

UNITED STATES DISTRICT COURT for the
SOUTHERN DISTRICT OF INDIANA

SCHOONER CREEK FARM,)
SARAH DYE, and)
DOUGLAS MACKEY,)

Case No. 1:20-cv-00518-RLY-DML

Plaintiffs,)

v.)

CITY OF BLOOMINGTON, INDIANA,)

And,)

JOHN HAMILTON, in his official capacity)
as Mayor of the City of Bloomington, Indiana and)
in his individual capacity,)

And,)

PAULA MCDEVITT, in her official capacity)
as Administrator of the Bloomington Parks and,)
Recreation Department and in her)
individual capacity,)

And,)

MARCIA VELDMAN, in her official capacity)
As the Program Coordination for the Bloomington)
Community Farmers Market and in her)
Individual capacity,)

Defendants.)

CITY OF BLOOMINGTON, INDIANA,)

And,)

JOHN HAMILTON, in his official capacity)
as Mayor of the City of Bloomington, Indiana and)
in his individual capacity,)

And,)

)
 PAULA MCDEVITT, in her official capacity)
 as Administrator of the Bloomington Parks and,)
 Recreation Department and in her)
 individual capacity,)
)
 And,)
)
 MARCIA VELDMAN, in her official capacity)
 As the Program Coordination for the Bloomington)
 Community Farmers Market and in her individual)
 capacity,)
)
 Counter-claim Plaintiffs,)
)
 v.)
)
 SARAH DYE, and DOUGLAS MACKEY,)
)
 Counter-claim Defendants.)

PLAINTIFFS’ MOTION FOR ORAL ARGUMENT ON CROSS CLAIMS FOR SUMMARY JUDGMENT

Plaintiffs and Counter-claim Defendants, Schooner Creek Farms, Sarah Dye, and Douglas Mackey, by counsel and pursuant to Rule 7-5 of the Local Rules of the United States District Court for the Southern District of Indiana respectfully request that the Court set both Plaintiff’s Motion for Partial Summary Judgment (Dkt. 38) and Defendants’ Motion for Summary Judgment (Dkt. 59) (collectively, the “Motions”) for oral argument before the Court. In support of this request Plaintiffs state as follows:

1. Plaintiffs filed their Motion for Oral Argument in Support of their Motion for Partial Summary Judgment on October 19, 2020. As of the date of this filing, the Court has neither granted or denied that motion.
2. As of the date of this filing, both of the Motions have been fully briefed, and each presents novel arguments in support.

3. Questions the Court is asked to resolve on the Motions include but are not limited to:
 - a. Do the Plaintiff's claims in the present case arise, "as a result of operations under [the Vendor Contract]"? *Dkt. 39* at 9;
 - b. Does the covenant not to sue in the Vendor Contract consist of language with the required specificity to waive Constitutional rights?. *Dkt 39* at13;
 - c. Does the indemnification clause in the Vendor Contract state clearly and unequivocally that farm vendors would agree to first party indemnity? *Dkt 39* at 15;
 - d. Does reading a waiver of Constitutional rights into the Vendor Contract render the contract void as unconscionable? *Dkt. 39* at 17;
 - e. Can a question asked by counsel in a discovery deposition be a basis for determining the mindset of a party? *Dkt. 62-1* at 18-19;
 - f. Can an otherwise unconstitutional action by a municipality be cured by framing it as a "request". *Dkt. 62-1* at 38;
 - g. Is a "request" to waive a Constitutional right a request at all if it carries with it a threat? *Dkt 73* at 13;
 - h. Do public statements by public officials encouraging the actions of private individuals serve to make the private actors the government's proxy? *Dkt. 73* at 21.
4. The facts at issue here are not limited to the foregoing. All parties hereto have presented novel arguments in this matter and Plaintiffs assert that the Court may benefit from oral argument by counsel in deciding the Motions.
5. Plaintiffs request the Court set the Motions for at least three hours of oral argument.

WHEREFORE, Plaintiffs and Counter-claim Defendants respectfully request the Court set Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment for oral argument.

Respectfully submitted,

ORZESKE & BLACKWELL, P.C.

/s/ **Michael J. Bruzzese**

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CERTIFICATE OF SERVICE

I hereby certify that on 14th day of July 2021, a copy of the foregoing Motion for Oral Argument was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's CM/ECF system.

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