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15 **UNITED STATES DISTRICT COURT**
 16 **DISTRICT OF ARIZONA**

18 NATIONAL COALITION OF LATINO CLERGY)
 AND CHRISTIAN LEADERS (“CONLAMIC”),)
 19 PHOENIX, ARIZONA, ET AL.,)
 20 Plaintiffs,)
 21 v.)
 22 STATE OF ARIZONA, ET AL.,)
 23 Defendants.)
 24 _____)

CASE NO. 2:10-CV-00943-SRB

PLAINTIFFS’ REPLY IN
SUPPORT OF MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT

25
 26 Plaintiffs, by and through undersigned counsel, hereby file this Reply in Support of their
 27 Motion for Leave to File Second Amended Complaint.
 28

1 **INTRODUCTION**

2 Defendants argue that the Court should deny leave to amend because Plaintiffs' action is
3 "duplicative" of other challenges to S.B. 1070, involves "the same claims" and "many of the
4 exact same allegations" and is based on the "same grounds" as the other actions, specifically
5 citing the related case of Friendly House, et al. v. Whiting, et al., Case No. 10-cv-1061-PHX-
6 SRB. (Defts' Resp., DE 39 at 1-3.) Yet, in a separate filing served the very same day,
7 Defendants argue that the State of Arizona's waiver of immunity in the Friendly House case
8 should not carry over to this case because "this case involves different parties, different
9 allegations, and largely different claims." (Defts' Reply in Support of Mot. to Dismiss, DE 38 at
10 3.) Defendants cannot have it both ways.

11 Their opposition to Plaintiffs' first request to amend contradicts itself at every turn, and
12 does not overcome the liberal policy of allowing amendment, particularly at this early stage of
13 the litigation. Plaintiffs therefore respectfully request that their motion be granted.

14 **ARGUMENT**

15 Defendants argue that Plaintiffs' motion should be denied because they claim the
16 proposed amendment is futile and because of Plaintiffs' purported delay.

17 With regard to the first argument, Defendants only state generally that Plaintiffs'
18 amended allegations are "speculative and conclusory" as to standing, without citing a single
19 paragraph of the proposed Second Amended Complaint, or giving any example of how Plaintiffs'
20 amended allegations are deficient. (Defts' Resp. at 3.) As Defendants did not address any of
21 Plaintiffs' amended standing allegations, they have not met their burden to show that Plaintiffs'
22 amendment would be futile. See, e.g., TriQuint Semiconductor, Inc. v. Avago Technologies
23 Ltd., 2010 WL 3034880, at *9 (D. Ariz. 2010) ("The party opposing amendment bears the
24 burden of showing prejudice, futility, or one of the other permissible reasons for denying a
25 motion to amend.") (quoting DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th Cir.
26 1987)); see also Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir.1988) ("a proposed
27 amendment is futile only if no set of facts can be proved under the amendment to the pleadings
28 that would constitute a valid and sufficient claim or defense").

1 As to delay, Defendants' argument is supported neither by fact nor law. Plaintiff National
2 Coalition of Latino Clergy and Christian Leaders ("CONLAMIC"), joined by parishioners, small
3 business owners and other members of the Arizonan Latino community, filed this action on April
4 29, 2010. (DE 1.) Under the Federal Rules of Civil Procedure, Plaintiffs were permitted at least
5 120 days to serve the complaint on defendants, which in this case would have been August 27,
6 2010. Fed.R.Civ.P. 4(m). It can hardly be said, then, that Plaintiffs' having served Defendants
7 on July 14, 2010 constitutes undue delay. This is Plaintiffs' first motion to amend (having
8 previously amended once as of right before serving defendants), the motion is filed in part in
9 response to Defendants' first motion to dismiss (and so at the earliest stage of the litigation), and
10 the motion has been filed before the Court has even issued a scheduling order imposing deadlines
11 on amendments.

12 That other individuals have also filed challenges to S.B. 1070 has no bearing on the right
13 of CONLAMIC, La Hermosa Church, or any of the individual parishioners, business owners and
14 other Plaintiffs to bring this action, or on their request to amend the complaint. If Defendants'
15 concern is judicial resources, the proper vehicle to raise that concern would be through a motion
16 to consolidate, by which the court can streamline actions that involve common questions of law
17 or fact. See Fed.R.Civ.P. 42(a). Defendants, however, have not moved to consolidate.
18 Additionally, they cite no authority for the proposition that a court may deny leave to amend in
19 one action simply because it may share common questions of law or fact with a related action.
20 See Fournier v. Johnson, 677 F.Supp. 2d 1172, 1173 (D.Ariz. 2009) (factors to be considered in
21 determining whether to allow amendment are bad faith, undue delay, prejudice, and futility).

22 Defendants argue that granting Plaintiffs' first request to amend the complaint will create
23 duplicative litigation, invite abuse and waste judicial resources. Yet in the same breath, they
24 complain that Plaintiffs have not pursued this action vigorously enough, including by *not* serving
25 the original complaint and *not* moving for a preliminary injunction when others did, both of
26 which in fact have simplified the litigation and conserved the Court's resources. (Defts' Resp. at
27 1, 3.) Again, Defendants cannot have it both ways.

28

1 The Federal Rules of Civil Procedure provide that the Court “should freely give leave [to
2 amend a pleading] when justice so requires.” Fed.R.Civ.P. 15(a)(2). Here, Plaintiffs move to
3 amend to (1) add a claim for violations of the First Amendment freedoms of religion and
4 association; (2) state a separate claim under the Equal Protection Clause; (3) consolidate and
5 clarify claims under the Supremacy Clause (Counts II and IV) and Fourteenth Amendment
6 (Counts I, VI, and VI); (4) withdraw two individual plaintiffs and all class allegations; and (5)
7 supplement the factual allegations in support of Plaintiffs’ claims. Plaintiffs’ proposed Second
8 Amended Complaint significantly streamlines the factual allegations, addresses many of the
9 concerns raised by Defendants’ in their motions to dismiss, and reduces the claims for relief from
10 six to four.¹

11 Plaintiffs therefore respectfully request that their motion be granted.

12 **V. CONCLUSION**

13 Based on the foregoing, Plaintiffs respectfully request that the Court grant their Motion
14 for Leave to File Second Amended Complaint.

15
16 **Dated: September 23, 2010**

17
18 RESPECTFULLY SUBMITTED,
19 /s/ Tania Galloni
20 FLORIDA IMMIGRANT ADVOCACY CENTER
21 /s/ Ben R. Miranda
22 LAW OFFICE OF BEN R. MIRANDA
23 /s/ William J. Sanchez
24 SANCHEZ LAW, LLC
25

26 ¹ Defendants’ complaint that some of Plaintiffs’ allegations are too similar to those in other
27 pending actions (Defts’ Resp. at 2) relates only to Plaintiffs’ legal allegations, not allegations of fact.
28 As the related actions all challenge the legality of S.B. 1070, it should come as no surprise that there
will be common questions of law.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 23, 2010 I electronically transmitted the attached
3 document to the Clerk's Office using the CM/ECF system for filing and for transmittal of a
4 Notice of Electronic Filing to the following CM/ECF registrants:

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