

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DO NO HARM, INC., a nonprofit corporation,

Civil File No. 0:25-cv-00287
(KMM/EMB)

Plaintiff,

v.

DR. BROOKE CUNNINGHAM, in her
official capacity as Commissioner of the
Minnesota Department of Health,

**DEFENDANT’S
MEMORANDUM OF LAW
OPPOSING PLAINTIFF’S
MOTION TO SUPPLEMENT
COMPLAINT**

Defendant.

Plaintiff Do No Harm, Inc. brought this section 1983 action seeking a declaration that Minn. Stat. § 145.987, subd. 1, which establishes the Health Equity Advisory and Leadership (“HEAL”) Council, violates the Fourteenth Amendment of the Constitution. Plaintiff’s claims are based on one of its members allegedly applying for an appointment to the HEAL Council in 2024, who was not selected; Plaintiff alleges that the member was at a significant disadvantage for appointment due to his race.

Plaintiff now seeks to supplement its complaint to update references to the statutory language of section 145.987, which was amended effective June 14, 2025. However, the deadline to amend pleadings has passed, and Plaintiff failed to seek modification of the scheduling order. The proposed supplementation would also be unnecessary. Accordingly, Defendant respectfully requests that the Court deny Plaintiff’s motion.

FACTUAL BACKGROUND

The HEAL Council was statutorily established in 2023 and has specified duties relating to health equity. Minn. Stat. § 145.987 (2024). The commissioner of health appoints 18 members to the HEAL Council who will provide representation from seven identified groups. *Id.*, subd. 1.

On January 24, 2025, Plaintiff filed this section 1983 action, asserting claims under two provisions of the Fourteenth Amendment to the Constitution: the Equal Protection Clause (first cause of action), and the Citizenship Clause (second cause of action). (Doc. 1.) Plaintiff alleges that in 2024, one of its members applied for open positions on the HEAL Council but was not selected. (*Id.*, ¶¶ 16–17.) Plaintiff alleges that its member’s application was at a significant disadvantage because of his race and that this member sustained a loss of equal citizenship rights. (*Id.*, ¶¶ 20, 38.) Plaintiff states that it brought this action “to vindicate its member’s constitutional rights[.]” (*Id.*, ¶ 5.)

Plaintiff alleges that this member intends to apply for the next available position on the HEAL Council. (Doc. 1, ¶ 19.) The terms of all current members of the HEAL Council expire on December 1, 2025. (*Id.*; *see also* “Board/Commission: Health Equity Advisory and Leadership (HEAL) Council – July 1, 2023,” Minn. Sec. of State, <https://commissionsandappointments.sos.mn.gov/Agency/Details/337> (last accessed August 1, 2025).)

On June 14, 2025, section 145.987, subdivision 1 was amended, now providing that the HEAL Council consists of 18 members appointed by the commissioner, “...including

but not limited to members who will provide representation from the following groups...”
(Laws of Minn. 2025, 1st Spec. Sess., ch. 3, art. 2, sec. 31.)

Plaintiff seeks to supplement its complaint solely to include a reference to the amended statutory language; Plaintiff does not assert any new or revised claims resulting from the amendment. (Doc. 19.)

The pretrial scheduling order in this matter required all motions seeking to amend the pleadings to be filed and served by April 30, 2025. (Doc. 13 at 3.) The scheduling order may be modified pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Rule 16.3. (*Id.* at 1.) Local Rule 16.3(a) requires a motion to modify a scheduling order, even if the motion is stipulated or uncontested. On July 14, 2025, Defendant informed Plaintiff, through counsel, that because the deadline to amend pleadings passed on April 30, Plaintiff would need to request permission from the Court before moving to amend its pleadings. (Declaration of Kaitrin C. Vohs, Aug. 1, 2025, ¶ 3.)

LEGAL ARGUMENT

Upon motion, the court may permit a party to supplement its pleading setting out any transaction, occurrence, or event that happened after the date of the pleading. Fed. R. Civ. P. 15(d). A party does not have an absolute right to amend its pleading. *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 715 (8th Cir. 2008); *see also Cognex Corp. v. VCode Holdings, Inc.*, Civil No. 06-1040 (JNE-JJG), 2006 WL 8443326, *1 (D. Minn. Dec. 12, 2006) (holding the standard for determining a motion under Rule 15(d) is the same as for a motion to amend under Rule 15(a)). The court has broad discretion over whether to allow

a supplemental pleading. *Mgmt. Registry, Inc. v. A.W. Cos., Inc.*, No. 17-cv-5009 (JRT/DTS), 2024 WL 1956176, *2 (D. Minn. Mar. 20, 2024).

Plaintiff's motion should be denied. Preliminarily, it is untimely and procedurally improper. Even if considered, Plaintiff's proposed supplementation should be denied as unnecessary.

I. Plaintiff's Motion Is Untimely and Should Be Denied.

A scheduling order must limit the time to amend the pleadings. Fed. R. Civ. P. 16(b)(3)(A). If a party seeks to amend a pleading after the scheduling deadline, the standards under Rule 15 do not apply. *Sherman*, 532 N.W.2d at 716. Rather, the party must first show "good cause" under Rule 16(b) to modify the schedule. *Id.*; *see also Mgmt. Registry*, 2024 WL 1956176 at *3 (applying this standard to a motion for supplemental pleading). In addition, this district requires a motion to modify the scheduling order compliant with Local Rule 7.1(b), even if uncontested, and places the onus on the party seeking modification to establish good cause. LR 16.3; *see also O'Neil v. Simplicity, Inc.*, 574 F.3d 501, 505 (8th Cir. 2009) (holding that a "court does not abuse its discretion in denying leave to amend where a plaintiff has not followed applicable procedural rules").

Here, the scheduling order's deadline to amend pleadings expired on April 30, 2025. Although Defendant reminded Plaintiff, through counsel, of this deadline and the necessity to first obtain permission to modify the schedule, Plaintiff filed the instant motion without moving to modify the scheduling order. Not only did Plaintiff fail to comply with the procedural requirements of Local Rules 7.1 and 16.3, but Plaintiff also failed to establish—

or even assert—good cause to support its motion. *See* LR 16.3. Because Plaintiff’s motion is untimely and failed to follow the procedural rules, the motion should be denied.

II. Even If Considered, Plaintiff’s Motion Should Be Denied as Unnecessary.

Without waiving any arguments, even if Plaintiff’s motion were procedurally proper, it should be denied as unnecessary.

To state an actionable claim under section 1983, the plaintiff must allege facts to show the defendant’s wrongful conduct deprived the plaintiff of a constitutionally protected right. *Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010). Put another way, the plaintiff must plead facts showing a causal connection between the challenged conduct and the alleged constitutional deprivation. *Id.* at 851.

With its requested supplementation, Plaintiff only seeks to add a recitation of statutory language to the complaint. Plaintiff does not seek to add any facts or claims, and Plaintiff even asserts that its underlying claims are not altered. *See* Doc. 19 at ¶ 5; Doc. 25 at 1. Given that a complaint does not require the inclusion or recitation of statutory language, Plaintiff’s proposed supplementation is entirely unnecessary. *See* Fed. R. Civ. P. 8(a); *see also Favors v. Lourey*, No. 19-CV-0032 (PJS/TNL), 2019 WL 3043958, * 1 (D. Minn. June 18, 2019) (“A recitation of the text of the statute under which the litigant is seeking relief is not necessary”). The Court should deny Plaintiff’s motion.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court deny Plaintiff’s motion for a supplemental complaint.

Dated: August 1, 2025

KEITH ELLISON
Attorney General
State of Minnesota

s/Jennifer Moreau

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DO NO HARM, INC., a nonprofit corporation,

Civil File No. 0:25-cv-00287
(KMM/EMB)

Plaintiff,

v.

**DECLARATION OF
KAITRIN C. VOHS**

DR. BROOKE CUNNINGHAM, in her
official capacity as Commissioner of the
Minnesota Department of Health,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, KAITRIN C. VOHS, declare under penalty of perjury:

1. I am an Assistant Attorney General at the Office of the Minnesota Attorney General. I am one of the attorneys representing the Defendant in this matter. This declaration is based on my personal knowledge and my review of documents in this matter.

2. On July 1, 2025, counsel for Plaintiff Do No Harm, Inc. contacted me and co-counsel Jennifer Moreau and asked for consent to file an unopposed supplemental complaint under Rule 15(d) with the Court.

3. On July 14, I responded that Defendant was not willing to consent to filing the proposed supplemental complaint and further stated that the deadline for filing a motion to amend the pleadings closed on April 30, 2025. Because the deadline to amend the

pleadings closed on April 30, I noted that Plaintiff should seek permission from the Court before moving to amend the pleadings.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Date: August 1, 2025

s/ Kaitrin C. Vohs
KAITRIN C. VOHS