

<p>STATE OF MINNESOTA</p> <p>COUNTY OF HENNEPIN</p> <p>Douglas Benson, Duane Gajewski, Jessica Dykhuis, Lindzi Campbell, Sean Campbell, Thomas Trisko and John Rittman, Plaintiffs,</p> <p>v.</p> <p>Jill Alverson, in her official capacity as the Hennepin County Local Registrar and State of Minnesota</p> <p>Defendants.</p>	<p>DISTRICT COURT</p> <p>FOURTH JUDICIAL DISTRICT</p> <p>Court File No. 27 CV 10 11697</p> <p>Case Type: Other Civil</p> <p>PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO THE STATE AND COUNTY'S MOTIONS TO DISMISS</p>
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INTRODUCTION

In this lawsuit, the Plaintiffs challenge the constitutionality of the State’s marriage laws and the constitutionality of the State’s Defense of Marriage Act (“DOMA”). Plaintiffs also seek an adjudication of their constitutional rights under the Minnesota Constitution. The named Defendants are Jill Alverson, in her official capacity as the Hennepin County Local Registrar, and the State of Minnesota.

Defendants Alverson and State move to dismiss. Defendant Alverson and the State argue that they are not proper parties to this lawsuit. They move for dismissal under Minnesota Rule of Procedure 12.02(e), arguing the Plaintiffs fail to state a claim upon which relief can be granted. Defendants Alverson and State of Minnesota are parties necessary to the resolution of Plaintiffs’ claims. The Plaintiffs state claims for which the court may grant declaratory, equitable, injunctive, and mandamus relief under state law. The Court should deny the Defendants’ motions entirely.

ARGUMENT

Plaintiffs seek declaratory and injunctive relief pursuant to Minnesota's Uniform Declaratory Judgments Act, Minn. Stat. § 555.01, *et seq.* Specifically, Plaintiffs seek a judgment declaring that Minnesota's marriage statutes contained in Minnesota Statutes, Chapter 517 are unconstitutional, declaring that Minnesota's DOMA is unconstitutional, declaring that all Minnesota statutes referring to husband and wife be interpreted in a gender-neutral manner, enjoining the County Registrar to stop refusing to grant marriage licenses to otherwise qualified same-sex couples, and issuing a Writ of Mandamus ordering the County Registrar to issue a valid marriage license to the Plaintiffs. (Compl. 17-18.)

The purpose of Minnesota's Uniform Declaratory Judgments Act is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Minn. Stat. § 555.12. "Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." Minn. Stat. § 555.02. Plaintiffs seek an adjudication of their constitutional rights and legal recognition of their relationships. Plaintiffs have therefore properly requested declaratory and injunctive relief pursuant to Minnesota's Uniform Declaratory Judgments Act.

Defendant Alverson and the State of Minnesota seek dismissal from this lawsuit. However, both defendants enforce laws that deny Plaintiffs their state constitutional rights. If the Plaintiffs prevail, the court's ruling will affect the interests, duties and obligations of County Registrar Alverson and the State of Minnesota. Thus, the Plaintiffs properly name Defendant Alverson and the State of Minnesota as defendants in this lawsuit.

Defendant Alverson and the State of Minnesota also request that this lawsuit be dismissed on its merits because existing Minnesota precedent resolves the Plaintiffs' claims. Specifically, the Defendants cite *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971) in which the Minnesota Supreme Court interprets Minnesota's then-existing marriage laws to prohibit marriage by two persons of the same sex, without violation of the United States Constitution. In this lawsuit, however, the Plaintiffs seek an adjudication of their constitutional rights under the *Minnesota* constitution. *Baker* does not address the Minnesota Constitution. *Baker* does not address Minnesota's Defense of Marriage Act of 1997 because the law does not yet exist. Plaintiffs present questions of first impression to the district court of Minnesota. Accordingly, Plaintiffs have stated claims for which this court may grant declaratory, equitable, and mandamus relief.

I. Defendant Alverson, In Her Official Capacity As The Hennepin County Local Registrar, Is A Proper Defendant In This Lawsuit Because Her Interests Would Be Affected If The Plaintiffs Prevail

Under the Minnesota Declaratory Judgments Act, Plaintiffs must join as parties "all parties who have or claim any interest which would be affected by the declaration." Minn. Stat. § 555.11. As the Hennepin County Local Registrar, Defendant Alverson issues marriage licenses to couples who meet the legal requirements to marry. Minn. Stat. § 517.07. After she issues marriage licenses, Defendant Alverson must then record them in the county marriage records and report data from the marriage licenses to the State Registrar. Minn. Stat. §§ 517.10 and 144.223. These are ministerial duties.

Defendant Alverson has an interest in performing her duties in compliance with the law. If the Plaintiffs prevail in this marriage equality lawsuit, the Court will require Defendant

Alverson to comply with its judgment. The desired relief will be injunction against continued refusal to stop refusing to grant marriage licenses to otherwise qualified same-sex couples and a writ of mandamus ordering the issue of valid marriage licenses to the respective adult Plaintiffs. This will work a change County Registrar Alverson's ministerial duties under the law. She has an interest in the outcome of this case, specifically, the definition of her ministerial duties under the law. Plaintiffs correctly name Jill Alverson, the Hennepin County Registrar in her *official capacity*, as a party in compliance with Minn. Stat. § 555.11.

Ms. Alverson (i.e., Hennepin County) argues for dismissal because her role in issuing marriage licenses is purely ministerial. She cites a number of cases that discuss whether ministerial government employees may challenge the constitutionality of state statutes. She cites *State v. Steele County Bd. of Comm'rs*, 232 N.W. 737, 738 (Minn. 1930). *Steele County* simply holds that that government officials performing ministerial duties must perform their duties, regardless of whether the officials believe the law requiring them to do so is unconstitutional. Defendant Alverson also cites *Mower County Board of Comm'rs v. Board of Trustees of PERA*, 136 N.W.2d 671, 676 (Minn. 1965), which holds that a public official compelled by a law to perform a ministerial duty had no standing to challenge the constitutionality of that law. Finally, Defendant Alverson cites *Lockyer v. City and County of San Francisco*, 95 P.3d 459, 475 (Cal. 2004), which holds that a "local executive official, charged with a ministerial duty, generally lacks authority to determine that a statute is unconstitutional and on that basis refuse to apply the statute."

None of these cases, however, addresses the issue of whether one may sue a government employee under the Minnesota Uniform Declaratory Judgments Act for performing ministerial duties. The Plaintiffs do not argue that the County Registrar possesses authority under

Minnesota law to decline to perform her ministerial duties. They do not argue the presence or absence of standing for the County Registrar to challenge the constitutionality of Minnesota's marriage laws. The County Registrar misplaces reliance on these cases.

No case law prevents suit against a government official in her or his official capacity for ministerial acts. On the contrary, there are many cases in which government employees have been sued for performing their ministerial duties.

For example, in *Paquin v. Mack*, 788 N.W.2d 899, 902 (Minn. 2010), the Beltrami County Auditor rejects 166 signatures from the plaintiff's nominating petition, leaving him 157 signatures short of the 500 necessary for a valid petition. The plaintiff sues the Beltrami County Auditor to compel her to accept his petition. *Id.* at 902. Minn. Stat. § 204B.07, subd. 4 states that every person who signs a nominating petition must list his residential address. Minn. Stat. § 204B.10, subd. 3 states that the county auditor is required "to verify that there are a sufficient number of signatures of individuals whose residence address as shown on the petition is in the district where the candidate is to be nominated." The 166 signatures the Beltrami County Auditor rejects contain post office box numbers instead of residential addresses. *Paquin*, 788 N.W.2d at 903. In rejecting these signatures, the Beltrami County Auditor exercises no discretion and performed a mere ministerial duty in accordance with the law. The performance of the auditor's ministerial duty, however, provides the basis of the plaintiff's lawsuit.

In *Smith v. Mary Kiffmeyer and Jill Alverson*, 721 N.W.2d 912, 914 (Minn. 2006), the plaintiff, also a candidate for public office, sues the Hennepin County Auditor when she refuses to accept his affidavit of candidacy for failure to file the affidavit before the close of filing. According to Minn. Stat. § 204B.09, subd. 1(c), "No affidavit or petition shall be accepted later than 5:00 p.m. on the last day for filing." By refusing the plaintiff's late affidavit, the Hennepin

County Auditor is not exercising her discretion. Rather, she is merely performing a ministerial duty in accordance with the law. The performance of the auditor's ministerial duty, however, provides the basis of the plaintiff's lawsuit.

A final example of a case in which a government official can be sued for performing a ministerial duty is, ironically, a case that Defendant Alverson cites extensively. In *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), the plaintiffs, two men, sue the Hennepin County District Court Clerk on his refusal to issue them a marriage license. In refusing to issue the plaintiffs a marriage license, the Hennepin County District Court Clerk exercises no discretion. Rather, he merely acts in accordance with Minnesota law, which permits marriages only between a husband and wife. *Id.* at 186. The performance of the clerk's ministerial duty provides the basis of the plaintiffs' lawsuit.

These cases, and many others, demonstrate that one may sue a government employee in her official capacity on account of her performance of ministerial duties. No authority suggests otherwise. The County Registrar's argument for dismissal on the grounds of "mere performance of ministerial duties" has no merit. Because the outcome the plaintiffs desire will modify the County Registrar's ministerial duties under the law, County Registrar Jill Alverson, in her official capacity is a proper party to this lawsuit. Accordingly, the Court should deny her Motion to Dismiss her as a party to this lawsuit.

II. The State Of Minnesota Is A Proper Defendant In This Lawsuit

The State of Minnesota argues that it is not a proper defendant in this lawsuit. The State obfuscates its role in this lawsuit. The State alone has "the power to create and enforce a legal code." *Diamond v. Charles*, 476 U.S. 54, 65 (1986). Because only the State can create a legal code, only the State can defend "the standards embodied in that code." *Id.* The Attorney

General, as counsel for the State, may appear on behalf of the State when “the interests of the state require it.” Minn. Stat. § 8.01. The State clearly has an interest in determining whether its marriage laws are constitutional. Therefore, “[o]nly the State, or some agency thereof, is the proper party to defend the DOMA’s constitutionality. (Judge DuFresne’s Order Denying Mot. to Int. 17.)

In support of its position, the State offers two legal theories. First, the State argues that it is not able to grant the relief that the Plaintiffs request. Second, the State argues that it cannot be made a party under the Uniform Declaratory Judgments Act. Clearly established Minnesota law undercuts both arguments.

A. The State Of Minnesota May Provide The Relief The Plaintiffs Request.

The State claims that the Plaintiffs seek no relief from the State. (State’s Memo. 1.) In so asserting, the state is inviting the court to misread the plain words of the Plaintiffs’ Amended Complaint. In addition to requesting that the Court enjoin Defendant Alverson from refusing to grant marriage licenses to otherwise qualified same-sex couples, Plaintiffs also request that the Court declare that all Minnesota statutes regarding husbands, wives, and spouses be interpreted in a gender-neutral manner, in accordance with marriage equality. (Comp. 17, ¶ 3.) This list includes more than 515 statutes that discriminate against same-sex couples.¹ The State has direct involvement in the administration and enforcement of many of these statutes. The present operation of these statutes injure the plaintiffs and their families. As the 515 Report demonstrates, the examples abound. Illustration of several egregious statutes demonstrate the justiciable controversy between the State and the Plaintiffs.

¹ See Affidavit of Douglas Benson, filed and served with complaint, attaching and incorporating “The 515 Report”.

For example, under Minn. Stat. § 299A.44, the Commissioner of Public Safety must pay \$100,000 to the surviving spouse of a public safety officer killed in the line of duty. No such benefit is available to same-sex couples. The Commissioner of Public Safety is clearly an agent of the State.

Under Minn. Stat. § 144A.45, subd. 1, the Commissioner of Health has the authority to regulate the training of home care providers. Under Minn. Stat. § 144A.43, subd. 4, however, legal spouses are exempt from the definition of a home care provider and need not undergo formal training. This exemption does not inure to same-sex couples. Same-sex couples are therefore subject to the supervision and training of the Commissioner of Health when providing care for each other. The Commissioner of Health is clearly an agent of the State. This statute runs afoul the marriage equality the plaintiffs seek under Minn. Const. Art. I, §§ 2, 7, 8, and 16.

Minn. Stat. § 268.087 entitles a surviving spouse to receive the unemployment benefits of his deceased spouse. No such benefit is available to same-sex couples. The Commissioner of Employment and Economic Development administers Minnesota's unemployment insurance program. Minn. Stat. § 116J.401, subd. 2. The Commissioner of Employment and Economic Development is clearly an agent of the State.

These statutes, and numerous others, demonstrate that the State of Minnesota administers and enforces many laws and programs that discriminate against same-sex couples. Victory for the plaintiffs, and the concomitant declaratory and equitable relief they seek will change the state's conduct to fulfill its obligations of administration of existing state programs. The state is in a position to provide the relief Plaintiffs request. The state is a proper party.

B. The State Of Minnesota May Be Joined As A Party Under Minnesota's Uniform Declaratory Judgments Act

The state also argues for dismissal on the grounds that it cannot be a named party under Minnesota's Uniform Declaratory Judgments Act. Clearly established law, including precedent that notes the appearance of the incumbent Attorney General as the state's representative, sows this outrageous position simply to be untrue. The text of Minnesota's Uniform Declaratory Judgments Act does not prohibit naming the State as a party in actions for declaratory relief. Minnesota appellate courts show long history allowing the state's joinder in declaratory judgment actions. In fact, on at least one occasion, the Minnesota Court of Appeals has held that a state administrative agency was a *necessary* party to a declaratory judgment action.

In support of its position that it *cannot* be a party in declaratory judgment action, the state points out that there is no provision in Minnesota's Uniform Declaratory Judgments Act that *requires* making the State a party. This is certainly correct. Minnesota's Uniform Declaratory Judgments Act requires that "persons . . . who have or claim any interest which would be affected by the declaration" be joined as parties. Minn. Stat. § 555.11. The definition of persons under the Act does not include the State. Minn. Stat. § 555.13. However, there is absolutely *no* language in the Minnesota Declaratory Judgments Act that *prohibits* joining the state as a party. The language in Minn. Stat. § 555.11 is not exclusive. Simply because the Plaintiffs are not *required* to join the State as a party does not mean that they are *prohibited* from joining the State as a party.

Minnesota case law conclusively demonstrates that the State may be joined as party in declaratory judgment actions. In *Unbank Co., LLP v. Merwin Drug Co., Inc.*, 677 N.W.2d 105, 106 (Minn. Ct. App. 2004), the plaintiff, a currency exchange operator, seeks a declaratory

judgment that the currency exchange license issued to one of its competitors by the Minnesota Commissioner of Commerce is invalid. The district court dismisses the plaintiff's case, concluding that it "could not issue a declaratory judgment affecting [the competitor's] licensing status in an action in which the commissioner was not a party." *Id.* at 106. On appeal, the Minnesota Court of Appeals affirms. The court holds, "an administering state board has an interest in the act it administers that is affected by a declaratory judgment . . . and . . . a declaration of rights cannot be made when that entity is not a party to the action." *Id.* Thus, under the rule in *Unbank*, a state administrative agency, and by extension the State, may be a necessary party in a declaratory judgment action. In the instant case, the Plaintiffs' request for declaratory judgment would similarly affect the interests of multiple state agencies and departments. The State is therefore a necessary party to this case.

Furthermore, Minnesota courts have long recognized that the state may be joined as a party in an action under the Minnesota Uniform Declaratory Judgments Act. In *Studor Inc. v. State*, 781 N.W.2d 403 (Minn. Ct. App. 2010), plaintiffs seek a declaratory judgment that the State's statutory ban on air-admittance valves in plumbing systems is unconstitutional. The state is a named defendant. In *Ruter v. State*, 695 N.W.2d 389 (Minn. Ct. App. 2005), a disabled corrections officer seeks a declaratory judgment entitling him upon retirement to revoke his disability benefits and begin to receive a regular retirement annuity. The State is a named defendant. *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. Ct. App. 2005), finds plaintiffs seeking a declaratory judgment that Minnesota's Personal Protection Act of 2003 is unconstitutional. The state is the *only* named defendant. In *Doe v. Ventura*, 2001 WL 543734 (Minn. Dist. Ct. 2001), the plaintiffs seek a declaratory judgment that Minnesota's sodomy law, Minn. Stat. § 609.293 (2000), is unconstitutional. The state is a named defendant. In *Rexton v.*

State, 521 N.W.2d 51(Minn. Ct. App. 1994), plaintiff seeks a declaratory judgment that the Minnesota Department of Administration's refusal to consider its late bid to provide hearing aids for the State is arbitrary and capricious. The state is a named defendant.

Going back at least to 1976, Minnesota courts recognize and allow the state's joinder as a party under Minnesota's Uniform Declaratory Judgments Act. In *Red Lake Band of Chippewa Indians v. State*, 248 N.W.2d 722 (Minn. 1976), the plaintiffs seek a declaratory judgment that they are a "state" or "territory and possession of the United States" within the meaning of Minnesota's automobile registration statutes. The State is a named defendant. These cases and numerous others conclusively demonstrate the state's lawful joinder under Minnesota's Uniform Declaratory Judgments Act.

Contrary to the state's assertion, allowing the Plaintiffs to join the State as a defendant will not result in the State becoming a party in all cases in which a constitutional claim is made. (State's Memo. 7.) Declaratory judgments are only proper when there is a "genuine conflict in tangible interests between parties with adverse interests." *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270 (Minn. Ct. App. 2001). If a party raises a constitutional claim through a declaratory judgment action and the State is not an adverse party, there would be no reason, and certainly no requirement, to join the State as a party. In *New Creative Enterprises, Inc. v. Dick Hume & Associates, Inc.*, 494 N.W.2d 508, 509 (Minn. Ct. App. 1993), the plaintiff, a manufacturer, terminates its employment agreement with the defendant, one of its sales representatives. Upon his termination, the defendant filed a demand for arbitration pursuant to Minn. Stat. § 325E.37, subd. 5, which requires terminated sales representatives to submit their claims to binding arbitration and precluded judicial review of the arbitration decision. *Id.* at 510. The plaintiff employer successfully seeks a declaratory judgment that the statute is unconstitutional. *Id.* at

513. The *Dick Hume* conflict is between two private parties and not between a private party and the state. The state is not a defendant and no reason exists to join the State as a defendant in *Dick Hume*.

In the instant case, the Plaintiffs and the State are adverse parties. Therefore, allowing the Plaintiffs to join the state as a party simply follows settled Minnesota law. It does not, as the State claims, create precedent requiring the state's joinder as a necessary party in all cases implicating constitutional issues. The State may provide the relief the Plaintiffs request. Chapter 555 of the Minnesota Statutes, the Minnesota's Uniform Declaratory Judgments Act, allows joinder of the state. The Court should deny the State's Motion to Dismiss it as a party to this lawsuit.

III. Plaintiffs Plead Legally Sufficient Causes of Action

Defendants move to dismiss this lawsuit on its merits under Minnesota Rule of Civil Procedure 12.02(e). To survive a motion to dismiss, plaintiffs must plead "legally sufficient" claims for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). A claim is legally sufficient if it complies with Minnesota Rule of Civil Procedure 8.01 and contains "a short plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010). The Plaintiffs base their claim on several provisions of the Minnesota Constitution, specifically Minn. Const. Art. I, §§ 2, 7, 8, and 16 (Equal Protection, Due Process, Remedies Clause, and Freedom of Conscience), and Minn. Const. Art. IV, § 17 (Single Subject Clause). For each claim, the Plaintiffs cite the statute that they are challenging and which provision of the Minnesota Constitution it violates. The Plaintiffs also provide sufficient factual material that demonstrates how the challenged statutes violate their constitutional rights. Finally, Plaintiffs

state a demand for judgment and precise forms of relief remedy the multiple violations of their constitutional rights. (Compl. 16-17.) The Plaintiffs have therefore pled legally sufficient and plausible² claims that satisfy the requirements of rule 8.01.

In Minnesota, “When the complaint alleges constitutional errors, a Rule 12.02 motion should be even more sparingly granted to ensure that our courts remain open to protect our citizens against possible governmental overreaching. Under well-settled principles of law, allegations of constitutional infirmities deserve a judicial forum.” *Elzie v. Commissioner of Public Safety*, 298 N.W.2d 29, 32 (Minn. 1980). Furthermore, “When constitutional violations are alleged, the defendant must demonstrate the complete frivolity of the complaint before dismissal under Rule 12.02 is proper.” *Id.* at 33. In the instant case, the Plaintiffs allege multiple violations of their constitutional rights. Neither Hennepin County Registrar Jill Alverson nor the state suggest that the Plaintiffs’ claims are frivolous, let alone completely frivolous. Such an allegation, if ever made, lacks merit in view of the Plaintiffs’ plausible, fact-rich, legally sufficient claims based on well-established constitutional doctrines. Therefore, under the rule in

² Minnesota traditionally applies the pleading standard of *Conley v. Gibson*, 355 U.S. 41 (1957). Under *Conley*, “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* at 45-46. However, in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court overrules *Conley* in favor of a new pleading standard. Now in the federal courts, to survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Id.* at 570. The Minnesota Supreme Court cites *Twombly* twice. In *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008), the Court cites *Twombly* for the notion that a complaint must include more than “labels and conclusions.” In *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010), the Court also cites *Twombly* for the notion that, “A plaintiff must provide more than labels and conclusions.” It is, however, unclear whether the Minnesota Supreme Court has adopted *Twombly*’s plausibility pleading standard in its entirety. Regardless, in the instant case, all of the Plaintiffs’ claims contain sufficient factual matter to meet both the “no set of facts” standard and the “plausibility” standard.

Elzie, the Court should deny the Defendants' Motions to Dismiss this lawsuit under Rule 12.02(e) and provide the Plaintiffs the judicial forum they deserve.

A. The Minnesota Supreme Court's Decision In *Baker v. Nelson* Does Not Dispose Of Any Of The Plaintiffs' Claims

Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971), a nearly forty year-old case years ago, the Minnesota Supreme Court holds Minnesota's marriage laws to prohibit same-sex couples from marrying without violation of the First, Eighth, Ninth, or Fourteenth Amendments to the United States Constitution. The United States Supreme Court dismisses the plaintiffs' appeal on the grounds that the case does not present a "substantial federal question." *Baker v. Nelson*, 409 U.S. 810 (1972). For two reasons, however, *Baker* does not dispose of any of the Plaintiffs' claims and provides little, if any, precedential value.

1. Same-Sex Marriage Now Presents A Substantial Federal Question

First, although *Baker* may not have presented a federal question in 1971, it certainly does in 2010. The United States Congress makes marriage equality a federal question in 1996 in passing the federal Defense of Marriage Act. Under the federal Defense of Marriage Act, the federal government may only recognize marriages between opposite sex couples. 1 U.S.C. § 7. The Act also permits the states to not recognize same-sex marriages from other states. 28 U.S.C. § 1738C. Congress acts in the face of the marriage equality case of *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993), finding prohibitions against same-sex marriage to violate the Equal Protection Clause.

Following its dismissal of the *Baker* appeal, the United States Supreme Court makes same-sex marriage a substantial federal question. In two major decisions, the Court recognizes that gays and lesbians possess protected rights with regard to their sexual orientation under the

United States Constitution. In *Romer v. Evans*, 517 U.S. 620 (1996), the Court strikes down Colorado Amendment 2, which prohibits the state and its political subdivisions from enacting laws prohibiting discrimination on the basis of sexual orientation, as a violation the Equal Protection Clause of the Fourteenth Amendment. The Court finds no advancement of any legitimate government interest by placing gays and lesbians in a “solitary class with respect to transactions and relations in both the private and governmental spheres.” *Id.* at 627. The Court additionally holds that gays and lesbians have the right to seek “specific legal protection from the injuries caused by discrimination” against them. *Id.*

In *Lawrence v. Texas*, 539 U.S. 558, 563 (2003), the Court addresses the following issue: whether a Texas statute that criminalizes “deviate sexual intercourse with another individual of the same sex” violates the U.S. Constitution. The Court strikes down that the statute as a violation the Due Process Clause of the Fourteenth Amendment by depriving gays and lesbians of the liberty to engage in “private sexual conduct” on equal footing as heterosexuals. *Id.* at 578. By recognizing that gays and lesbians are a distinct group of citizens with rights protected by the U.S. Constitution, and by striking down laws that impair their rights on the basis of sexual orientation, the United State Supreme Court, therefore, regards marriage equality, or same-sex marriage, as a substantial federal question.

Finally, marriage equality is a substantial federal question in the lower federal courts. This year in *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. 2010) (Walker, Vaughn, J.), the United States District Court for the Northern District of California addresses the constitutionality of Proposition 8, the amendment to the California Constitution prohibiting same-sex marriage. In a 136 page decision that includes 108 pages of findings of fact after exhaustive discovery, the court holds that the amendment violate the Due Process Clause of the

Fourteenth Amendment because depriving gays and lesbians of the fundamental right to marry is not “narrowly tailored to a compelling government interest.” *Id.* at 995. The court also held that the amendment violates the Equal Protection Clause of the Fourteenth Amendment because depriving same-sex couples of marriage equality is simply not rationally related to a legitimate state interest. *Id.* at 997.

In another, *Gill v. Office of Personnel Management*, 699 F.Supp.2d 374 (D. Mass. 2010), the United States District Court for the District of Massachusetts addresses the constitutionality of the 1996 federal Defense of Marriage Act. The court holds the federal Defense of Marriage Act to be in violation of the equal protection principles in the Fifth Amendment because denial to gays and lesbians of the rights and privileges set forth in more than 1,138 federal laws has no rational relationship to any legitimate government purpose. *Id.* at 387, 395. The actions of Congress and the decisions of our federal courts therefore demonstrate that the issue of same-sex marriage currently presents a substantial federal question.³

2. The Plaintiffs Assert Violations Of The Minnesota Constitution, Not The U.S. Constitution

Baker rests upon interpretation of the United States Constitution. 191 N.W.2d at 315. These Plaintiffs, however, Plaintiffs assert that Minnesota’s marriage laws violate the Due Process, Equal Protection, Freedom of Conscience, Freedom of Association, and Single Subject provisions of the Minnesota Constitution, without regard to the United States Constitution.

It is true that, as a general matter, Minnesota courts do not “construe our state constitution as providing more protection for individual rights than does the federal constitution

³ The pending repeal of “Don’t Ask Don’t Tell” by the United States Department of Defense reaffirms equality of rights without regard to sexual orientation as a substantial federal question. See Nickitas Aff. Exhibit 2 Lisa Daniel, “Repeal of ‘Don’t Ask, Don’t Tell’ Offers Few Risks, Report Finds”, American Forces Press Service, Nov. 30, 2010.

unless there is a principled basis to do so.” *Kahn v. Griffin*, 701 N.W.2d 815, 824 (Minn. 2005). In the *exact same* case, however, the Court states, “[W]hen we reach a clear and strong conviction that there is a principled basis for greater protection of the individual civil and political rights of our citizens under the Minnesota Constitution, we will not hesitate to interpret the constitution to independently safeguard those rights.” *Id.* at 828. Indeed, the Minnesota Supreme Court finds broader protection under the Minnesota Constitution than the U.S. Constitution in the areas of search and seizure, equal protection, right to counsel, privacy, and freedom of conscience-religious beliefs. *Id.* at 827-828. The Minnesota Court of Appeals has also recently determined that the “Minnesota Constitution provides broader protections to property owners than does the United States Constitution when property is taken, damaged, or destroyed for a public or governmental use.” *Interstate Companies, Inc. v. City of Bloomington*, --- N.W.2d ----, 2010 WL 4451625 at *6 (Minn. Ct. App. 2010).

Because the Minnesota judiciary is “independently responsible for safeguarding the rights of [its] citizens,” Minnesota courts have repeatedly interpreted the Minnesota Constitution to afford our citizens broader protections than the U.S. Constitution. *State v. Fuller*, 374 N.W.2d 722, 727 (Minn. 1985). The Minnesota Supreme Court’s decision in *Baker* adjudicating Minnesota citizens’ rights under the U.S. Constitution therefore does not marriage equality under the Minnesota Constitution. To the contrary, the instant cases raise many questions of first impression in our state. Marriage equality for same-sex spouses presents a substantial federal question. Plaintiffs allege violations of their constitutional rights under the Minnesota Constitution. Analysis of the alleged constitutional violations requires discovery outside the four corners of the complaint, under settled Minnesota law. Thus, the Court should deny the Defendants’ Motion to Dismiss.

B. Minnesota's Marriage Laws Violate The Plaintiffs' Due Process Rights Under The Minnesota Constitution

In Count I, the Plaintiffs allege that Minnesota's marriage laws violate their Due Process rights under the Minnesota Constitution. (Compl. 12). Under the Minnesota Constitution, "No person shall be . . . deprived of life, liberty or property without due process of law." Minn. Const. art. I, § 7. Under a Due Process analysis, certain "fundamental liberty interests" are protected by deprivation by the government, regardless of the procedures provided, "unless the infringement is narrowly tailored to serve a compelling state interest." *Chavez v. Martinez*, 538 U.S. 760, 775 (2003). The United States Supreme Court long holds that the right to marry is a fundamental right. *See Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (holding that "the right to marry is of fundamental importance for all individuals"); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (holding that "[m]arriage is one of the basic civil rights of man, fundamental to our very existence and survival."); and *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (stating that the right to marry is one of the liberties guaranteed by the Fourteenth Amendment).

The United State Supreme Court has yet to address whether the fundamental right to marry extends to gays and lesbians under the Fourteenth Amendment. However, this does not preclude Minnesota courts from addressing the issue. In *State v. Oman*, 110 N.W.2d 514, 522-523 (Minn. 1961), the Minnesota Supreme Court states:

When we apply our state due process clause, we are not bound to follow any interpretive relaxation of the inhibitions of the Fourteenth Amendment made by the Supreme Court of the United States. We are bound by the decisions of that court as to what the due process clause of the Fourteenth Amendment prohibits; but, in interpreting our own clause, we are not bound to follow what that court says is not a violation of the Fourteenth Amendment. We should exercise our own judicial judgment as to what we deem a violation of our own constitution.

Thus, under the rule in *Oman*, Minnesota is free to recognize that same-sex couples' fundamental right to marry is guaranteed by the Due Process Clause of the Minnesota Constitution.

The adult Plaintiffs attempt to obtain marriage licenses in Hennepin County. (Compl. 10-11) An agent or employee of Hennepin County Local Registrar refuses to permit the Plaintiffs to apply for marriage licenses based on their sex. *Id.* The Hennepin County Local Registrar acts according to Minn. Stat. § 517.01 and Minn. Stat. § 517.03, which currently prohibit marriages between persons of the same sex. Plaintiffs allege that they have a fundamental right to marry and that Minnesota’s marriage laws deprive them of that right under the Due Process Clause of the Minnesota Constitution. (Compl. 12 , ¶¶ 19, 20.)

In their Complaint, the Plaintiffs describe both the constitutional violation they are alleging and the facts that resulted in that violation. The Plaintiffs also specify the relief they seek. (Compl. 17-18.) The Plaintiffs claim that Minnesota’s marriage laws violate their Due Process rights is therefore legally sufficient and plausible. Accordingly, the Court should deny the Defendants’ motion to dismiss Count I.

C. Minnesota’s Marriage Laws Violate The Plaintiffs’ Equal Protection Rights Under The Minnesota Constitution

In Count III, the Plaintiffs allege that Minnesota’s marriage laws violate the Equal Protection Clause of the Minnesota Constitution. Under the Minnesota Constitution, “No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Minn. Const. art. 1, § 2. The United States Supreme Court does not recognize gays and lesbians as a suspect class. Thus, courts review laws that discriminate against gays and lesbians are reviewed under

the “rational basis” test of the Equal Protection Clause. *See Cleburne v. Cleburne Living Center, Inc.*, 473 US 432, 437 (1985).⁴

To withstand a challenge under the federal rational basis test, a law must be simply “rationally related to a legitimate governmental purpose.” *Id.* at 446. The Minnesota Supreme Court, however, has developed a more stringent rational basis test that differs from the federal standard. *State v. Russell*, 477 N.W.2d 886, 889 (Minn. 1991). Under the Minnesota rational basis test:

- (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Id. at 888.

Furthermore, under Minnesota’s stricter rational basis test, the Minnesota Supreme Court has stated that it is “unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires.” *Id.* at 889. Instead, Minnesota courts requires a “reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals.” *Id.*

For example, in *State v. Russell*, the Minnesota Supreme Court addresses the issue of whether a statute providing harsher penalties for crack cocaine users than for powder cocaine violated Minnesota’s Equal Protection Clause. *Id.* at 887. The Court holds that the statute does

⁴ Plaintiffs note that the Minnesota Legislature recognizes access to public services without regard to sexual orientation as a “civil right” under Minn. Stat. § 363A.02 subd. 2. They also note that the Minnesota Human Rights Act does not enshrine marriage equality for same-sex couples. Their constitutional arguments rest upon independent constitutional grounds, including the more stringent “rational basis” test of Minn. Const. Art. I, § 2, *infra*.

not survive the rational basis test because the state fails to prove that a genuine and substantial distinction between crack cocaine and powder cocaine users exists. The Court adds that the distinction is arbitrary and unreasonable, and that the distinction does not further its legislative purpose of penalizing street level drug dealers. *Id.* at 889-891. Importantly, due to Minnesota's more stringent rational basis test, the Minnesota Supreme Court refuses to defer to the legislature's reasoning in evaluating the statute. On the contrary, in evaluating the statute, the court considered independent, contradicting expert sources, including as the Minnesota Department of Public Safety, which directly contradicted legislative findings. This contradictory evidence exists outside the four corners of the statute and the public records that embody the statute's legislative history *Id.* at 890. Furthermore, the Court dismisses the testimony at a legislative hearing of a Hennepin County prosecutor regarding the respective amounts of drugs that indicate street-level dealings, finding his opinion to be "purely anecdotal." *Id.* at 889. The Court holds that anecdotal testimony, even if adopted by the Minnesota Legislature, cannot form the basis of a substantial and genuine distinction. *Id.* at 889-890.

Russell demonstrates that the Minnesota Supreme Court will not simply deem threadbare or nonempirical legislative findings under the rational basis test of Minn. Const. Art. I, § 2. Rather, the Court insists that the state provide credible, affirmative evidence (as opposed to mere hypothetical speculation) to prove that a statute is based on a genuine and substantial distinction between the groups the statute regulates and that the statute has an actual, not merely theoretical, relationship to the legislature's goals.

In the instant case, the Plaintiffs include three committed same-sex couples who form and maintain caring, committed emotional bonds, lead professional lives, and raise children in a manner virtually indistinguishable from married opposite-sex couples. (Compl. 2-8.) The only

obstacle to marriage equality, and thus the only characteristic that differentiates them from couples that are able to marry, and be recognized as married, under Minnesota law, is their sexual orientation. (Compl. 14, ¶ 29). The Plaintiffs argue that this distinction is arbitrary and does not advance any legitimate government purpose. (Comp. 14, ¶ 32.)

In their Complaint, the Plaintiffs describe both the constitutional violation they are alleging and the facts that resulted in that violation. The Plaintiffs also specify the relief they seek. (Compl. 17-18.) The Plaintiffs claim that Minnesota’s marriage laws violate their Equal Protection rights is therefore legally sufficient and plausible. Accordingly, the Court should deny the Defendants’ Motion to Dismiss Count III and allow the State and County to provide evidence regarding the purposes of Minnesota’s marriage laws and how denying same-sex couples the right to marry helps serve those purposes.

D. Minnesota’s Marriage Laws Violate The Plaintiffs’ Freedom of Conscience Rights Under The Minnesota Constitution.

In Count IV, the Plaintiffs allege that Minnesota’s marriage laws violate the Freedom of Conscience Clause of the Minnesota Constitution. Under the Minnesota Constitution, “The right of every man to worship God according to the dictates of his own conscience shall never be infringed . . . nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship.” Minn. Const. art. 1, § 16.

According to the Minnesota Supreme Court, the Freedom of Conscience Clause affords “greater protection for religious liberties against governmental action than the first amendment of the federal constitution.” *Hill-Murray Federation of Teachers v. Hill-Murray High School*, 487 N.W.2d 857, 864 (Minn. 1992). “Whereas the first amendment establishes a limit on

government action at the point of *prohibiting* the exercise of religion, section 16 precludes even an *infringement* on or an *interference* with religious freedom.” *State v. Hershberger*, 462 N.W.2d 393, 397 (Minn. 1990). Thus, the Court uses a heightened “compelling state interest balancing test” when determining whether a law violates the Freedom of Conscience Clause. *Hill-Murray*, 487 N.W.2d at 865. The test has four prongs: (1) whether the objector's beliefs are sincerely held; (2) whether the state regulation burdens the exercise of religious beliefs; (3) whether the state interest in the regulation is overriding or compelling; and (4) whether the state regulation uses the least restrictive means. *Id.* In the instant case, a balancing of the four factors indicates that Minnesota’s marriage laws violate the Plaintiffs’ Freedom of Conscience rights.

First, Plaintiffs Thomas Trisko and John Rittman hold sincere beliefs that blessing and recognizing the unions of same-sex couples is part of their religious tradition. (Trisko Aff. 3, Rittman Aff. 3.) *See also* Affidavit of Reverend T. Michael Rock ¶ 8 (stating that “It is part of my religious denomination’s values to accept and facilitate the marriage of same-sex couples in the same manner that we accept and facilitate the marriage of different sex couples.”) and Affidavit of Rabbi Jared Saks ¶ 8 (also stating that “It is part of my religious denomination’s values [Reform Judaism] to accept and facilitate the marriage of same-sex couples in the same manner that we accept and facilitate the marriage of different sex couples.”)

Second, by prohibiting marriage equality, the State burdens the exercise of religious beliefs. The blessing and celebrating of marital unions is central to many religious traditions. Minnesota’s marriage laws, however, prevent pastors, priests, rabbis, and Muslim qadis from performing legally recognized same-sex marriages. Minnesota’s marriage laws also deny same-sex couples the opportunity to enter into what they believe are holy, sacred unions. Minnesota’s marriage laws therefore burden the exercise of religious beliefs.

Third, it is unclear what state interest is served by prohibiting marriage equality in Minnesota. In fact, the Plaintiffs allege that there is *no* state interest that is served by prohibiting marriage equality. If there is *no* state interest that is served by prohibiting marriage equality, there can be no overriding or compelling state interest that is served by prohibiting marriage equality.

Fourth, because it is unclear what, if any, state interest is at issue, it is difficult to analyze the means the State uses to achieve it. However, regardless of whether there is or is not a state interest served by denying marriage equality, depriving thousands of Minnesotans of the fundamental right to marry cannot be the least restrictive means of serving *any* government interest. Minnesota's marriage laws therefore violate the Plaintiffs' Freedom of Conscience rights.

Regarding Count IV, the Plaintiffs state both the constitutional violation they are alleging and the facts that resulted in that violation. The Plaintiffs also specify the relief they seek. (Compl. 17-18.) The Plaintiffs' claim that Minnesota's marriage laws violate their Freedom of Conscience rights is therefore legally sufficient and plausible. Accordingly, the Court should deny the Defendants' Motion to Dismiss Count IV and allow the State to present what interests, if any, are served by denying marriage equality.

E. Minnesota's Marriage Laws Violate The Plaintiffs' Freedom of Association Rights Under The Minnesota Constitution

In Count V, the Plaintiffs allege that Minnesota's marriage laws violate their Freedom of Association rights protected by the Minnesota Constitution. "Although "freedom of association" is not mentioned in the text of either the federal or the state constitution, the Supreme Court of the United States, in certain circumstances, has recognized it as derivative of federal first

amendment guarantees of free speech, press, petition, and assembly and protected by the due process clause.” *Metropolitan Rehabilitation Services, Inc. v. Westberg*, 386 N.W.2d 698 (Minn. 1986). Indeed, the Minnesota Court of Appeals recognizes in *State by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d 844 (Minn. 1985) that Minn. Const. Art. I, § 16 protects Freedom of Association rights.

According to the United States Supreme Court, “Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996). In Minnesota, the Minnesota Supreme Court recognizes that “the right to associate with another person for the purpose of marriage is a basic right.” *Cybyrke v. Independent School Dist. No. 196*, 347 N.W.2d 256, 262 (Minn. 1984). Furthermore, Minnesota recognizes that same-sex couples enjoy Freedom of Association rights as a “family of affinity” whose relationships “ought to be accorded respect.” *See In re Guardianship of Sharon Kowalski*, 478 N.W.2d 790, 797 (1991) (court awards same-sex spouse Karen Thompson guardianship of brain-damaged spouse Sharon Kowalski). Even families of affinity, however, do not enjoy full equality of Freedom of Association rights under Minnesota’s marriage laws.

Plaintiffs Jessica Dykhuis, Lindzi Campbell, and Sean Campbell reside together as a family unit. (Compl. 5.) Jessica and Lindzi have been in a loving, committed relationship for two years. *Id.* They actively raise their two children and are in all respects a family unit. *Id.* Minnesota’s marriage laws, however, deny Jessica and Lindzi the right to associate with each other for the purpose of marriage. Minnesota’s marriage laws therefore violate Jessica and Lindzi’s Freedom of Association rights.

Regarding Count V, the Plaintiffs state both the constitutional violation they are alleging and the facts that resulted in that violation. The Plaintiffs also specify the relief they seek. (Compl. 17-18.) The Plaintiffs' claim that Minnesota's marriage laws violate their Freedom of Association rights is therefore legally sufficient and plausible. Accordingly, the Court should deny the Defendants' Motion to Dismiss Count V.

F. Minnesota's Defense of Marriage Act Violates The Single Subject Clause Of The Minnesota Constitution

In Count II, the Plaintiffs allege that Minnesota's DOMA violates the Single Subject Clause of the Minnesota Constitution. Article IV, § 17 of the Minnesota Constitution provides that that "[n]o law shall embrace more than one subject, which shall be expressed in its title." The purpose of the Single Subject Clause is to "prevent what is called "log-rolling legislation" or "omnibus bills," by which a number of different and disconnected subjects are united in one bill, and then carried through by a combination of interests." *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891).

To satisfy the Single Subject Clause, "All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject." *Id.* at 924. The Minnesota Supreme Court further clarified this standard by stating that legislation satisfies the Single Subject Clause when the "common thread which runs through the various sections . . . is indeed a mere filament." *Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150, 155 (Minn. 1989).

After a long period of liberally construing the Single Subject Clause, in the last decade the Minnesota Supreme Court has adopted a more stringent approach. In *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 295 (Minn. 2000), the court addressed the issue of whether an amendment to the state’s prevailing wage law enacted as part of an omnibus tax bill related to tax relief and reform violated the Single Subject Clause. There, the appellants assert that the prevailing wage amendment is germane to the subject of tax relief because it purposes to overturn a prior Minnesota Supreme Court decision impacting tax relief. *Id.* at 302. The Minnesota Supreme Court rejects the appellants’ reasoning as “strained” and strikes down the amendment as a violation Single Subject Clause. *Id.* The court reasons that the “clear wording” of the Clause does permit the “inclusion of such disparate provisions in one bill”. *Id.*

More recently, in *Unity Church of St. Paul v. State*, 694 N.W.2d 585, 595 (Minn. 2005), the court addresses the issue of whether the Personal Protection Act (“PPA”, or “concealed-carry”), legislation relating to handguns permits, enacted as part of a natural resources bill violates the Single Subject Clause. The appellant -- the state -- argues the PPA does not violate the Single Subject Clause because it is not a tiny section of an immense omnibus bill and because it receives extensive legislative attention in both the House and the Senate. *Id.* at 596. The Minnesota Supreme Court rejects the appellants’ arguments and strikes down the PPA violated the Single Subject Clause. *Id.* at 600. Rather, the court held, the proper inquire was whether the challenged law is germane to a single subject. *Id.* at 596. Because natural resources and handguns are “two disparate subjects” that “lack a legitimate connection to one another,” the PPA violates the Single Subject Clause. *Id.* at 595.

In the instant case, the Plaintiffs contend that the State DOMA violates the Single Subject Clause. In 1997, the State DOMA finds itself attached to a 400+ page bill (253 pages on the

Internet) relating to human services, health care, long-term care facilities, children’s programs, child support, care for disabled persons, and welfare reform. (Senate File No. 1908.)⁵ The later topics all relate are all germane to one topic: human services. The State DOMA, on the other hand, addresses the entirely separate topics of restricting marriage to opposite-sex couples and prohibiting Minnesota from recognizing same-sex marriages performed in other jurisdictions. (S.F. No. 1908, Chapter 10.)

Human services, aid to disabled individuals, long-term care facility funding, welfare reform, and same-sex marriage are widely disparate subjects that lack a legitimate connection to one another. Furthermore, contrary to the State’s assertion, there is not even a mere filament that connects the two subjects. The State contends that “children and families” is the common filament that runs between the two subjects. (State’s Memo. 13, n.7.) However, this category is much broader than the Single Subject Clause permits. The failed parallel analogy linking firearms and natural resources underscores the meritlessness of the state’s argument. Human services and same-sex marriage are not germane to a single subject. One can receive human services regardless of whether one is married. One can be denied a marriage license regardless of whether one receives human services. The inclusion of the Minnesota DOMA into a large funding bill is emblematic of the gross logrolling that Minnesota’s Framers forbid in its founding document. The modern Minnesota Supreme Court concurs. Human services and same-sex marriage are two disparate subjects. Minnesota’s DOMA, Minn. Stat. § 517.03 subd. 1(b) therefore violates the Single Subject Clause.

Regarding Count II, the Plaintiffs state both the constitutional violation they are alleging and the facts that resulted in that violation. The Plaintiffs also specify the relief they seek.

⁵ Nickitas Aff. Ex. 3

(Compl. 17-18.) The Plaintiffs' claim that Minnesota's DOMA violates the Single Subject Clause is therefore legally sufficient and plausible. Accordingly, the Court should deny the Defendants' Motion to Dismiss Count V.

CONCLUSION

Because Defendants Hennepin County Registrar Jill Alverson, in her official capacity only, and the State of Minnesota are proper parties to this lawsuit, the Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss on the grounds of misjoinder. Because the Plaintiffs plead legally sufficient claims under Minnesota law, the Plaintiffs respectfully request that the court deny the Defendants' Rule 12.02(e) Motion to Dismiss, and allow this lawsuit to proceed to resolution on its merits.

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Respectfully submitted:

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