

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INGRID BUQUER, *et al.*,)
) Cause No. 1:11-cv-0708-SEB-MJD
Plaintiffs,)
)
v.)
)
CITY OF INDIANAPOLIS, *et al.*,)
)
Defendants.)

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER**

Defendants Marion County Prosecutor in his official capacity and Johnson County Prosecutor in his official capacity (hereinafter "State Defendants"), by counsel, Betsy M. Isenberg, Deputy Attorney General, respectfully move this Court pursuant to Fed. R. Civ. P. 15 for leave to amend their answer to amended complaint and statement of defenses.

Background

Plaintiffs filed a complaint on May 25, 2011, challenging Section 19 of Senate Enrolled Act 590, which amends Indiana Code § 35-33-1-1 to add (a)(11) through (a)(13), and Section 18 of Senate Enrolled Act 590, which adds Indiana Code § 34-28-8.2, which were to go into effect on July 1, 2011. (DE 1). On May 26, 2011, Plaintiffs filed a motion for preliminary injunction seeking to enjoin enforcement of the provisions listed above. (DE 14). After briefing and a hearing held on June 20, 2011, the Court granted the Plaintiffs' motion for preliminary injunction on June 24, 2011. (DE 79). Plaintiffs also moved to certify two separate classes of Plaintiffs in this matter on June 7, 2011. (DE 40). The parties agreed to class certification and filed a stipulation on July 8, 2011. (DE 82). The Court granted the stipulation and certified the classes on July 14, 2011. (DE 84).

State Defendants filed an answer in this matter on July 15, 2011. (DE 86). Recently State Defendants were made aware of potential for litigation by the Department of Justice against the State of Indiana involving immigration legislation and are acting promptly to amend their answer. Therefore, State Defendants now seek leave to amend their answer to include this defense.

Legal Standard

Rule 15(a) of the Federal Rules of Civil Procedure provides that courts should give defendants leave to amend their answers “freely . . . when justice so requires.” The rule “encourages the court to look favorably on requests to amend.” 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1484 at 592 (1990). “If no prejudice is found, then leave normally will be granted.” *Id.* at 60 (Supp. 2004) (footnote omitted). “[A] district court may deny leave to amend on the grounds of undue delay, bad faith, dilatory motive, prejudice or futility.” *Guise v. BWM Mortgage, LLC*, 377 F.3d 795, 801 (7th Cir. 2004) (citing *Indiana Funeral Dirs. Ins. Trust. v. Trustmark Ins. Corp.*, 347 F.3d 652, 655 (7th Cir. 2003)).

Analysis

State Defendants request leave to amend their answer to Plaintiffs’ complaint to include one additional defense. State Defendants seek to add the following defenses: The Plaintiffs have failed to join a party necessary for a just adjudication and complete relief, the United States of America.

This defense was not included in State Defendants’ answer to Plaintiffs’ complaint because State Defendants and the State of Indiana, as a whole, have only recently been made aware of the potential for litigation by the Department of Justice against the State of Indiana

involving Indiana's immigration legislation. In addition, the United States has filed litigation against the States of Arizona and Alabama regarding legislation in those states touching upon immigration. See *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011); *United States v. Alabama, et al.*, United States District Court for the Northern District of Alabama, Cause Number 2:11-cv-02746 SLB. There has not been any undue delay in seeking to amend the answer.

Further, the Plaintiffs would not be prejudiced by allowing the defendants to amend their answer. State Defendants answered the complaint on July 15, 2011. This matter is still in the early stages. The parties have not completed discovery. The discovery deadline in this matter is March 26, 2012, and dispositive motions are due on April 25, 2012. (DE 95). Therefore, allowing the State Defendants to amend their answer would not prejudice the Plaintiffs in prosecuting this action.

Conclusion

For the reasons stated above and in State Defendants' motion for leave to amend answer, State Defendants respectfully move this Court for leave to amend their answer to the complaint.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed electronically on this 11th day of October, 2011. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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