

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

STATE OF MISSOURI ET AL

CASE NO. 3:22-CV-01213

VERSUS

JUDGE TERRY A. DOUGHTY

JOSEPH R BIDEN JR ET AL

MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM ORDER

Pending before the Court is a Motion For Leave to Amend Complaint to Add Class Allegations and for Class Certification [Doc. No. 227] filed by Plaintiffs.¹ An Opposition [Doc. No. 244] has been filed by Defendants.² A Reply [Doc. No. 250] was filed by Plaintiffs. For the reasons set forth herein, Plaintiffs' Motion for Leave to Amend Complaint to Add Class Allegations and for Class Certification is **GRANTED**.

Plaintiffs have filed suit against a total of sixty-seven government agencies and/or employees alleging that the Defendants have coerced and/or have been significantly involved with social media platforms in order to suppress free speech in violation of the First Amendment to the United States Constitution. Plaintiffs have previously filed a Complaint³, an Amended Complaint,⁴ and a Second Amended Complaint.⁵

Plaintiffs have asked for leave to file a Third Amended Complaint to add class certification allegations, add Dr. Hugh Auchincloss as Director of NIAID, and drop Plaintiffs' request for

¹ Plaintiffs consist of the State of Missouri, the State of Louisiana, Dr. Aaron Kheriaty, Dr. Martin Kulldorff, Jim Hoft, Dr. Jayanta Bhattacharya, and Jill Hines.

² Government Defendants consist of Joseph R. Biden, Jr., Vivek H. Murthy, Xavier Becerra, Department of Health and Human Services, Dr. Anthony Fauci, National Institute of Allergy and Infectious Diseases, Centers for Disease Control & Prevention, Alejandro Mayorkas, Department of Homeland Security, Jen Easterly, Cybersecurity & Infrastructure Security Agency, and Nina Jankowicz, Karine Jean-Pierre, Carol Y. Crawford, Jennifer Shopkorn, U.S. Census Bureau, U. S. Department of Commerce, Robert Silvers, Samantha Vinograd and, Gina McCarthy.

³ [Doc. No. 1]

⁴ [Doc. No. 45]

⁵ [Doc. No. 84]

injunctive relief against President Biden. The request is opposed by Defendants, who argue the Third Amended Complaint would be futile and that Plaintiffs have been dilatory in adding a class certification request.

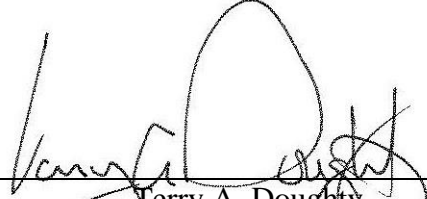
Pursuant to Federal Rule of Civil Procedure 15(a)(2), a party may amend its pleading with leave of court, which should be freely granted when justice so requires. Rule 15(a) is to be applied with extreme liberality. *Eminence Cap. LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). In the absence of any apparent or delivered reason – leave should be freely given. *Foman v. Davis*, 371 U.S. 178, 182 (1962). The touchstone of the inquiry under Rule 15(a) is whether the proposed amendment would unfairly prejudice the defense. *Lowrey v. Texas A & M Univ. Sys.* 117 F.3d 242, 246 (5th Cir. 1997).

This Court does not find Plaintiffs' request is either dilatory or futile. It is not dilatory because the proposed amendment comes at a time in the litigation prior to a determination of whether a preliminary injunction should issue and prior to a determination on the merits. Additionally, it was not until the end of January 2023, that the parties completed the preliminary-injunction related discovery, and the request to amend is arguably based upon information obtained during discovery.

This Court is not, at this time, making a determination of whether the case should be certified as a class action. However, the allegations are not futile. Arguably, the allegations, at least facially, meet the requirement of FRCP 23(b)(2), which permits class action for declaratory or injunctive relief where the party opposing the class has acted or refused to act on grounds generally applicable to the class. This would include civil rights cases. *AmChem Prods, Inc. v. Windsor*, 521 U.S. 591, 615 (1997). Therefore,

IT IS ORDERED that Plaintiffs’ Motion For Leave to Amend Complaint to Add Class Allegations and for Class Certification [Doc. No. 227] is **GRANTED**.

MONROE, LOUISIANA this 4th day of May 2023.



Terry A. Doughty
United States District Judge