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12 *Attorneys for Defendants Janice K. Brewer, Governor of the*
13 *State of Arizona, and the State of Arizona*

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 National Coalition of Latino Clergy and
17 Christian Leaders (“CONLAMIC”), *et*
al.,

18 Plaintiffs,

19 v.

20 State of Arizona, *et al.*,

21 Defendants.

No. CV-10-0943-PHX-SRB

**GOVERNOR BREWER AND THE
STATE OF ARIZONA’S
OPPOSITION TO PLAINTIFFS’
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

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1 Plaintiffs’ Motion for Leave to File Second Amended Complaint (doc. 35) should
2 be denied because plaintiffs’ proposed amended pleading fails to demonstrate that any
3 plaintiff has standing to pursue these claims. Plaintiffs also have delayed their pursuit of
4 this litigation and currently seek to pursue the same claims (using many of the exact
5 same allegations) that plaintiffs are pursuing in some of the other actions also
6 challenging the validity of SB 1070. Permitting plaintiffs to pursue their proposed
7 second amended complaint would only create duplicative litigation, invite abuse, and
8 waste judicial resources.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. PROCEDURAL HISTORY**

11 This is one of seven actions that were filed in this Court challenging the
12 constitutionality of various provisions of SB 1070. In contrast to the other six actions,
13 the plaintiffs in this case have made only a half-hearted effort to pursue this action since
14 they filed their initial Complaint on April 29, 2010 (doc. 1). Plaintiffs never served the
15 Complaint and only filed the magistrate election form when ordered to do so by the
16 Court. *See* Docs. 7 (Order to Show Cause) & 8 (plaintiffs’ election to assign the case to
17 a district judge). On June 6, 2010, plaintiffs filed their Amended Complaint (doc. 13),
18 which fails to comply with LRCiv 7.1 and contains numerous typographical errors.
19 Plaintiffs then waited to have the summonses issued for their Amended Complaint until
20 July 13, 2010 (docs. 22 & 23) and did not serve the Amended Complaint until July 14,
21 2010. Although plaintiffs’ Amended Complaint seeks injunctive relief, plaintiffs have
22 not moved for an injunction.

23 On July 15, 2010, defendant Arpaio moved to dismiss the Amended Complaint on
24 the grounds that plaintiffs lack standing to pursue their claims and that the Amended
25 Complaint fails to state a claim upon which relief can be granted (doc. 26). On August 4,
26 2010, Governor Brewer and the State moved to dismiss plaintiffs’ Amended Complaint
27 on the same grounds (doc. 30), which defendants Romley and Goddard joined on the
28 same day (docs. 31 & 33). Plaintiffs opposed the motions to dismiss on July 29, 2010

1 and August 23, 2010 (docs. 28 & 34), respectively.

2 On August 25, 2010, plaintiffs moved for leave to file a second amended
3 complaint (doc. 35). In their proposed second amended complaint, plaintiffs seek to
4 “address many of the concerns raised in Defendants’ motions to dismiss,” *see* Pls.’ Mot.
5 at 3, but, in many instances, plaintiffs have simply copied and pasted the allegations from
6 pleadings in other actions challenging SB 1070 to bolster their claims and factual
7 allegations.¹ For example, the allegations in paragraphs 53 through 56 of plaintiffs’
8 proposed second amended complaint track (and, in some instances, copy verbatim) the
9 allegations in paragraphs 206 through 208 of the Complaint in *Friendly House, et al.*
10 *Whiting, et al.*, Case No. CV10-01061-PHX-SRB. The allegations in paragraph 58 of the
11 proposed second amended complaint copy verbatim paragraph 182 of the *Friendly*
12 *House* Complaint. The allegations in 63 of the proposed second amended complaint
13 track the allegations in paragraph 28 of the Complaint in *United States v. Arizona et al.*,
14 Case No. CV10-01413-PHX-SRB. And paragraphs 66 through 70 of the proposed
15 second amended complaint copy verbatim the allegations in paragraphs 186 through 190
16 of the *Friendly House* Complaint.

17 **II. ARGUMENT**

18 Rule 15 of the Federal Rules of Civil Procedure provides that “[t]he court should
19 freely give leave” to amend pleadings “when justice so requires.” Fed. R. Civ. P.
20 15(a)(2). However, this policy of liberality “must be tempered with considerations of
21 undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to
22 cure deficiencies by amendments previously allowed, undue prejudice to the opposing
23 party by virtue of allowance of the amendment, futility of amendment, etc.” *Cervantes v.*
24 *Pratt*, No. CV04-1004-PHX-SRB, 2008 WL 348918, at *3 (D. Ariz. Feb. 8, 2008)
25 (quoting *Schlachter-Jones v. General Tele.*, 936 F.2d 435, 443-44 (9th Cir. 1991)).
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28 ¹ Plaintiffs offer no explanation as to why they did not previously assert the claims and
factual allegations in the proposed amended pleading. *See generally* Pls.’ Mot.

1 Here, plaintiffs’ Motion should be denied because the amendment is futile. For
2 the reasons stated in the Motion to Dismiss filed by Governor Brewer and the State (doc.
3 30), plaintiffs lack standing to pursue their claims because plaintiffs have not
4 demonstrated that they would suffer an actual or imminent injury from the enforcement
5 of any provision of SB 1070. *See* Mot. to Dismiss at 3-11. Plaintiffs’ proposed second
6 amended complaint does not correct this basic deficiency. Although the proposed
7 second amended complaint more clearly articulates the theories under which plaintiffs
8 seek to invalidate Sections 1, 2, 3, 5, 6, and 10 of SB 1070, the standing allegations
9 remain speculative and conclusory. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50
10 (2009) (“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
11 claim to relief that is plausible on its face.’”) (citation omitted); *Lujan v. Defenders of*
12 *Wildlife*, 504 U.S. 555, 560 (1992) (to have standing, a plaintiff must allege facts that
13 demonstrate “an injury in fact – an invasion of a legally protected interest which is (a)
14 concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical”)
15 (internal quotations and citation omitted).

16 Plaintiffs’ delay also warrants denial of their Motion. *See, e.g., Estate of Oliva ex*
17 *rel. McHugh v. New Jersey*, 604 F.3d 788, 803 (3d Cir. 2010) (“Delay is ‘undue’ when it
18 places an unwarranted burden on the court or when the plaintiff has had previous
19 opportunities to amend.”) (citing *Bjorgung v. Whitetail Resort, LP*, 550 F.3d 263, 266
20 (3d Cir. 2008)). Although a two-month delay in seeking leave to amend is generally not
21 considered “undue” delay, the circumstances of this case are unique. In addition to the
22 plaintiffs in this case, six other sets of plaintiffs have filed suit to challenge SB 1070 on
23 the same grounds plaintiffs raise here. Unlike many of the other plaintiffs, the plaintiffs
24 in this case did not attempt to move for injunctive relief, and plaintiffs’ first two
25 complaints were confusing and replete with typographical errors. In their proposed
26 second amended complaint, plaintiffs have corrected many of these issues,² but in doing
27 so, they simply reproduce the same claims and allegations that are already being litigated

28 ² The proposed second amended complaint still fails to comply with LRCiv 7.1.

1 in the actions brought by the United States and the *Friendly House* plaintiffs. Permitting
2 an amendment in such circumstances would only waste judicial resources and invite
3 abuse. *See* Fed. R. Civ. P. 1 (the Rules of Civil Procedure “should be construed and
4 administered to secure the just, speedy, and inexpensive determination of every action
5 and proceeding”).

6 **III. CONCLUSION**

7 For these reasons, defendants the State of Arizona and Governor Brewer request
8 that the Court deny plaintiffs’ Motion for Leave to File Second Amended Complaint.

9 Respectfully submitted this 13th day of September, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2010, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

s/John J. Bouma

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