

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LEAGUE OF UNITED LATIN AMERICAN)	
CITIZENS, KANSAS, ALEJANDRO)	
RANGEL-LOPEZ,)	
)	
Plaintiffs,)	Civil Action No.: 2:18-cv-02572-DDC
)	
vs.)	
)	
DEBORAH COX, FORD COUNTY CLERK, in)	
her official capacity,)	
)	
Defendant.)	
)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF THEIR MOTION TO
VOLUNTARILY DISMISS WITHOUT PREJUDICE**

Plaintiffs, by counsel, pursuant to Federal Rule of Civil Procedure 41(a)(2), respectfully request that the Court dismiss Plaintiffs’ claims in this litigation without prejudice. Prior to the November 2018 election, Plaintiffs filed a complaint and motion for an emergency injunction challenging Defendant’s maintenance of a single polling location for Dodge City’s 13,000 registered voters and her decision to limit in-person voting to the Western Bank Expo Center, a building that is inaccessible by public transportation and located outside of the city limits. Following the election, Plaintiffs sought to continue their challenge in light of Defendant’s unresolved polling location plans for the 2019 and 2020 elections. Given Defendant’s public announcement specifying the number and location of polling sites for the 2019 election, Plaintiffs now move to voluntarily dismiss the lawsuit without prejudice.

I. FACTUAL BACKGROUND

Plaintiffs filed this case on October 26, 2018 to challenge Ford County's maintenance of a single, inaccessible polling location in Dodge City on the grounds that it violated Section 2 of the Voting Rights Act as well as the First and Fourteenth Amendments of the Constitution. After the November 2018 election, Defendant filed a motion to dismiss the case arguing mootness. In her brief in support of her motion to dismiss, Defendant stated that she intended to continue to maintain a single polling location for the 2019 election. Memo. in Support of Def.'s Mot. to Dismiss, ECF No. 30, at 6, fn.2. Further, she stated that she would return in-person voting to a site that was scheduled to be encumbered by construction – the reason she moved voting outside of the city limits for the November 2018 election. *Id.* at 6.

Defendant has since announced a different plan for the 2019 election. She will maintain two polling locations and they will be located at Hoover Pavilion (108 4th Ave, Dodge City, KS 67801) and the Knights of Columbus Hall (800 W Frontview St, Dodge City, KS 67801). Def.'s Supplement to Reply Mem., ECF No. 35, Ex 1. Defendant stated that she will send voters notice of their new polling location by the end of the week. *Id.* In sum, Defendant has agreed to operate at least two polling locations for all future elections and is significantly less likely to use the Western Bank Expo Center as a polling location now that the new locations have been selected and are not scheduled to have construction.

II. LEGAL ARGUMENT

Defendant has already filed a dispositive motion in this case. Accordingly, Plaintiffs' Motion for Voluntary Dismissal is governed by Rule 41(a)(2). Rule 41(a)(2) states that an action may be dismissed at the plaintiffs' request by court order and on terms that the court considers proper. Fed. R. Civ. P. 41(a)(2). A dismissal under Rule 41(a)(2) is without prejudice unless

otherwise stated. *Id.* It is within the trial court's discretion to determine whether to grant a motion for voluntary dismissal. The Tenth Circuit endorses a liberal standard for granting voluntary dismissals, providing that "absent legal prejudice to the defendant, the district court should grant such a dismissal." *Brown v. Baeke*, 413 F.3d 1121, 1123 (10th Cir. 2005), quoting *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997). Prejudice is not established by the fact that plaintiffs may file a second lawsuit. *Id.* at 1124 ("Prejudice does not arise simply because a second action has been or may be filed against the defendant").

Courts consider several factors when examining a motion for voluntary dismissal, including "the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the stage in the litigation" *Collins v. Keebler Co.*, 2017 U.S. Dist. LEXIS 145565 at 2 (D. Kan. 2017), quoting *Baeke*, 413 F.3d at 1123. Each of these factors weigh in Plaintiffs' favor.

A. Defendant's effort and expense in preparing for trial.

Courts typically distinguish the costs and efforts associated with initial dispositive motions and preliminary injunctions from trial preparation work when assessing the potential prejudice to a defendant. *Ledford v. Kinseth Hosp. Cos.*, Case No. 15-1156-GEB, 2017 U.S. Dist. LEXIS 90211, at *9 (D. Kan. 2017), citing *Agjunction LLC v. Agrian Inc.*, Case No. 14-CV-2069-DDC-KGS, 2015 U.S. Dist. LEXIS 10977, at *4 (D. Kan. Jan. 30, 2015) (distinguishing preparation for a preliminary injunction hearing from the "relevant inquiry", which is "defendants' effort and expense preparing for *trial*"). While Defendant may have incurred legal fees in connection with her motion to dismiss and retention of counsel to serve as an election observer, she has not expended any expense or effort in this matter to prepare for trial. The Court has yet to issue even

a preliminary scheduling order for this case, to say nothing of setting a trial date. The parties have not commenced discovery, procured expert reports, or assumed any cost or time commitment associated with settlement efforts.

B. Plaintiffs' Delay/Diligence.

Plaintiffs have been as diligent as possible in litigating this case. Plaintiffs reached out to Defendant's counsel regarding the possibility of settlement the week after the election. They have timely met all filing deadlines related to the motion to dismiss and attempted to initiate discovery. Further, Plaintiffs are filing this motion three days after Defendant announced her specific plan to open additional polling locations and relocate voting sites. Indeed, Plaintiffs would have filed the present motion in November had Defendant announced her current plans then rather than an intent to continue with a single polling location. ECF No. 30, at 9.

C. Plaintiffs' Reason for Requesting Dismissal.

Plaintiffs state an adequate basis for requesting dismissal when they achieve the relief they originally sought in the litigation through government acquiescence. *See, e.g., Robinson v. Kansas*, 506 F. Supp. 2d 488, 494 (D. Kan. 2007). Plaintiffs have provided a detailed, sufficient explanation of the need for a voluntary dismissal. They are dismissing the case because the facts underlying the allegations in their complaint have changed. The specific circumstances Plaintiffs alleged created an unconstitutional burden on their right to vote and violated Section 2 of the Voting Rights Act will seemingly no longer govern their voting experience. Though the new polling locations may show themselves to be insufficient or Defendant may renege on her commitment, it would be inefficient for Plaintiffs to persist with litigation on a foundation of facts and circumstances that is rapidly shifting.

D. Stage of Litigation.

The merits case of this litigation has yet to begin. While Defendant has filed her answer and a motion to dismiss, there has been no discovery or even preliminary pretrial activity. *See Eg. Hale v. Emporia State Univ.*, 2016 U.S. Dist. LEXIS 188573 at *5 (D. Kan. 2016)(noting voluntary dismissal would not prejudice Defendant where parties had only begun early stages of discovery). Plaintiffs specifically request that the Court dismiss this matter without prejudice because dismissal without prejudice will not disadvantage Defendant. If Defendant Cox's 2019 polling administration disenfranchises voters, or Plaintiffs challenge the fact of and circumstances surrounding the selection of any subsequent polling sites in Dodge City, Defendant will not suffer any prejudice from this subsequent litigation because Defendant has expended minimal effort and resources on this case thus far, no judicial decisions have been issued, and— to the extent Defendant has prepared to litigate this matter— the specific issues of fact in this litigation are unlikely to be relevant to subsequent litigation.

For the reasons set forth herein, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Voluntary Dismiss this action without prejudice.

DATED: January 25, 2019

Respectfully Submitted,

/s/ Lauren Bonds

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on January 25, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to the e-mail addresses of all counsel of record.

/s/ Lauren Bonds
Lauren Bonds