order. Plaintiffs add no new claims or new parties that would require significant additional litigation effort by Defendants and seek leave to amend or supplement for the first time in this litigation. Plaintiffs add facts that bolster existing claims and cure alleged defects, but do not otherwise disturb their core arguments or claims.

III. Defendants' responses in opposition are untimely.

Defendants' responses in opposition to Plaintiffs' motion for leave to amend their complaint are untimely and should be rejected. The Local Rules of the U.S. District Court for the Western District of Texas make clear that "[a] response to a discovery or case management motion shall be filed not later than 7 days after the filing of the motion." L.R. CV-7(d)(2). A motion for

scheduling order); *Lewis*, 699 F.2d at 239-40 (denying leave to supplement because plaintiff waited five months to seek leave to supplement); *Haralson v. Campuzano*, 356 F. App'x 692, 699 (5th Cir. 2009) (affirming denial of leave to supplement because supplemental complaint would add two new parties and force re-litigation of the case); *Walzier v. McMullen*, 333 F. App'x 848, 852 (5th Cir. 2009) (affirming denial of leave to supplement to add claims and defendants where plaintiff already had ample time to do so and was "abusing the judicial process").

leave to file an amended complaint is a case management motion.⁶ L.R. CV-7(d)(2). Defendants' response deadline to Plaintiffs' motion for leave to file an amended complaint was August 5, 2026, seven days after the July 29 filing, rendering Defendants' oppositions (filed August 11 and 12) untimely. Defendants did not seek an extension and did not accompany their late responses with a motion for leave to file out of time. "If there is no response filed *within the time period prescribed* by this rule, the court may grant the motion as unopposed." L.R. CV-7(d)(2) (emphasis added). As such, the Court should consider Plaintiffs' motion for leave to amend substantively unopposed and grant the motion.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for leave to amend their complaint, or in the alternative leave to supplement their complaint, should be granted.

⁶ On August 12, 2026, Plaintiffs contacted the clerk's office for the Western District of Texas and confirmed that a motion for leave to file an amended complaint is a case management motion within the context of the Local Rules.

Dated: August 19, 2026

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2026, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. The electronic filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Daniel Brophy
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