UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Minnesota Right to Life and Minnesota Gun Rights, Plaintiffs, v. Faris Rashid, et al., Defendants.	Court File No.: 25-cv-02476 (NEB/DTS) **THE COUNTY ATTORNEYS' JOINT RESPONSE TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

INTRODUCTION

Ramsey County Attorney John Choi ("**Choi**"), Dakota County Attorney Kathryn M. Keena ("**Keena**"), and Hennepin County Attorney Mary Moriarty ("**Moriarty**") (collectively, "**the County Attorneys**") are not proper parties to this lawsuit. The suit was commenced by Minnesota Right to Life and Minnesota Gun Rights (collectively, "**Plaintiffs**"), challenging the constitutionality of Minnesota Statues Chapter 10A as allegedly violative of Plaintiffs' First Amendment right to free speech. Plaintiffs seek a preliminary injunction against all Defendants. Such early relief is to be granted only in extraordinary circumstances to preserve the status quo while the parties litigate the merits of the claims in the case. Plaintiffs presumably include the County Attorneys in their requested relief because Chapter 10A gives the

County Attorneys the ability to seek an injunction to enforce the challenged law.

But none of the County Attorneys—or any county attorney to the best of the County Attorneys' understanding—has enforced or threatened to enforce the challenged law against Plaintiffs or anyone else, and none has a present intention of doing so. Further, Plaintiffs offer no evidence of any allegedly unconstitutional *County* policies that were the "moving force" behind their alleged injury. Accordingly, Plaintiffs cannot prove a likelihood of success on the merits against the County Attorneys, the first and arguably most important factor courts consider when deciding whether to grant a motion for a preliminary injunction against a party.

Nor can Plaintiffs prove the second most important factor courts consider when deciding whether to grant a preliminary injunction: irreparable harm. The chance of the County Attorneys seeking an injunction against Plaintiffs to enforce Chapter 10A is simply too speculative for the Court to deem any risk of enforcement irreparable harm. The County Attorneys have never enforced the statute, they have no intention of enforcing it against Plaintiffs or anyone else, and there is no evidence of enforcement by any county attorney since the law was enacted more than a half-century ago.

The last two factors courts consider in deciding whether to issue a preliminary injunction do not favor a preliminary injunction against the

County Attorneys either. Plaintiffs have not demonstrated that the balance of harms favors issuing a preliminary injunction against the County Attorneys. The imbalance of power among the county attorneys across the state that would result from an injunction—Plaintiffs only named three of 87 county attorneys—is more harmful than any harm Plaintiffs might suffer. And though Plaintiffs did not even address the public interest, an injunction does not serve that interest when the movant has not made the appropriate showing of likelihood of success on the merits and irreparable harm.

For all of these reasons, the Court should deny Plaintiffs' motion for a preliminary injunction against the County Attorneys. The County Attorneys are simply not the proper parties to adjudicate whether Chapter 10A is constitutional and thus, are not the proper parties against whom the Court should issue an injunction.

STATEMENT OF FACTS

A. Minnesota Statutes Chapter 10A

Minnesota Statutes Chapter 10A governs political "lobbying" efforts in Minnesota.[1] The law requires lobbyists to file biannual reports with the Minnesota Campaign Finance and Public Disclosure Board ("**the Board**")[2]

[1] *See generally* Minn. Stat. § 10A.03, .04, .05, .06; Minn. R. 4511.0100, subp. 3.

[2] Minn. Stat. § 10A.04, subds. 1, 2; Minn. Stat § 10A.01, subd. 8 (defining "Board" as "the state Campaign Finance and Public Disclosure Board").

The reports must contain, among other information, the name and address of vendors the lobbyist paid for advertising.[3]

B. The plaintiffs, the present lawsuit, and the motion for a preliminary injunction

Plaintiffs are non-profit advocacy organizations that engage in political lobbying on "controversial" topics, namely, guns and abortion.[4] Plaintiffs' advocacy involves communicating with supporters, donors, and the public to urge them to take action about these topics, such as contacting their local public officials about supporting or opposing legislative proposals.[5] Plaintiffs' communication methods may include social media advertising, text messages, email, direct mail, and radio advertising.[6] Despite admitting that they expect "pushback" given their focus on "controversial" topics,"[7] Plaintiffs complain that Chapter 10A requires them to publicly disclose their vendors and as a result, their vendors have been subject to "harassment" and some have cut ties with Plaintiffs.[8]

---

[3] Minn. Stat. § 10A.04, subd. 6(d).

[4] (Doc. 9 at ¶¶ 3-4, 9.)

[5] (*Id.* at ¶¶ 3-5.)

[6] (*Id.* at ¶¶ 7-8.)

[7] (*Id.* at ¶ 9.)

[8] (*Id.* at ¶¶ 11-15.)

Because they do not wish to disclose information about their vendors, Plaintiffs have not filed the reports that were due on March 15, 2025, as required under Chapter 10A.[9] On April 1, 2025, each Plaintiff received a letter from the Board warning that the Board "may begin legal proceedings to compel the required filing and assessment of late filing fees and penalties."[10] Plaintiffs do not submit any evidence that the County Attorneys have communicated with them about their missing reports, or that the County Attorneys were involved with—or even had any knowledge of—the April 1 letters from the Board.

Plaintiffs' complaint challenges the constitutionality of Chapter 10A as violating their First Amendment rights to free speech.[11] Plaintiffs seek a "preliminary injunction to prevent Defendants from enforcing the unconstitutional disclosure law requiring Plaintiffs to identify the name and address of their vendors."[12] Plaintiffs' motion makes no argument relating

[9] (*Id.* at ¶ 20.)

[10] (Doc. 9 at ¶ 21, Ex. 1.)

[11] (Doc. 1 at ¶¶ 39-63.)

[12] (Doc. 8 at 3; *see* Doc. 1 at "Prayer for Relief" B.)

specifically to the County Attorneys.[13] Indeed, their motion papers do not even refer to the County Attorneys at all.

C. County attorneys' role in enforcing Chapter 10A

Chapter 10A provides county attorneys with some discretionary enforcement authority. The chapter provides that either the Board or a county attorney may seek an injunction to enforce the chapter.[14] The chapter also allows, but does not require, a county or city attorney to prosecute a violation of the chapter that may result in a criminal offense; however, such a matter must first be finally disposed of by the Board before a prosecution may begin.[15]

The complaint notes that under Minn. Stat. § 10A.025, subd. 2, signing and certifying a report required by Chapter 10A, with knowledge that the report "contains false information or omits required information," is a gross misdemeanor.[16] However, there is no evidence that Plaintiffs have signed or certified, or intend to sign and certify, a report that contains false information or omits required information; that the Board has addressed or threatened to

[13] (*See generally* Doc. 8.)

[14] Minn. Stat. § 10A.34, subd. 2.

[15] Minn. Stat. § 10A.022, subd. 7.

[16] (*See* Doc. 1 at ¶¶ 26, 44, 46.)

address such conduct by Plaintiffs; or that any County Attorney has threatened to criminally prosecute Plaintiffs for such conduct.

D. The County Attorneys' lack of enforcement of Chapter 10A against Plaintiffs or anyone else

Indeed, each County Attorney has filed a declaration stating that they "have never enforced or threatened to enforce," and "have no present intention of enforcing, or threatening to enforce," any provision of Chapter 10A against Plaintiffs or anyone else, whether through civil or criminal proceedings.[17]

ARGUMENT

I. The Court should deny Plaintiffs a preliminary injunction against the County Attorneys because Plaintiffs have not clearly shown that the factors the Court considers in deciding whether to issue preliminary injunctions favor issuing an injunction.

A preliminary injunction is an extraordinary equitable remedy that is never awarded as of right.[18]

> The default rule is that a plaintiff seeking a preliminary injunction must make a *clear showing* that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.[19]

---

[17] (Choi Decl., at ¶¶ 2-6; Keena Decl., at ¶¶ 2-6; Moriarty Decl., at ¶¶ 2-6.)

[18] *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (quotation omitted).

[19] *Id.* at 345-46 (quotation omitted) (emphasis added).

Plaintiffs do not meet the strict standards for this extraordinary relief.

First, Plaintiffs have not clearly shown that they are likely to succeed on the merits of their claims against the County Attorneys. Plaintiffs lack Article III standing to sue the County Attorneys because there is no credible threat that the County Attorneys will enforce Chapter 10A against them. Further, to the extent the County Attorneys would ever enforce Chapter 10A against anyone, the County Attorneys would do so on behalf of the state; as such, they are entitled to Eleventh Amendment immunity, and the *Ex parte Young* exception does not apply. Alternatively, to the extent the Court determines that the County Attorneys are county officials, rather than state officials, Plaintiffs fail to offer any evidence in support of a *Monell* claim for municipal liability.

Second, Plaintiffs have not clearly shown that they will suffer irreparable harm at the County Attorneys' hands, because there is no evidence that the County Attorneys would take any steps to enforce the statute, either civilly or criminally. None of the three County Attorneys has ever enforced or threatened to enforce Chapter 10A against anyone, including Plaintiffs. As such, the threat of enforcement by the County Attorneys is, at best, speculative, which is insufficient to establish irreparable harm.

Third and fourth, Plaintiffs cannot clearly show that the balance of harms or the public interest favors the injunction they request.

A. Plaintiffs have not clearly shown that they are likely to succeed on the merits against the County Attorneys.

"While no single factor is determinative [in deciding whether to issue a preliminary injunction], the probability of success factor is the most significant."[20] Making a clear showing of likelihood of success on the merits requires satisfying an evidentiary burden that is "much higher" than that required for summary judgment.[21] "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion."[22]

1. Plaintiffs lack Article III standing to sue the County Attorneys since there is no credible threat that the County Attorneys will act to enforce the statute.

Since "[f]ederal jurisdiction is limited by Article III, § 2, of the U.S. Constitution," "the plaintiff's standing to sue is the threshold question in every federal case."[23] Article III standing only exists if the plaintiff proves, among

---

[20] *Home Instead, Inc., v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) (citations and internal quotations omitted).

[21] *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam).

[22] *Id.* (emphasis in original).

[23] *Steger v. Franco, Inc.*, 228 F.3d 889, 892 (8th Cir. 2000) (citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975)) (internal quotations omitted).

other things, that they suffered "an injury-in-fact."[24] To establish an injury-in-fact, a plaintiff must plead, "at a minimum ... an intention to engage in a course of conduct … proscribed by a statute, and a credible threat of prosecution thereunder."[25] A "total lack of enforcement of a statute [in cases "approaching desuetude"] defeats a claim of a credible threat of prosecution."[26]

Here, Plaintiffs cannot clearly show that they suffered an injury-in-fact sufficient to confer Article III standing as to the County Attorneys, because the lack of enforcement during Chapter 10A's history by county attorneys approaches desuetude. County attorneys were authorized to file an injunction under Chapter 10A in 1974, when the law was first enacted.[27] Despite the law being on the books for more than a half-century, the County Attorneys have not located a single instance in which a county attorney sought an injunction

---

[24] *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

[25] *Jones v. Jegley*, 947 F.3d 1100, 1103 (8th Cir. 2020) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (internal quotation marks omitted)).

[26] *281 Care Committee v. Arneson*, 638 F.3d 621, 628 (8th Cir. 2011) ("*Care Committee I*") (citing *St. Paul Area Chamber of Commerce v. Gaertner*, 439 F.3d 481, 486 (8th Cir. 2006)); *see also Jones*, 947 F.3d at 1104 (recognizing that a plaintiff's fear of consequences and self-censorship are reasonable "as long as there is no 'evidence—via official policy or a long history of disuse—that authorities' have 'actually' refused to enforce [the] statute") (quoting *Care Committee I*, 638 F.3d at 628).

[27] 1974 Minn. Laws 1174-1175 (ch. 470, § 34).

to enforce Chapter 10A. Thus, the case is similar to *Poe v. Ullman*, where the U.S. Supreme Court found a lack of Article III standing due to a lack of enforcement for more than a half-decade.[28]

Even if there is a credible threat of enforcement by the Board, that is not a credible threat of enforcement by the County Attorneys. The Board and the County Attorneys are unaffiliated and have different rights and obligations under Chapter 10A. For example, the section of 10A providing for remedies empowers only the Board to bring a civil action to recover fees and penalties.[29] The same section also provides that the Board *or* a county attorney may seek an injunction to enforce the chapter.[30] In short, a credible threat by one is not a credible threat by the other.

Plaintiffs do not argue that they fear criminal prosecution by the County Attorneys under Minn. Stat. § 10A.025, subd. 2's prohibition against false statements. But even if they did make this argument, it would fail. First, Plaintiffs do not claim that they plan to sign and certify a report required by Chapter 10A with knowledge that the report "contains false information or omits required information," and no evidence in the record would support such

[28] *Poe v. Ullman*, 367 U.S. 497, 501-02 (1961).

[29] Minn. Stat. § 10A.34, subd. 1a, 4.

[30] Minn. Stat. § 10A.34, subd. 2.

a claim. As such, Plaintiffs do not clearly show "an intention to engage in a course of conduct … proscribed by a statute," which is required for them to have standing on their claims against the County Attorneys.[31]

Second, there is no evidence that the County Attorneys plan to criminally prosecute Plaintiffs, have threatened to criminally prosecute Plaintiffs, or have ever criminally prosecuted anyone under Chapter 10A. To the contrary, the County Attorneys have testified that they have no present intention of prosecuting Plaintiffs under Chapter 10A.[32] Further, even if the County Attorneys wanted to prosecute Plaintiffs, the Board would first have to "finally dispose of the matter," and there is no evidence that the Board has taken any action with respect to an alleged violation of Minn. Stat. § 10A.025, subd. 2 by Plaintiffs. Accordingly, Plaintiffs do not clearly show a credible threat of criminal prosecution by the County Attorneys as required for standing to sue them.

---

[31] *See Jones*, 947 F.3d at 1103.

[32] (Choi Decl., at ¶ 6; Keena Decl., at ¶ 6; Moriarty Decl., at ¶ 6.) Further, as a general matter, the County Attorneys do not prosecute gross misdemeanors unless the defendant is also charged with a felony arising out of the same incident or some other special circumstance applies. *See* Minn. Stat. § 388.051, subds. 1 and 2.

2. The County Attorneys are entitled to Eleventh Amendment immunity, and no exception to immunity applies.

"Generally, States are immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity."[33] Because an official capacity suit against a state official is really a suit against the state, a state official sued in their official capacity is usually entitled to immunity under the Eleventh Amendment.[34] The *Ex parte Young* exception to Eleventh Amendment immunity, however, permits certain suits against state officers for prospective declaratory and injunctive relief.[35] That exception applies to "officers of the state, [who] are clothed with some duty in regard to the enforcement of the laws of the state" when such officers "threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act."[36] Conversely, the exception

[33] *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021).

[34] *See, e.g.*, *Hummel v. Minn. Dep't of Agric.*, 430 F. Supp. 3d 581, 587 (D. Minn. 2020).

[35] *Id.*

[36] *Ex parte Young*, 209 U.S. 123, 155-56 (1908); *see also 281 Care Committee v. Arneson*, 766 F.3d 774, 797 (8th Cir. 2014) ("*Care Committee II*").

does not apply "when the defendant official has neither enforced nor threatened to enforce the statute challenged as unconstitutional."[37]

Here, the County Attorneys are state officials entitled to Eleventh Amendment immunity, and the *Ex parte Young* exception does not apply.

First, the County Attorneys are state officials when they enforce Chapter 10A, whether criminally or civilly. Courts in this District have recognized that a county attorney is acting on behalf of the state, rather than the county, when they enforce the state's criminal statutes.[38] So, to the extent Plaintiffs sue the County Attorneys based on the County Attorneys' ability to criminally prosecute violations of Chapter 10A, the County Attorneys are state officials entitled to Eleventh Amendment immunity.[39]

To the extent Plaintiffs have sued the County Attorneys based on the County Attorneys' ability to seek an injunction to enforce Chapter 10A, the

---

[37] *Care Committee II*, 766 F.3d at 797 (citation omitted).

[38] *St. James v. City of Minneapolis*, Civ. No. 05-2348, 2006 WL 2591016, at *3-5 (D. Minn. June 13, 2006) (applying framework from *McMillian v. Monroe County*, 520 U.S. 781, 783, 785-86 (1997) and examining Minnesota law); *Minn. RFL Repub. Farmer Labor Caucus v. Freeman*, Civ. No. 19-1949, 2020 WL 1333154, at *3 (D. Minn. Mar. 23, 2020) (citation omitted); *see also Minn. RFL Repub. Farmer Labor Caucus v. Freeman*, 33 F. 4th 985, 991-92 (8th Cir. 2022) ("*RFL*") (treating county attorneys as state officials); *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325-26 (5th Cir. 2024) (treating Texas district attorney as state official).

[39] *See St. James*, 2006 WL 2591016, at *3-5; *Minn. RFL*, 2020 WL 1333154, at *3.

County Attorneys are still state officials, even though an injunction is a civil enforcement mechanism. To start, filing a civil action to seek an injunction to enforce Chapter 10A is similar to filing a criminal case to enforce Chapter 10A; both are court actions to enforce the same state statute so that the Board—a state entity—can perform its duties, including enforcement of the statute.[40] Both are unlike administrative and managerial actions taken by a county attorney, which may be considered actions taken on behalf of the county.[41] In addition, Minn. Stat. § 10A.34, subd. 2 provides that "a county attorney" may seek an injunction. If the Legislature had wanted to give the power to seek an injunction to a county—which is a legal entity that can sue and be sued[42]—it could have provided that a "county" may seek an injunction. The Legislature's

---

[40] *See* Minn. Stat. § 10A.022. Courts have held that local law enforcement officials act on behalf of the state when civilly enforcing state law. *See, e.g. Ward v. Cooper*, Civ. No. 23-6167, 2024 WL 819564, at *2 (N.D. Cal. Feb. 27, 2024) (sheriff acts on behalf of the state when serving writs under state law); *Bernard v. Ignelzi*, Civ. No. 23-1463, 2024 WL 4242364, at *5-6 (W.D. Pa. Sept. 19, 2024) (sheriff acts on behalf of the state when serving and enforcing civil contempt orders); *Alencastro v. Sheahan*, 698 N.E.2d 1095, 1099 (Ill. Ct. App. 1998) (sheriff acts on behalf of the state when executing court orders for possession of real property).

[41] *See Myers v. Cnty. of Orange*, 157 F.3d 66, 77 (2d Cir. 1998) (prosecutor acts on behalf of the state when making individual prosecutorial decisions, but acts on behalf of the county when making decisions related to management of their own office); *Del Campo v. Kennedy*, 491 F. Supp. 2d 891, 898-99 (N.D. Cal. 2006) (prosecutor acts on behalf of the county when administering county diversion program).

[42] Minn. Stat. § 373.01, subd. 1(a)(1).

decision not to do that suggests that the county attorney is acting on behalf of the state, not the county, when they seek an injunction.

Second, the *Ex parte Young* exception to Eleventh Amendment immunity does not apply here because the County Attorneys have not "threatened and are [not] about to commence proceedings" to enforce Chapter 10A against Plaintiffs.[43] To the contrary, the County Attorneys have testified that they (1) have never enforced, or threatened to enforce, Chapter 10A against anyone, including Plaintiffs;[44] (2) have never sought an injunction, or threatened to seek an injunction, against anyone, including Plaintiffs, under Minn. Stat. § 10A.34, subd. 2;[45] (3) have never criminally prosecuted anyone, including Plaintiffs, for an alleged violation of Minn. Stat. § 10A.025, subd. 2;[46] and (4) have no present intention of commencing enforcement proceedings under Chapter 10A against anyone, including Plaintiffs.[47] Plaintiffs have not—and cannot—present any evidence to the contrary.

---

[43] *See Ex parte Young*, 209 U.S. at 155-56; *Care Committee II*, 766 F.3d at 797.

[44] (Choi Decl., at ¶ 2; Keena Decl., at ¶ 2; Moriarty Decl., at ¶ 2.)

[45] (Choi Decl., at ¶ 3; Keena Decl., at ¶ 3; Moriarty Decl., at ¶ 3.)

[46] (Choi Decl., at ¶ 4; Keena Decl., at ¶ 4; Moriarty Decl., at ¶ 4.)

[47] (Choi Decl., at ¶ 6; Keena Decl., at ¶ 6; Moriarty Decl., at ¶ 6.)

The Eighth Circuit's recent decision in *RFL* is controlling.[48] There, the plaintiffs were "political candidates, political associations, and individuals who engage in political activities."[49] They brought a lawsuit challenging a provision of the Minnesota Fair Campaign Practices Act as being violative of their First Amendment right to free speech.[50] The plaintiffs sued "four Minnesota county attorneys with authority to criminally prosecute violations of [the challenged statute]."[51] The plaintiffs moved for a preliminary injunction to enjoin the county attorneys from enforcing the challenged statute.[52]

In opposition to the preliminary injunction motion, the county attorneys argued they were immune from liability under the Eleventh Amendment and that the *Ex parte Young* exception did not apply because there was no evidence that they threatened and were about to commence proceedings to enforce the

---

[48] *RFL*, 33 F.4th 985.

[49] *Id.* at 987.

[50] *Id.*; *see also Care Committee II*, 766 F.3d at 796-97 (holding, in a First Amendment pre-enforcement challenge to a state statute, that the *Ex parte Young* exception did not deprive the Minnesota Attorney General of Eleventh Amendment immunity where the Attorney General filed an affidavit stating that her office had never initiated a prosecution under the challenged statute and had no intention of prosecuting the plaintiffs' activities under the statute).

[51] *RFL*, 33 F.4th at 987.

[52] *Id.* at 988.

challenged law.[53] As evidence, the county attorneys filed declarations nearly identical to those the County Attorneys have filed here, testifying that "they never have initiated civil or criminal proceedings for violations of [the challenged statute], that they are 'not currently investigating' any such violations, and that they have 'no present intention' to commence proceedings."[54] The Eighth Circuit found the county attorneys' declarations defeated any argument that the *Ex parte Young* exception applied:

> The *Ex parte Young* doctrine does not apply when the defendant official has *neither enforced nor threatened to enforce* the statute challenged as unconstitutional. Here, the county officials' affidavits all show that they have not enforced or threatened to enforce [the challenged statute]. Therefore, the *Ex parte Young* exception to Eleventh [Amendment] Immunity is inapplicable.[55]

This case is nearly identical to *RFL*. As in *RFL*, Plaintiffs are political activists claiming a state statute violates their First Amendment right to free speech. As in *RFL*, Plaintiffs named certain county attorneys because the law in question vested in them the authority to enforce the law. And as in *RFL*, the County Attorneys filed declarations evidencing that the County Attorneys

---

[53] *Id.*

[54] *Id.* (quoting the county attorney declarations).

[55] *Id.* at 992 (citations and internal quotation marks omitted) (emphasis in original).

have neither enforced nor threatened to enforce Chapter 10A against Plaintiffs.

In sum, the County Attorneys are state actors and as such, are entitled to immunity from suit under the Eleventh Amendment. No exceptions, including *Ex parte Young*, apply, so Plaintiffs cannot clearly show that they are likely to succeed on the merits against the County Attorneys.

3. If the Court determines that the County Attorneys are county officials, rather than state officials, no evidence of an unconstitutional *County* policy supports a claim for *Monell* liability.

Alternately, if the Court finds that the County Attorneys are not state officials, then Plaintiffs' claims against the County Attorneys still fail under *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978). This is because Plaintiffs offer no evidence of allegedly unconstitutional *County* policies that were the "moving force" behind their injury, as is required.

Both counts of Plaintiffs' complaint allege claims under 42 U.S.C. § 1983.[56] Plaintiffs assert their § 1983 claims against the County Attorneys in their official capacities only.[57] Official-capacity suits are "'only another way of

[56] (Doc. 1 at ¶¶ 17, 20.)

[57] (*Id.* at 1, ¶¶ 13-15.)

pleading an action against an entity'" that employs an officer.[58] Here, those entities are the Counties.[59]

"[A] municipality cannot be held liable solely because it employs a tortfeasor."[60] Rather, to prevail on their official-capacity claims against the County Attorneys, Plaintiffs must show that the Counties "caused the constitutional violation at issue."[61] Thus, courts must first determine "whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation."[62]

To prove the existence of a policy, plaintiffs must point to "an official policy, a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters."[63] Further,

---

[58] *E.g.*, *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (*quoting Monell*, 436 U.S. at 690 n.55).

[59] *See* Minn. Stat. §§ 382.01 (designating the county attorney as a county "officer"); 388.051, subd. 1 (enumerating duties that each county attorney owes his or her county and its staff as chief legal officer).

[60] *Monell*, 436 U.S. at 691.

[61] *Elder-Keep v. Aksamit*, 460 F.3d 979, 986 (8th Cir. 2006) (quotation omitted).

[62] *City of Canton v. Harris*, 489 U.S. 378, 385 (1989).

[63] *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999); *see also City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) ("[O]nly those with final policymaking authority may by their actions subject a government to § 1983 liability") (internal quotation marks omitted).

Plaintiffs must "demonstrate that the policy itself is unconstitutional"[64] and that the policy is the "moving force" behind the violation of their constitutional rights.[65]

Thus, to show that they are likely to succeed on their claims against the County Attorneys, Plaintiffs must submit evidence that: (1) each County has an unconstitutional policy; (2) which is the "moving force" behind the alleged violation of their First Amendment free speech rights. They have not—and cannot—make this showing.

a. The County Attorneys' statutory authority to enforce Chapter 10A is not a municipal policy for *Monell* purposes and Plaintiffs do not allege the existence of a municipal policy to enforce Chapter 10A in an unconstitutional manner.

Plaintiffs seek to impose § 1983 liability on the County Attorneys because state law gives them authority to enforce Chapter 10A, which Plaintiffs claim is unconstitutional. The Supreme Court and the Eighth Circuit have yet to decide whether municipalities like the Counties can be

[64] *Szabla v. City of Brooklyn Park*, 486 F.3d 385, 395 (8th Cir. 2007) (citations omitted).

[65] *Mettler*, 165 F.3d at 1204 (quoting *Monell*, 436 U.S. at 694).

liable under *Monell* based solely on an employee's act of enforcing (let alone merely having the ability to enforce) an allegedly unconstitutional state law.[66]

Two views of the issue have emerged at the Circuit level. Each demonstrates that the County Attorneys' authority to enforce Chapter 10A is, without more, not a municipal policy for *Monell* purposes.

Some circuits—namely, the Fourth, Fifth, Seventh and Tenth Circuits—find that enforcing state law is not a municipal policy under *Monell*.[67] As the Seventh Circuit explained, for example:

> When the municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury. Apart from this rather formalistic point, our position has the virtue of minimizing the occasions on which federal constitutional law, enforced through section 1983, puts local government at war with state government.[68]

---

[66] *Minn. RFL*, 2020 WL 1333154, at *2 (citing *Slaven v. Engstrom*, 710 F.3d 772, 781 n.4 (8th Cir. 2013) ("Whether, and if so when, a municipality may be liable under § 1983 for its enforcement of a state law has been the subject of extensive debate in the circuits.") and *Vives v. City of New York*, 524 F.3d 346, 351-53 (2d Cir. 2008) (collecting and analyzing cases)).

[67] *See, e.g.*, *Whitesel v. Sengenberger*, 222 F.3d 861, 872 (10th Cir. 2000); *Bockes v. Fields*, 999 F.2d 788, 791 (4th Cir. 1993); *Surplus Store & Exchange, Inc. v. City of Delphi*, 928 F.2d 788, 791-92 (7th Cir. 1991); *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980).

[68] *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998).

These decisions hold that enforcing state law is not a municipal policy for *Monell* purposes, even when enforcement is discretionary.

Other circuits—the Second, Sixth, Ninth, and Eleventh Circuits—say that a municipality's choice to enforce a state statute may satisfy *Monell*.[69] For example, in *Vives*, the Second Circuit held that a municipality may trigger liability under *Monell* if it "decides to enforce a statute that it is authorized, but not required, to enforce" and if the enforcement decision was "focused on the particular statute in question" as opposed to a decision simply to enforce all state statutes.[70] Notably, though, in each of these cases, the relevant "policymaker was alleged to have gone beyond merely enforcing the state statute."[71]

Regardless of which position the Eighth Circuit might choose to adopt, Plaintiffs' claims against the County Attorneys fail. This is because Plaintiffs do not allege that any of the County Attorneys has adopted an unconstitutional policy regarding enforcement of Chapter 10A or has applied the statute unconstitutionally in prosecuting violators. Indeed, Plaintiffs have not

---

[69] *Vives*, 524 F.3d at 351-53; *Cooper v. Dillon*, 403 F.3d 1208, 1221-23 (11th Cir. 2005); *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364-65 (6th Cir. 1993); *Evers v. Custer Cnty.*, 745 F.2d 1196, 1203-04 (9th Cir. 1984).

[70] 524 F.3d at 353.

[71] *Id.* at 351.

identified any policy whatsoever of any of the Counties. Absent an alleged unconstitutional policy, Plaintiffs cannot clearly show that they are likely to succeed on their claims against the County Attorneys under *Monell*.[72]

b. Plaintiffs' alleged harm is not caused by a municipal policy.

Having not even identified any relevant policy of the Counties at all, Plaintiffs' claims against the County Attorneys are also not likely to succeed under *Monell* because Plaintiffs cannot establish that any policy of the Counties is the moving force behind the harm they claim they will suffer.

As noted above, to have a successful claim under *Monell*, Plaintiffs must clearly show that an unconstitutional policy was the "moving force" underlying

[72] *See Calhoun v. Washington Cnty. Cmty. Servs. Child Support Unit*, Civ. No. 18-1881, 2019 WL 2079834, at *5 (D. Minn. Apr. 23, 2019) (provisionally dismissing Fourteenth Amendment claim where alleged violation of plaintiffs' due process rights was caused by a State agency's edict rather than a Washington County policy), *adopted by* 2019 WL 2075870 (D. Minn. May 10, 2019); *Udoh v. Minn. Dep't of Human Servs.*, Civ. No. 16-3119, 2017 WL 9249426, at *7 (D. Minn. July 26, 2017) (dismissing *Monell* claim challenging constitutionality of state law, where plaintiffs failed to allege a municipal policy that violated their due process rights), *adopted by* 2017 WL 4005606 (D. Minn. Sept. 12, 2017), *aff'd* 735 Fed. App'x. 906 (8th Cir. 2018) (per curiam memorandum); *Mitchell v. Atkins*, 387 F. Supp. 3d 1193, 1202 (W.D. Wash. 2019) (finding no *Monell* policy where state law delegated enforcement discretion to local entities but plaintiffs did not allege that local officials exercised such discretion); *see also, e.g.*, *Ulrich v. Pope Cnty.*, 715 F.3d 1054, 1061 (8th Cir. 2013) (affirming dismissal of *Monell* claim where plaintiff "alleged no facts in his complaint that would demonstrate the existence of a policy or custom" that caused a constitutional deprivation).

Plaintiffs' alleged injury.[73] Plaintiffs' only alleged injury here is that Chapter 10A's vendor disclosure requirements violate their constitutional rights, meaning that Plaintiffs claim that the statute itself is the sole cause of their threatened constitutional injury.[74] While the Attorney General will brief this Court on why the challenged statute is constitutional, a position with which the County Attorneys agree, Plaintiffs ultimately fail to allege that any county policy is the source of any harm. Thus, their official-capacity claims against the County Attorneys fail for want of "moving force" causation.

[73] *Mettler*, 165 F.3d at 1204 (quoting *Monell*, 436 U.S. at 694).

[74] *See, e.g.*, *Calhoun*, 2019 WL 2079834, at *5 (finding that "any alleged violation of Plaintiff's due process rights … was the result of action undertaken by an entity separate and distinct from Washington County"); *Snyder v. King*, 745 F.3d 242, 247 (7th Cir. 2014) ("To say that [a] direct causal link exists when the only local government 'policy' at issue is general compliance with the dictates of state law is a bridge too far; under those circumstances, the state law is the proximate cause of the plaintiff's injury.") (citations omitted); *N.N. ex rel. S.S. v. Madison Metro. Sch. Dist.*, 670 F. Supp. 2d 927, 941 (W.D. Wis. 2009) (noting that when a plaintiff cannot "point to a separate policy choice made by the municipality … it is the policy contained in [the challenged] law rather than anything devised or adopted by the municipality, that is responsible for the injury.") (quotations and citation omitted).

B. Plaintiffs have not clearly shown that they are likely to suffer irreparable harm if this Court does not issue a preliminary injunction against the County Attorneys

The keystone of any successful motion for injunctive relief "has always been irreparable harm and inadequacy of legal remedies."[75] This issue is so central to a motion for injunctive relief that "[f]ailure to show irreparable harm is an independently sufficient ground upon which to deny a preliminary injunction."[76] Put another way, "[o]nce a court determines that the movant has failed to show irreparable harm absent an injunction, the inquiry is finished and the denial of the injunctive request is warranted."[77]

To succeed on their motion against the County Attorneys, Plaintiffs must clearly show that any irreparable harm they would suffer absent an injunction will be actual and immediate.[78] "Possible or speculative harm is not

---

[75] *Bandag, Inc. v. Jack's Tire & Oil, Inc.*, 190 F.3d 924, 926 (8th Cir. 1999) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-07 (1959)).

[76] *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (citing *Adam-Mellang v. Apartment Search, Inc.*, 96 F.3d 297, 299 (8th Cir.1996); *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir. 1987)).

[77] *Gelco Corp.*, 811 F.2d at 420.

[78] *See Starbucks,* 602 U.S. at 346; *Berkley Risk Adm'rs Co. v. Accident Fund Holdings, Inc.*, No. 16-CV-2671, 2016 WL 4472943, at *4 (D. Minn. Aug. 24, 2016); *see also Mainstream Fashions Franchising, Inc. v. All These Things, LLC*, 453 F. Supp. 3d 1167, 1200 (D. Minn. 2020).

sufficient."[79] Plaintiffs themselves admit that any irreparable harm must be "certain."[80]

Plaintiffs have not even argued that they will suffer irreparable harm at the hands of the County Attorneys,[81] and indeed, there is no evidence of any such harm. As discussed above, the threat that the County Attorneys would take any enforcement action is entirely speculative. Not one of the three County Attorneys has ever threatened to enforce Chapter 10A against anyone, including Plaintiffs. Not one of the three County Attorneys is currently investigating anyone, including Plaintiffs, for allegedly violating Chapter 10A. And not one of the three County Attorneys is about to commence any proceedings, either of a civil or criminal nature, to enforce Chapter 10A against anyone, including Plaintiffs. Thus, any harm that Plaintiffs may suffer at the hands of the County Attorneys is anything but "certain."

---

[79] *Anytime Fitness, Inc. v. Family Fitness of Royal, LLC*, Civ. No. 09-3503, 2010 WL 145259, at *2 (D. Minn. Jan. 8, 2010).

[80] (Doc. 8 at 19 (citing *Dakotans for Health v. Noem*, 52 F.4th 381, 392 (8th Cir. 2022).)

[81] (Doc. 8 at 20 (making Plaintiffs' argument for irreparable harm, citing only actions by the Board: "the Board made clear it intends to enforce the law against Plaintiffs by sending letters to Plaintiffs threatening civil penalties and other consequences").)

C. Plaintiffs have not clearly shown that the balance of harms favors granting a preliminary injunction

A preliminary injunction would harm the County Attorneys by creating court-ordered infringement on the discretionary authority granted to them by the legislature.[82] An injunction would put the County Attorneys in a position where they would not hold the same discretionary authority as other elected officials in the exact same office, creating an imbalance of power among the county attorneys in the state. Therefore, the balance of harms weighs in favor of denying Plaintiffs' requested relief.

D. Plaintiffs have not clearly shown that the public interest favors granting a preliminary injunction

Even though Plaintiffs did not address this factor, an injunction does not serve the public interest when the movant has not made the appropriate showing of likelihood of success on the merits and irreparable harm.[83] As discussed above, Plaintiffs have made no such showing against the County Attorneys, so the public interest does not warrant granting a preliminary injunction against them.

---

[82] *See Labnet Inc. v. U.S. Dep't of Labor*, 197 F. Supp. 3d 1159, 1176 (D. Minn. 2016) (recognizing harm in enjoining enforcement power).

[83] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23-24 (2008).

CONCLUSION

For the reasons set forth above, the County Attorneys respectfully request the Court deny Plaintiffs' motion for a preliminary injunction against the County Attorneys.

Dated: July 18, 2025

KATHRYN M. KEENA
DAKOTA COUNTY ATTORNEY

By:/s/ *William M. Topka*
William M. Topka (#0339003)
Assistant County Attorney
1560 Highway 55
Hastings, Minnesota 55033
(651) 438-4438
william.topka@co.dakota.mn.us

Attorneys for Kathryn M. Keena

Dated: July 18, 2025

JOHN CHOI
RAMSEY COUNTY ATTORNEY

By: /s *Brett Bacon*
Brett Bacon (MN #0400776)
Assistant Ramsey County Attorney
360 Wabasha St. N., Suite 100
Saint Paul, MN 55102
(651) 266-3211
brett.bacon@co.ramsey.mn.us

Counsel for Ramsey County Attorney John Choi

MARY F. MORIARTY
HENNEPIN COUNTY ATTORNEY

Dated: July 18, 2025

By: *s/ Christiana M. Martenson*

Kelly K. Pierce (0340716)
Christiana M. Martenson (0395513)
Assistant Hennepin County Attorneys
1300A Government Center
300 South Sixth Street
Minneapolis, MN 55487
Telephone: (612) 348-5506
Kelly.Pierce@hennepin.us
Christiana.Martenson@hennepin.us

Attorneys for Hennepin County Attorney Mary F. Moriarty

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Minnesota Right to Life and Minnesota Gun Rights,

Plaintiffs,

v.

Faris Rashid, et al.,

Defendants.

Court File No.: 25-cv-02476 (NEB/DTS)

CERTIFICATE OF COMPLIANCE

I, Christiana M. Martenson, certify that the Memorandum titled: The County Attorneys' Joint Response to Plaintiffs' Motion for a Preliminary Injunction complies with Local Rule 7.1(f).

I further certify that, in preparation of this memorandum, I used Microsoft Word for Office 365 and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count, using font size 13.

I further certify that the above document contains the following number of words: 6,317.

MARY F. MORIARTY
HENNEPIN COUNTY ATTORNEY

Dated: July 18, 2025

By: *s/ Christiana M. Martenson*

Kelly K. Pierce (0340716)
Christiana M. Martenson (0395513)
Assistant Hennepin County Attorneys
1300A Government Center
300 South Sixth Street
Minneapolis, MN 55487
Telephone: (612) 348-5506
Kelly.Pierce@hennepin.us
Christiana.Martenson@hennepin.us

Attorneys for Hennepin County Attorney Mary F. Moriarty