IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

PARENTS, FAMILIES, AND FRIENDS OF LESBIANS AND GAYS, INC., et al.,	)	
Plaintiffs,	)	
v.	)	**Case No. 2:11-cv-04212-NKL**
CAMDENTON R-III SCHOOL DISTRICT, et al.,	)	
Defendants.	)	

DEFENDANTS' SUGGESTIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COME NOW Defendants Camdenton R-III School District and Timothy E. Hadfield, in his individual and official capacity (hereinafter collectively referred to as "Defendants") and for their Suggestions in Opposition to Plaintiffs' Motion for Leave to file Second Amended Complaint, state as follows:

Introduction

Defendants adamantly oppose Plaintiffs' Motion for Leave to File a Second Amended Complaint. The harm to Defendants if Plaintiffs are granted leave to amend their Complaint for a second time, seventy-eight (78) days after filing suit, after full briefing on Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction has been completed, and a full Preliminary Injunction Hearing has been conducted is severe. It is not in the interest of justice to allow Plaintiffs the repeated opportunity to attempt to conjure a cognizable and legitimate injury in order to pursue this litigation. Furthermore, Plaintiffs' Motion for Leave to Amend should be denied as their proposed amendments would be futile and the Second Amended Complaint

would still not withstand a motion to dismiss. *See Weimer v. Amend*, 870 F.2d 1400, 1407 (8th Cir. 1989).

Argument

A district court "enjoys discretion in whether to grant a Rule 15(a) motion." *Elema-Schonander, Inc. v. K.C.F. Med. Supply Co.*, 869 F.2d 1124, 1126 (8th Cir. 1989). The text of Federal Rule 15(a)(2) makes it clear that permission to amend a pleading is not to be given automatically but is allowed only "when justice so requires." Accordingly, leave should not be granted in all cases and in particular, leave to amend should not be granted in this case as Defendants would be harmed by such amendment and Plaintiffs' proposed amendment to the First Amendment Complaint would be futile.

Plaintiffs' initial Complaint in this matter was filed on August 15, 2011. Since that time, Plaintiffs have filed a First Amended Complaint and extensive briefing has been conducted on Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction. The Defendants have also incurred considerable expense in preparing for and participating in a Preliminary Injunction hearing. To amend the Complaint after months of litigation on the issues presented in the First Amended Complaint creates an undue burden on Defendants. Indeed, after a nearly four hour hearing in which Plaintiffs were given the opportunity to present their claims and hear Defendants' evidence, Plaintiffs then sought amendment within three business days of the hearing. Accordingly, Defendants consider Plaintiffs' Motion to Amend an effort to create undue burden and expense for the District who has been litigating this matter in good faith.

In Plaintiffs' proposed Second Amended Complaint (Doc # 71-1), Plaintiffs seek to add a class of Plaintiffs "who use, or will use, computers in the school library." (Doc #71-1, ¶8). However, even if such amendment were permitted, Plaintiffs' Second Amended Complaint

would still not survive a Motion to Dismiss as Plaintiffs again continue to fail to bring forth one student Plaintiff who has demonstrated an "injury-in-fact" that is actual and not conjectural or hypothetical. Like the First Amended Complaint, nowhere in the proposed Second Amended Complaint does it state that *one* student has *ever* attempted to access a website to which they were denied on the District's system. Further, attempting to certify all the students of the District as a class adds nothing to the relief requested in this matter and is thus, unnecessary. Specifically, if the Court determines that Jane Doe has standing and this case survives Defendants' Motion to Dismiss, the Court can make a determination regarding the constitutionality of the District's Internet filtering system regardless of whether this action is treated as an individual action or a class action.

It is settled law that district courts have the power to deny leave to amend if the proposed changes would not save the complaint. *Holloway v. Dobbs*, 715 F.2d 390, 392-393 (8th Cir. 1983). Accordingly, allowing Plaintiffs to amend the Complaint a second time in advancement of a claim that is legally insufficient on its face should be denied. *Fuller v. Secretary of Defense of U.S.*, 30 F. 3d 86 (8th Cir. 1994) (holding that district court did not abuse its discretion in denying motion for leave to amend plaintiff's complaint because such amendment would have been futile).

CONCLUSION

It is futile for Plaintiffs to amend their Complaint in order to add a class of students who have demonstrated no injury in fact. Further, the Defendants will be harmed by yet another amendment to the Complaint. Therefore, Plaintiffs' Motion for Leave to File Second Amended Complaint should be denied.

WHEREFORE, Defendants Camdenton R-III School District and Timothy E. Hadfield, in his individual and official capacity, respectfully request that Plaintiffs' Motion for Leave to File Second Amended Complaint be denied, and for such other and further relief as it deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2011, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of filing to the following:

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