

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT

Suffolk, ss.

Super. Ct. No. 20-00855-D

**STEPHEN FOSTER, MICHAEL GOMES,  
PETER KYRIAKIDES, RICHARD  
O'ROURKE, STEVEN PALLADINO,  
MARK SANTOS, DAVID SIBINICH,  
MICHELLE TOURIGNY, MICHAEL  
WHITE, FREDERICK YEOMANS, and  
HENDRICK DAVIS**, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

**CAROL MICI**, Commissioner of the  
Massachusetts Department of Correction,  
**GLORIANN MORONEY**, Chair  
Massachusetts Parole Board, and **THOMAS  
TURCO**, Secretary of the Executive Office of  
Public Safety and Security,

Defendants.

2/18/2021

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**PLAINTIFFS' MOTION TO AMEND THE COMPLAINT**

Pursuant to Mass. R. Civ. P. 15(a), Plaintiffs hereby move for leave to amend the complaint in the above-captioned case. In support, Plaintiffs state as follows:

1. Plaintiffs filed the original, operative complaint in this case on April 17, 2020 alleging that Defendants' failure to take necessary action to protect Massachusetts prisoners from COVID-19, including their failure to reduce the number of people incarcerated, violated their rights under the Massachusetts and United States Constitutions.

2. On December 28, 2021, the Massachusetts Legislature enacted, over the veto of Governor Baker, a line item to the fiscal year 2021 budget in response to COVID-19 that requires Defendant Mici to, *inter alia*, “release, transition to home confinement or furlough individuals in the care and custody of the department who can be safely released, transitioned to home confinement or furloughed . . .” (the “Decarceration Law”).
3. Plaintiffs raised the Governor’s veto of the line item and Defendants’ failure to comply with the enacted law on December 23, 2020 and January 26, 2021, respectively, in briefing on Plaintiffs’ emergency motion for preliminary injunction. Defendants Mici and Turco addressed DOC’s interpretation of the law in a memorandum on February 4, 2021.
4. On February 17, 2021, the Court denied Plaintiffs’ motion for preliminary injunction, but allowed Plaintiffs to “move on an expedited basis for leave of court to amend their Complaint to assert new claims under the [Decarceration Law].”
5. Pursuant to Mass. R. Civ. P. 15(a), leave to amend a complaint “shall be freely given when justice so requires.” A motion to amend “should be granted unless there are good reasons for denying the motion.” *Mathis v. Massachusetts Elec. Co.*, 409 Mass. 256, 264. Amendment to allow pleading additional causes of action is proper. *Guardianship of Hurley*, 394 Mass. 554, 560 (1985) (“an amendment, which states an additional cause of action arising from the same underlying facts, is proper.”); *Doherty v. Admiral’s Flagship Condominium Trust*, 80 Mass. App. Ct. 104, 112-113 (2011) (abuse of discretion to deny motion to

amend complaint where amendment stated entirely new actionable cause of action and there was no showing of undue delay or prejudice).

6. This lawsuit and the Decarceration Law are both direct responses to Defendants' failure to take necessary action to protect prisoners in Massachusetts from COVID-19 by reducing the prison population. The constitutional claims asserted in the case are therefore intertwined with the claim that Defendants have failed to comply with the Decarceration Law. Leave to amend should be granted here as amendment is the most expeditious and efficient manner of adjudicating Plaintiffs' claims, which are of life and death import.
7. There is no good reason for denying leave to amend. Plaintiffs have not unduly delayed amendment, acted in bad faith or with a dilatory motive, or failed to cure prior deficiencies in the complaint. Trial is not imminent, and Defendants will not be prejudiced by the amendment—indeed, Defendants have already addressed the substance of Plaintiffs' claims that they are in violation of the Decarceration Law in their briefing opposing Plaintiffs' motion for a preliminary injunction.
8. Plaintiffs' cause of action for declaratory judgment for violation of Decarceration Law is properly pled.
9. A copy of the proposed amended complaint and a redlined version showing changes from the original complaint are submitted herewith.

WHEREFORE, Plaintiffs ask that the Court GRANT this motion to amend the complaint.

Dated: February 18, 2021

Respectfully Submitted,

/s/ Michael J. Horrell

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served on February 18, 2021 by email to the counsel of record.

/s/ Michael J. Horrell

Michael J. Horrell (BBO #690685)