

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

**MID VERMONT CHRISTIAN SCHOOL**, on behalf of itself and its students and its students' parents; **A.G.** and **M.G.**, by and through their parents and natural guardians, Chris and Bethany Goodwin; **CHRISTOPHER GOODWIN**, individually; and **BETHANY GOODWIN**, individually,

Plaintiffs,

v.

**ZOIE SAUNDERS**, in her official capacity as Secretary of the Vermont Agency of Education; **JENNIFER DECK SAMUELSON**, in her official capacity as Chair of the Vermont State Board of Education; **CHRISTINE BOURNE**, in her official capacity as Windsor Southeast Supervisory Union Superintendent; **HARTLAND SCHOOL BOARD**; **RANDALL GAWEL**, in his official capacity as Orange East Supervisory Union Superintendent; **WAITS RIVER VALLEY (UNIFIED #36 ELEMENTARY) SCHOOL BOARD**; and **JAY NICHOLS**, in his official capacity as the Executive Director of The Vermont Principals' Association,

Defendants.

Case No. 2:23-cv-00652

**MOTION FOR LEAVE TO AMEND COMPLAINT**

**(Proposed Amended Verified Complaint Attached)**

Plaintiffs Mid Vermont Christian School, A.G., M.G., Christopher Goodwin, and Bethany Goodwin move for leave under Fed. R. Civ. P. 15(a)(2) to amend their Complaint (ECF No. 1) (“First Complaint”). This is Plaintiffs first request for leave to amend. None of the Defendants have answered the First Complaint, the Court has not issued a scheduling order under Fed. R. Civ. P. 16, and the case has effectively been stayed since Plaintiffs appealed the denial of their request for a preliminary injunction in June 2024.

Since the filing of the First Complaint, Vermont enacted Act 73, which was signed into law on July 1, 2025. Act 73 excludes *all* religious approved independent schools in Vermont from town tuition funding and other public benefits. Due to Act 73, Mid Vermont Christian and its students are categorically barred from public funding even if the school is designated an “approved independent school” by the Board and Secretary of Education—which the Board has yet to decide. The Amended Complaint adds new allegations challenging Act 73, adds O.P. and Nathan Partington as plaintiffs because they are impacted by Act 73, and removes Christine Bourne, Hartland School Board, and Randall Gawel as defendants.

Another major event occurred since the First Complaint: the Second Circuit held that Plaintiffs were entitled to a preliminary injunction against Defendant Nichols and the Vermont Principals Association, reinstating them back into the VPA pending resolution of the case. *Mid Vermont Christian Sch. v. Saunders*, 151 F.4th 86, 96 (2d Cir. 2025). The Amended Complaint does not alter the allegations that formed the substantive basis for the preliminary injunction against the VPA and so does not affect the Second Circuit’s decision or the relief ordered.

### **LOCAL RULE 7(a)(7) CONFERRAL**

Per Local Rule 7(a)(7), on October 28, 2025, Plaintiffs' counsel emailed counsel for the various Defendants asking if they would consent to Plaintiffs' request for leave to amend. The email asked for a response by 12:00, Noon on October 30 and included both a redlined and clean copy of the Amended Complaint. The local school districts' counsel did not object to Plaintiffs' request for leave. Counsel for Defendants Saunders and Samuelson and counsel for Defendant Nichols both responded on October 31 that they did not consent.

### **LEGAL STANDARD**

Federal Rule of Civil Procedure 15(a)(2) states that the Court “should freely give leave” to amend a pleading “when justice so requires.” Leave to amend before trial should be freely given “especially when there has been no prior amendment.” *Grega v. Pettengill*, No. 5:14-CV-00147, 2015 WL 13505397, at \*1 (D. Vt. Jan. 27, 2015) (citation modified). This is a “permissive standard” that is “consistent with [the Second Circuit’s] strong preference for resolving disputes on the merits.” *Williams v. Citigroup Inc.*, 659 F.3d 208, 212 (2d Cir. 2011) (citation modified). As is the case here, “changes in both law and fact” typically “constitute good cause for allowing amendment of [a] Verified Complaint.” *Vermont Right to Life Comm., Inc. v. Sorrell*, No. 2:09-CV-188, 2010 WL 11610330, at \*2 (D. Vt. July 1, 2010). Leave “should not be denied unless there is evidence of undue delay, bad faith, undue prejudice to the non-movant, or futility.” *Milanese v. Rust-Oleum Corp.*, 244 F.3d 104, 110 (2d Cir. 2001).<sup>1</sup>

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<sup>1</sup> Alternatively, under Federal Rule of Civil Procedure 15(d) courts can allow a plaintiff to supplement a complaint with “any transaction, occurrence, or event” after the original complaint. “The standard for the exercise of discretion on a motion to supplement the pleadings is the same as that for disposition of a motion to amend a complaint under Rule 15(a).” *Klos v. Haskell*, 835 F. Supp. 710, 715 (W.D.N.Y. 1993), *aff’d*, 48 F.3d 81 (2d Cir. 1995) (citation modified); *see also Quaratino v.*

## ARGUMENT

The Motion for Leave should be granted. Plaintiffs seek to amend the Complaint to challenge the recently-enacted Act 73, which directly injures them by excluding them from town tuition, dual enrollment, and early college program funds. The new Complaint is connected to the First Complaint and there is no undue delay, bad faith, futility of amendment, or prejudice to Defendants that warrant denial.

**A. The Amended Complaint is connected to the First Complaint and furthers a speedy, merit-based resolution of the controversy.**

The Amended Complaint's facts and claims are "sufficiently connected to the original claims to be maintained in the same suit." *Vermont Right to Life*, 2010 WL 11610330, at \*2. The Amended Complaint retains nearly all factual allegations from the First Complaint and retains the same claims for relief. For example, all the prior allegations related to Rule 2200 and the VPA's exclusion of Mid Vermont Christian remain. And the new allegations are connected "to the original pleading" because, like the State's Rule 2200, Act 73 seeks to weed-out and exclude religious schools from receiving public benefits. *Quarantino*, 71 F.3d at 66. In other words, while the State's playbook may have changed, Plaintiffs continue to suffer the same harm. Similar to *Vermont Right to Life*, an intervening change in law "alters the landscape of the Plaintiffs' challenge to Vermont's [public benefits] laws." 2010 WL 11610330, at \*2. Permitting amendment furthers the speedy resolution of the entire controversy between the parties.

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*Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995) (citing same factors for a Rule 15(d) motion). Because the standard is the same, courts often "ignore[ ]" the "formal distinction between amendment and supplementation." *Wright & Miller, Federal Practice and Procedure*, § 1504 Supplemental Pleadings (3d ed. 2025). Plaintiffs satisfy the standard for leave whether analyzed under Rule 15(a)(2) or 15(d).

**B. Plaintiffs did not delay in seeking leave.**

There is no undue delay burdening Defendants. Act 73 was enacted this summer. It was impossible for Plaintiffs to amend the complaint to challenge Act 73 before it became law. Plus, until September 9, 2025, the parties were waiting for the Second Circuit’s decision on the appeal of the state athletics-side of this case. And courts often permit amendment after much longer intervals, including several years. *See Agerbrink v. Model Serv. LLC*, 155 F. Supp. 3d 448, 453 (S.D.N.Y. 2016) (collecting cases); *see also Richardson Greenshields Sec., Inc. v. Lau*, 825 F.2d 647, 653 n.6 (2d Cir. 1987) (collecting cases and noting that “parties in such cases have been permitted to amend their pleadings to assert new claims long after they acquired the facts necessary to support those claims”).

What’s more, several weeks after the 2025–2026 school year began, two Mid Vermont students were told that they could not participate in Vermont’s Early College Program. The Amended Complaint adds facts related to those students—facts that could not have been added until after they occurred in September 2025. *See Amended Complaint* ¶¶ 184–88, 337–40. In short, there is no delay burdening Defendants.

**C. Defendants cannot show any evidence of bad faith.**

Defendants bear the burden of proving that Plaintiffs are acting out of bad faith. “[C]onclusory allegation[s] of bad faith” are not enough. *Agerbrink*, 155 F. Supp. 3d at 453–54. There is no evidence of bad faith here. Rather, Plaintiffs are merely responding to Vermont’s change in law that permanently excludes them from all education-related public benefits in the state.

**D. The amendment isn't futile because it challenges a new law.**

A proposed amendment is futile “only if the complaint as amended does not plausibly give rise to an entitlement to relief.” *Grega*, 2015 WL 13505397, at \*1. “[T]he court must accept the facts alleged by the party seeking amendment as true and construe them in the light most favorable to that party.” *Arroyo v. Milton Acad.*, No. 5:10-CV-117, 2011 WL 65938, at \*3 (D. Vt. Jan. 10, 2011). So an amended complaint is not futile if it “adequately sets forth specific facts, which if proven, c[ould] support a finding of [Defendants’ liability].” *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 92 (2d Cir. 2002), *abrogated in part on other grounds by Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019).

The Amended Complaint is not futile. It challenges a new law (Act 73) that did not exist when the case was first filed. *Cf.* Order on Mot. for Prelim. Inj. at 17 (ECF No. 57) (if circumstances change, “there will be time to consider the constitutionality of the state’s action then, not before it happens.”). The Amended Complaint contains new allegations claiming that the State has gerrymandered-out all religious approved independent schools in Vermont and acted with hostility towards religious schools in violation of the First and Fourteenth Amendments. These allegations must be assumed true at this stage, and as such, the Amended Complaint is not futile.

Indeed, this Court has declined to find an amended complaint futile when it alleged “various constitutional deprivations under 42 U.S.C. § 1983,” contained “lengthy background and factual allegations,” and thus the court could “conduct an identical [12(b)(6)] analysis” with additional briefing. *See Grega*, 2015 WL 13505397, at \*1. This Court has also held that a motion to amend is not futile where “it would be premature to resolve ... complex questions before the completion of discovery.” *Arroyo*, 2011 WL 65938, at \*3. That’s precisely the case here. The

Amended Complaint is not futile because it alleges new facts and challenges a new law with new legal claims under the United States Constitution. Denying amendment here would be like declaring a winner before the competition begins.

**E. There is no prejudice to Defendants in allowing amendment.**

Defendants also have the burden “of demonstrating that substantial prejudice would result [if] the proposed amendment [is] granted.” *Agerbrink*, 155 F. Supp. 3d at 454 (citation modified). Mere expenditure of “time, effort and money” in litigation does not “rise to [the] level of prejudice necessary to deny [a] motion to amend.” *Vermont Right to Life*, 2010 WL 11610330, at \*2 (citation omitted).

There is no prejudice to Defendants in permitting amendment. The parties have not moved passed the initial pleading stage in this case, Defendants have not answered the First Complaint, no schedule has been set, and discovery has not started. *See Grega*, 2015 WL 13505397, at \*1 (no substantial prejudice to defendants where discovery schedule was postponed); *see also Scott v. Chipotle Mexican Grill, Inc.*, 300 F.R.D. 193, 200 (S.D.N.Y.2014) (“A court is more likely to find an amendment prejudicial if discovery has closed.”). The last substantive action in this case in this Court occurred in July 2024, where the Court said it was “conclud[ing]” its “work on this matter pending resolution of the appeal of the denial of a preliminary injunction.” Order on Motion for Injunction Pending Appeal—School Activities Other than Athletics (ECF No. 76) at 3. Since then, the State Defendants—Secretary Saunders and Chair Samuelson—have not had to expend *any* time, effort, or money in litigating this case because Plaintiffs did not appeal the public funding issue to the Second Circuit. But Act 73 has changed all of that. Defendants’ prior motions to dismiss are now moot in light of Act 73 (for the public funding issue) and the Second Circuit’s preliminary injunction decision (for the athletics issue). In sum, Defendants are not prejudiced by the Amended Complaint.

## CONCLUSION

The Court should allow Plaintiffs to amend their Complaint. Simply put, “[g]ood cause in this case exists because the Plaintiffs request to update the complaint with both new law and new facts, absent which this case will be decided on grounds that are no longer accurate.” *Vermont Right to Life*, 2010 WL 11610330, at \*2. The amendment also furthers the “just, speedy, and inexpensive” adjudication of this case, Fed. R. Civ. P. 1, and “afford[s]” Plaintiffs “an opportunity to test [their] claim[s] on the merits,” *Foman v. Davis*, 371 U.S. 178, 182 (1962) (discussing Rule 15(a) standard). The Court should grant the Motion and order the filing of the Amended Verified Complaint (attached) immediately.

Respectfully submitted,

Dated: October 31, 2025

/s David Cortman

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will deliver service to all counsel in this case.

*s/ David Cortman*  
Counsel for Plaintiffs