

NOTIFY

3/14

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
No. 2016-00969**

**MASSACHUSETTS ASSOCIATION OF COURT INTERPRETERS, INC.;
MOUSSA ABBOUND; SOLEDADE GOMES DEBARROS; ANAHIT FLANAGAN;
NORMA V. MANN; and MICHAEL R. LENZ, individually and on behalf of other persons
similarly situated,
Plaintiffs**

vs.

**EXECUTIVE OFFICE OF THE TRIAL COURT,
Defendant**

**ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO
FILE AN AMENDED COMPLAINT**

Plaintiffs seek to amend the complaint by adding a second cause of action pursuant to 42 U.S.C. § 1983 (“§1983”) and the Massachusetts Civil Rights Act, G.L. c. 12, §11I (“MCRA”), for retaliation for the exercise of rights protected by the First Amendment of the United States Constitution and article 16 of the Declaration of Rights of the Massachusetts Constitution. Plaintiffs claim that they have exercised their Constitutional rights by complaining about the Trial Court’s actions regarding payment and other working conditions for per diem court interpreters in this lawsuit, and that the Trial court retaliated against them for this exercise by amending the Standard & Procedures (“S & P”) for court interpreters in a way that will chill continuing First Amendment activity. Defendant opposes. After a thorough review of the parties’ submissions, relevant law and oral arguments, plaintiffs’ motion for leave to file an amended complaint, in so far as the plaintiffs only seek declaratory and injunctive relief, is ALLOWED.

NOTICE SENT (2)
03.14.22

MD

It is well established under Massachusetts Rules of Civil Procedure that leave to amend a complaint “shall be freely given when justice so requires.” *Mass.R.Civ.P. Rule 15(a)*. This Court recognizes that the motion should generally be allowed absent a showing by the opposing party of prejudice or some other extenuating circumstances to justify a denial of the motion. Justifiable denial of such a motion include undue delay, dilatory practice, undue prejudice to the opposing party, and futility of amendment. *Castellucci v. U.S. Fidelity & Guaranty Co.*, 372 Mass. 288, 289-290 (1977); *Hodge v. King*, 33 Mass. App. Ct. 746 (1992).

Whether Defendant has sovereign immunity from 42 U.S.C. § 1983 and MCRA:

Defendant argues that amendment of the two claims is futile because the Executive Office of the Trial Court, has sovereign immunity. Defendant is correct in that the named defendant is not a person within in the meaning of § 1983, and thus, not intended to include as named party defendant. *Will v. Michigan*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). However, the sovereign immunity applies to only where a plaintiff seeks damage claims, which is barred by the Eleventh Amendment. Depending on the nature of the relief sought against the state or state official in his or her capacity, a defendant is no longer protected by sovereign immunity. See *Id.* at footnote 10 (“ ‘bifurcated application to municipal corporations depending on the nature of the relief sought against them,’ is not surprising, since by the time of the enactment of § 1983 municipalities were no longer protected by sovereign immunity”).

No cases cited by the defendant is inconsistent with this Court’s ruling. See *Donahue v. Trial Court of the Commonwealth of Massachusetts*, 99 Mass. App. Ct. 180, 164 N.E. 3d 925 (2021) (where Wage Act claim was properly dismissed and barred by sovereign immunity, as the same Wage Act claim was properly dismissed in this case) and see *Wright v. Department of*

Correction, 93 Mass. App. Ct. 1112 (2018) (where court ruled that department is not liable for monetary, declaratory or injunctive relief under § 1983—not as a matter of sovereign immunity as a whole, but because plaintiff must allege that he has been deprived of a Federal Constitutional right, and in that case, the Department of Correction’s Code penalizing plaintiff was a constitutionally valid prison regulation). Here, at this juncture, as the plaintiffs plead, they have been deprived of a Federal Constitutional right, and where they seek injunctive and declaratory relief, not damages, the claim is not barred by sovereign immunity.

Massachusetts courts have also concluded that such defendant, Executive Office of the Trial Court is not a “person” for purposes of G.L. c. 12, § 11I, under the same federal analysis. See *Commonwealth v. Elm Med. Lab., Inc.*, 33 Mass. App. Ct. 71 (1992). But *Elm Med. Lab* dealt with damage relief, like the federal case, *Will v. Michigan*, and not injunctive or declaratory relief. Under the similar analysis of § 1984, defendant is not entitled to sovereign immunity under MCRA, as State Constitutional right was deprived and as plaintiff does not seek damage relief. See *Layne v. Superintendent, Mass. Corr. Inst., Cedar Junction*, 406 Mass. 156 (1989) (“State may not violate a person’s constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights”) and *Gruba v. Bay State Abrasives, Div. of Dresser Indus., Inc.*, 803 F.2d 746 (1st Cir. 1986) (noting that the MCRA was “a fully adequate procedural vehicle” to redress constitutional deprivations).

Plaintiffs make an alternative argument that sovereign immunity is not applicable because their claim is based in contract. At this juncture, this Court is also convinced with this argument because defendant was not “only doing what the law requires.” See *Lopes v. Commonwealth*, 442 Mass. 170, 811 N.E. 2d 501 (2004). Trial Court’s 2021 amendment of Standard and Procedures for court interpreters is not statutorily bound and can be viewed as a

contract. See *Robinson v. Teachers' Retirement Bd.*, 414 Mass. 340, 607 N.E. 2d 746 (1993) (compared with where statutory retirement benefits was not contractual) and *Broadhurst v. Director of the Div. of Employment Sec.*, 373 Mass. 720, 369 N.E.2d 1018 (1977) (compared with where statutory unemployment benefits was not contractual).

This Court does not exercise any authority of the judiciary to abrogate sovereign immunity as it does not find it appropriate to do so.

ORDER

For the reasons stated, plaintiffs' motion for leave to file an amended complaint, in so far as the plaintiffs only seek declaratory and injunctive relief, is ALLOWED.

Date: 3/11/2022

Ham, J.
Catherine H. Ham
Justice of Superior Court