

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

BRIAN KIRK,

Plaintiff,

v.

CITY OF ST. JOSEPH, MISSOURI, *ET. AL.*

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No.: 5:24-CV-06023-SJ-GAF

**PLAINTIFF’S MOTION FOR LEAVE TO FILE
HIS FIRST AMENDED COMPLAINT,
WITH SUPPORTING SUGGESTIONS**

Plaintiff Brian Kirk (Plaintiff), by and through his undersigned counsel, hereby moves the Court for an order granting him leave to file his First Amended Complaint, which is attached hereto as Exhibit A, in lieu of a motion to dismiss. In support of his motion, Plaintiff states the following:

1. Plaintiff seeks leave to file a First Amended Complaint, pursuant to Fed. R. Civ. P. 15(a), which provides that a pleading may be amended by leave of court, and the Court “should freely give leave when justice so requires.” Rule 15(a).
2. Plaintiff wishes to amend his Complaint to withdraw the claim for equitable relief Subsection V, changing a church’s tax status, and replacing V with a count for defamation against Defendants Josh Blevins and Steve Greiert.
3. If the Court grants Plaintiff’s request, the motion to dismiss will be moot because the Complaint for which Defendant seeks dismissal has been superseded by the First Amended Complaint. Undoubtedly the facts and issues may vary. If the Court for some reason denies the Motion to Amend the Complaint, Plaintiff will seek additional time to respond to Defendant’s Motion to Dismiss.

4. When a Plaintiff has amended his Complaint, “an abandoned pleading shall receive no further consideration. The trial court should not consider a dismissal on an abandoned pleading. *McDonald v. Kansas City*, 285 S.W.3d 773, 774(Mo App 2009.) Therefore, Defendant’s motion to dismiss will be moot if the Court allows Plaintiff to amend the Complaint.

5. Defendant will not be unduly prejudiced by granting Plaintiff’s motion and any prejudice is far outweighed by the interests of justice identified expressly in Rule 15(a) to allow Plaintiff to fully assert all of his claims.

6. Plaintiff respectfully requests the Court grant Plaintiff leave to file his first amended Complaint and declare the motion to dismiss as moot.

WHEREFORE, Plaintiff requests the Court grant leave to file his First Amended Complaint, attached to Plaintiff’s Motion as Exhibit A, and for such further relief as is just and proper.

BRATCHER GOCKEL LAW, L.C.

By /s/Lynne Jaben Bratcher
Lynne Jaben Bratcher, Mo. Bar No.: 31203
Erin N. Vernon, Mo. Bar No.: 64590
4014 B South Lynn Court
Independence, MO 64055
Ph: (816) 221-1614
Fax: (816) 421-5910
E-Mail: lynne@bgklawyers.com
erin@bgklawyers.com

WYRSCH HOBBS & MIRAKIAN P.C.

Sarah J. Duggan #73687
1200 Main Street, Suite 2100
Kansas City, MO 64105
Ph: 816-281-8733
sduggan@whmlaw.net

ATTORNEYS FOR PLAINTIFF

I hereby certify that a copy of the foregoing was electronically filed on this 16th day of April 2024 with the Clerk of the Court via the CM/ECF eFiling System which automatically transmits an electronic Notice of Entry to:

Todd P. Graves, #41319
Katherine E. Graves, #74671
Graves Garrett Greim LLC
1100 Main Street, Suite 2700
Kansas City, MO 64105
Ph: 816-256-3181
Fax: 816-256-5958
tgraves@gravesgarrett.com
kgraves@gravesgarrett.com

Robert H. Tyler, #CA1790572
Bethany Onishenko, #AR2022079
Advocates for Faith and Freedom
25026 Las Brisas
Murrieta, CA 92562
Ph: 951-600-2733
rtyler@tylerlawllp.com
bonishenko@faith-freedom.com

Counsel for Defendants Josh Blevins and Steve Greiert

Brandon D. Mizner, Mo #46515
Thomas H. Osborn, MO #72953
Ensz & Jester, P.C.
1100 Main Street, Suite 2121
Kansas City, MO 64105
Ph: 816-474-8010
Fax: 816-471-7910
bmizner@enszjester.com
tosborn@enszjester.com

Counsel for Defendants City of St. Joseph, Taylor Crouse,
Madison Davis, Michael Grimm, Mayor John Josendale,
Marty Novak, Kenton Randolph, Jeff Schomburg,
Randy Schulz and Andy Trout

/s/Lynne Jaben Bratcher
Attorney for Plaintiff