UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,

Plaintiffs,

vs.

Keith Ellison, in his official capacity as Attorney General; Brad Johnson in his Official capacity as Anoka County Attorney,

Defendants.

Court No.23-CV-02774 (NEB-TNL)

DEFENDANT ELLISON'S REPLY MEMORANDUM SUPPORTING MOTION TO DISMISS

Plaintiffs Minnesota Voters Alliance, Mary Amlaw, Ken Wendling, and Tim Kirk insist that they have a First Amendment right to lie about who may vote and threaten people to keep them from voting. These arguments are meritless. Minnesota's election-integrity law, which prohibits such conduct, does not violate any of Plaintiffs' constitutional rights. It clearly reaches only speech that is unprotected by the First Amendment. Accordingly, the Court should dismiss Plaintiffs' complaint.

ARGUMENT

Plaintiffs use three tactics to distort Minnesota's election-integrity law into unconstitutionality. First, they attempt to lower their burden of proof by arguing that the standard for narrower, as-applied challenges should apply to their facial challenge. Second, they misstate the scope of the election-integrity law, most notably by suggesting it prohibits true speech that is clearly not covered by the statute. And third, they erroneously describe

the impact of the law by attempting to convert it into a prior restraint on speech. None of these arguments have merit, and the Court should dismiss Plaintiffs' complaint.

I. PLAINTIFFS' FACIAL CHALLENGE REQUIRES THEM TO SHOW THAT THE ELECTION-INTEGRITY LAW IS FACIALLY UNCONSTITUTIONAL.

Plaintiffs seek to permanently enjoin the Attorney General from enforcing the election-integrity law in toto, not merely with respect to any particular enforcement action. (Doc. 13, at 32.) Indeed, Plaintiffs do not even identify any speech that the Attorney General has taken action (or threatened to take action) against. (*Id.* at ¶¶ 24–33.) Plaintiffs are accordingly bringing a facial challenge to the election-integrity law, and their complaint must plausibly allege facts establishing entitlement to that relief.

Claims that do not involve a particular plaintiff are facial challenges that must "satisfy [the court's] standards for a facial challenge to the extent of that reach." *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010). And contrary to Plaintiffs' argument, that is a higher standard. Plaintiffs must show that a "substantial number" of the law's applications are unconstitutional as judged in relation to its plainly legitimate sweep. *United States v. Stevens*, 559 U.S. 460, 473 (2010).

In an attempt to circumvent this well-established standard, Plaintiffs primarily rely on *Bucklew v. Precythe*, 139 S. Ct. 1112 (2019). But that case dealt with whether as-applied challenges to execution methods were required to identify an alternative method of execution. *Id.* at 1126. It had nothing to do with what a plaintiff must show to succeed on a facial challenge. On the contrary, the Court reiterated that facial challenges differ from

as-applied challenges in that a plaintiff must make a higher showing as to "the extent to which the invalidity of the challenged law must be demonstrated." *Id.* at 1127.

Plaintiffs' reliance on *Citizens United v. Federal Election Commission* is similarly misplaced. 558 U.S. 310 (2010). In that case, the plaintiff pleaded an as-applied challenge, but the Court held that, to provide a remedy, it needed to address the facial validity of the statute. *Id.* at 893. Here, in contrast, Plaintiffs pleaded a facial challenge, and they must be held to the higher standard to maintain that challenge.

II. THE SCOPE OF THE ELECTION-INTEGRITY LAW IS CONSTITUTIONAL.

In his opening memorandum, the Attorney General explained how strict scrutiny is inapplicable to statutes like the election-integrity law, which only prohibits speech unprotected by the First Amendment. (Doc. 25, at 5–10.) Plaintiffs nevertheless continue to insist that the election-integrity law should be struck down for failing strict scrutiny. But that standard is inapplicable because the election-integrity law reaches only unprotected speech. Because the statute has only that limited reach and is not vague, it is constitutional.

A. The State May Prohibit Knowingly False Statements Made with the Intent to Impede Voting Rights.

In an effort to twist the election-disinformation prohibition into unconstitutionality, Plaintiffs repeatedly claim that it prohibits "true speech." (Doc. 32, at 26, 40.) This argument flies in the face of the statute's language, which prohibits only speech which the speaker "knows to be materially false." Minn. Stat. § 211B.075, subd. 2(a)(2) (Supp. 2023). When combined with the prohibition's requirement that the false statement be made with

the intent to impede or prevent another person from exercising the right to vote, this prohibition reaches only speech unprotected by the First Amendment.

As explained in the Attorney General's opening memorandum, the election-disinformation prohibition satisfies the Supreme Court's explicit instruction that "[s]tate[s] may prohibit messages intended to mislead voters about voting requirements and procedures," as well as the more general recognition that statements intended to effect a fraud are unprotected by the First Amendment. *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1889 n.4 (2018); *Animal Legal Def. Fund. v. Reynolds*, 8 F.4th 781, 786 (8th Cir. 2021). Plaintiffs attempt to distinguish *Mansky* but ultimately fail to do so. (Doc. 32, at 28.) To distinguish *Mansky*, Plaintiffs contend that the t-shirt and button slogans at issue in that case "were not 'intended to mislead voters.'" (*Id.*) Setting aside this dubious reading of *Mansky*,[1] that supposed distinction is entirely the point: the election-disinformation prohibition prohibits only knowingly misleading (indeed outright false) statements with an intent to stop people from voting.

Moreover, Plaintiffs entirely fail to address the Eighth Circuit's recognition that "intentionally false speech undertaken to accomplish a legally cognizable harm may be proscribed without violating the First Amendment." *Animal Legal Def. Fund*, 8 F.4th at 786. Plaintiffs do not contest that the election-disinformation prohibition has an intent requirement, nor do they contest that interfering with voting rights constitutes a legally

[1] Dubious because the remainder of footnote four of *Mansky* suggests that the Court struck down the statute because it referred to "political" messages, which Minnesota contended were "about the electoral choices at issue in [the] polling place," *not* "voting requirements and procedures." *Mansky*, 138 S. Ct. at 1889 n.4.

cognizable harm. Instead, the closest they come is arguing that their false claims about voter qualifications are "true[] in their minds."[2] (Doc. 32, at 40.) But regardless of Plaintiffs' proclivity for supposedly believing "alternative facts," the prohibition covers only false statements intended to interfere with civil rights. Thus, it falls squarely into the scope of speech the Eighth Circuit has held is not protected by the First Amendment.

Plaintiffs make the tangentially related argument that the First Amendment has no general fraud exception. (*Id.* at 39.) As an initial matter, Plaintiffs appear to recognize that this argument disregards the Eighth Circuit's holding in *Animal Legal Defense Fund*, as they direct it solely toward the arguments made by the Anoka County Attorney. (*See id.* ("The County Attorney also argues . . . .").) But insofar as fraud is a particular type of intentionally false statement made to accomplish a legally cognizable harm, Plaintiffs are clearly mistaken. The Eighth Circuit has identified at least nine "discrete categories of content-based restrictions" that are unprotected by the First Amendment. *United States v. Williams*, 690 F.3d 1056, 1061–62 (8th Cir. 2012). One category is "fraud." *Id.*

Plaintiffs attempt to avoid this exclusion by relying on *281 Care Committee v. Arneson*. 766 F.3d 774 (8th Cir. 2014). But this reliance is misplaced for at least three reasons. First, *281 Care Committee* presumed without deciding that at least intermediate

[2] After Plaintiffs filed their response brief, the Anoka County state district court dismissed their challenge to the voting-rights-restoration law. The court held that Plaintiffs "fundamentally flawed" argument failed to demonstrate that the restoration is unconstitutional. Order Dismissing Petition for Writ of Quo Warranto or Declaratory Judgment, *Minn. Voters Alliance v. Hunt*, No. 02-CV-23-3416, at 8–9 (Anoka Cnty. Dec. 14, 2023), ECF No. 77. Presumably, therefore, Plaintiffs now recognize (even "in their minds") that under current state law people with felony convictions may vote unless the person is incarcerated.

scrutiny applied to the statements at issue, because that was the level of scrutiny the state actors advocated for. *See id.* at 782 ("Appellees advocate that . . . we apply intermediate scrutiny to this case."). The court therefore had no occasion to consider whether fraudulent statements were entirely unprotected.

Second, that the statute covered "political speech" was a "key factor" in *281 Care Committee's* analysis. *Id.* But the speech at issue in this case is not political speech. Political speech is "interactive communication concerning political change." *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 186 (1999). It extends to advocacy regarding who should be elected, as well as to political policy generally or advocacy of the passage or defeat of legislation. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 205 (2003). But absent from this scope are statements of what the existing law is. There is a significant difference between the statements "People with felony convictions *cannot* vote" and "People with felony convictions *should not be allowed to* vote." One is verifiable as a true or false statement of current law; the other is an advocacy statement about what the law should be. Nor does a statement's relation to voting qualifications convert statements about the present state of the law into political speech. If Plaintiffs publicly declared that it is illegal to drive while wearing a seatbelt, their declaration would indisputably be non-political speech. Changing the act they (falsely) declare illegal to "voting while on conditional release" does not alter that conclusion.

Third, the Eighth Circuit rejected the statute in *281 Care Committee* partially because it "tend[ed] to perpetuate the very fraud it is allegedly designed to prohibit." 766 F.3d at 789. Plaintiffs cast similar aspersions on the election-integrity law. (Doc. 32, at 18–

19.) Notably, however, a significant source of concern in *281 Care Committee* was that anyone could file a complaint at the Office of Administrative Hearings without constraint to "explicit guidelines or ethical obligations." *281 Care Committee*, 766 F.3d at 790. Here, in contrast, enforcement of the election-integrity law occurs in district court, where spurious litigants are subject to sanctions.

Plaintiffs also appear to cite a supreme court case that supposedly construed *Alvarez* to prohibit content-based bans on false political speech. (Doc. 32, at 19.) But their citation is to a dissenting opinion from a denial of a petition for a writ of certiorari. *Am. Freedom Def. Initiative v. King Cnty.*, 577 U.S. 1202, 1206 (2016) (Thomas, J., dissenting). It thus has no binding effect.

In summary, the election-disinformation prohibition restricts only speech that is unprotected by the First Amendment. Accordingly, Plaintiffs' argument that the statute implicates protected speech that would trigger strict scrutiny is meritless.

B. The State May Prohibit True Threats.

As explained in the Attorney General's opening memorandum, the voter-intimidation prohibition, insofar as it restricts speech, restricts only true threats. (Doc. 25, at 6.) Statements fall into this category if a reasonable recipient would interpret the statement as a serious expression of an intent to harm or cause injury to another. *Doe v. Pulaski Cnty. Special Sch. Dist.*, 306 F.3d 616, 624 (8th Cir. 2004). The speaker must also have at least a reckless mens rea. *Counterman v. Colorado*, 600 U.S. 66, 74 (2023). The voter-intimidation prohibition satisfies these conditions. Plaintiffs must demonstrate that the threat "would cause a reasonable person to feel intimidated" and that the speaker had

the intent (a mens rea greater than recklessness) to impede election activities. Minn. Stat. § 211B.075, subd. 1.

Plaintiffs attempt to remove the voter intimidation from this exception not by reference to the meaning of the statute, but by pointing to the Anoka County Attorney's counterclaim.[3] But Plaintiffs' position on this counterclaim is so contradictory as to be incoherent. On the one hand, Plaintiffs claim that the voter-intimidation statute broadly reaches constitutionally protected speech, i.e., speech beyond threats to cause damage, loss, or harm. (Doc. 32, at 27.) But mere sentences later, Plaintiffs argue that because they have not violated the narrow confines of the statute (because Plaintiffs deny threatening or causing damage, harm, or loss to any person), they did not violate it. (*Id.*)

Regardless, that counterclaim and Plaintiffs' incoherent response to it are ultimately immaterial to the question of what speech the statute actually prohibits. The plain language prohibits only true threats. And Plaintiffs present no argument based in the statute (as opposed to the counterclaim) to the contrary. Accordingly, the voter-intimidation prohibition does not violate the First Amendment.

C. The Election-Integrity Law Is Not Overbroad.

Plaintiffs cursorily defend their overbreadth claim by arguing that the election-integrity law "sweeps in much protected speech." (Doc. 32, at 26.) But, despite the Attorney General's suggestion in his opening brief, Plaintiffs still have not identified a

[3] The Attorney General takes no position on the merits of the Anoka County Attorney's counterclaim. Contrary to Plaintiffs' construal, however, the Attorney General has never agreed that Plaintiffs' statements *are* in good faith, only that Plaintiffs have represented that they are. (*Compare* Doc. 25, at 14, *with* Doc. 32, at 18, 26.)

single example of a statement that they claim is both protected by the First Amendment *and* prohibited by the election-integrity law. Plaintiffs' inability to point to a First-Amendment protected statement that the statute would prohibit is fatal to their overbreadth claim.

D. The Election-Integrity Law Is a Permissible Election Regulation.

Because the election-integrity law reaches only speech unprotected by the First Amendment (or, at a minimum, there are not a substantial number of unconstitutional applications in relation to the statute's plainly legitimate sweep), it is constitutional. But even if the statute did not meet that test, it would still be constitutional as a permissible election regulation under the *Anderson-Burdick* framework applicable to such regulations. As outlined in the Attorney General's opening brief, at worst the election-integrity law imposes reasonable, nondiscriminatory burdens that further Minnesota's important election-integrity interests. (Doc. 25, at 10–13.)

Plaintiffs do not contest how these factors apply in this case; instead, they argue that *Anderson-Burdick* applies only to "non-speech regulations for elections and Election Day." (Doc. 32, at 17.) But the core reasons justifying the *Anderson-Burdick* framework are unquestionably implicated by election-related threats and false speech about the mechanics of elections. "[I]f [elections] are to be fair and honest and if some order, rather than chaos, is to accompany the democratic process," states must be allowed to enact election regulations without subjecting every such regulation strict scrutiny. *Storer v. Brown*, 415 U.S. 724, 30 (1974). Such chaos would certainly ensure if Plaintiffs and others were

permitted to lie to potential voters about election time, place, and eligibility, or use threats to interfere with election activities.

Plaintiffs rely on a Second Circuit case to oppose this argument, but that case actually supports applying *Anderson-Burdick* to the election-integrity law. In *Mazo v. New Jersey Secretary of State*, the court recognized that courts must be "wary of categorically removing any particular area of election regulation from *Anderson-Burdick's* ambit," and instead engage in a "careful analysis" to determine whether the law regulates the mechanics of elections or core political speech. 54 F.4th 124, 143 (2d Cir. 2022).

That careful analysis dictates that *Anderson-Burdick* should apply here. As explained above, lies about elections locations or voter qualifications are not core political speech. And while admittedly a closer call than the on-the-ballot speech addressed in *Mazo*, this is still fundamentally speech about a "mechanic of the electoral process," the who, when, and where of voting. *Id.* at 144. In the same way that "[f]or ballots to be effective tools for selecting candidates and conveying the will of voters, they must be . . . free from confusing or fraudulent content," so too for elections more generally; eligible voters must be free from fraudulent information regarding where, when, and whether they may vote. The Attorney General therefore agrees with Plaintiffs that if the Court reaches the *Anderson-Burdick* question, the Court should follow *Mazo*. And under that decision the framework applies to the election-integrity law and the law is constitutional.

E. The Election-Integrity Law Is Not Unconstitutionally Vague.

As outlined in the Attorney General's opening brief, the intent requirements of all three substantive provisions of the election-integrity law are fatal to Plaintiffs' vagueness

claims. (Doc. 25, at 18–19.) Plaintiffs do not attempt to argue otherwise. (*See* Doc. 32, at 33–37.) Indeed, the cases Plaintiffs cite support this conclusion. In *Counterman v. Colorado*, for example, the United States Supreme Court observed that an intent requirement is "a way to ensure that efforts to prosecute incitement would not bleed over, either directly or through a chilling effect, to dissenting political speech at the First Amendment's core." 600 U.S. 66, 81 (2023); *see also Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982) ("[A] scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed.").

Failing to overcome the statute's intent requirement, Plaintiffs argue that the Court should apply a "heightened" standard. (Doc. 32, at 34.) But courts do not require that statutes be written with perfect clarity, even for statutes that restrict expressive activity. *United States v. Williams*, 553 U.S. 285, 304 (2008). Rather than expecting mathematical certainty, courts uphold statutes impacting First Amendment rights when an ordinary person exercising common sense would be able to sufficiently understand and comply. *See Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972); *Fams. Achieving Indep. & Respect v. Neb. Dep't of Soc. Servs.*, 111 F.3d 1408, 1418 (8th Cir. 1997).

For instance, Plaintiffs cite *Edge v. City of Everett*, 929 F.3d 657 (9th Cir. 2020). (Doc. 32, at 34.) But in that case, the Ninth Circuit concluded that a vagueness challenge to expressive activity failed where the meaning of terms used in a statute are "easily discerned through recourse to a common dictionary." *Id.* at 665. In this case, similarly, dictionary definitions such as those cited in the Attorney General's opening brief make the

meaning of the terms used in the election-integrity law easily discernable. (*See* Doc. 25, at 21–24.) They consequently provide fair notice of what the statute prohibits and include sufficient standards to guide enforcement. As a result, the statute is not unconstitutionally vague. *See Grayned*, 408 U.S. at 110 (upholding statute impacting First Amendment rights where it was clear what the statute as a whole prohibited).

Plaintiffs do not argue the plain meaning is unclear. In the absence of ambiguity in the ordinary meaning of the terms used in the statute, Plaintiffs obfuscate. First, with respect to the voter-intimidation, election-disinformation, and interference provisions, they resort to caselaw regarding "true threats" and "incitement." An ordinary person would not need to resort to caselaw, however, to understand these terms and what the statute as a whole prohibits. Courts have upheld statutes using similar terms in the face of vagueness challenges. *See, e.g.*, *United States v. Betts*, 509 F. Supp. 3d 1053, 1062 (C.D. Ill. 2020) (finding term "incite" "commonly understood" and not unconstitutionally vague); *United States v. Juncaj*, No. 2:22-CR-00008, 2023 WL 1447354, at *13 (D. Nev. Jan. 31, 2023) (concluding "threaten" able to be understood by people of ordinary intelligence even when not limited by its terms to "true threats"); *United States v. Bundy*, No. 3:16-CR-00051, 2016 WL 3156310, at *3 (D. Or. June 3, 2016) (finding conduct proscribed by statute prohibiting "threats" without distinguishing between threats and "true threats," read as a whole, "sufficiently well-defined to be understandable by individuals of common intelligence and provides a sufficiently clear standard for enforcement").

Second, Plaintiffs argue that they want to express opinions and suggest that this insulates their speech. (Doc. 32, at 35.) But the statements Plaintiffs identify are not

opinions; on their face, they are legal conclusions that misleadingly suggest that eligible voters will be punished for exercising their civil rights. (*See, e.g.*, Doc. 13, ¶¶ 5, 23.) Plaintiffs do not have a constitutional right to threaten and intentionally deceive voters or to advise or counsel others to do so. Plaintiffs seem to concede as much with respect to the election-disinformation provision, arguing that "only true threats come to mind as possibly subject to restriction." (Doc. 32., at 36.)

Third, with respect to the election-disinformation provision, Plaintiffs claim the election-integrity statute conflicts with the statute governing polling-place challengers, section 204C.12. (Doc. 32, at 36–37.) Plaintiffs' concern is misplaced. "An authorized challenger" may "challenge an individual based on personal knowledge that the individual is not an eligible voter." Minn. Stat. § 204C.12, subd. 1 (2022). Subdivision 2 of the election-integrity law does not conflict with or diminish this authority because it requires knowledge that the information at issue is materially false. Minn. Stat. § 211B.075, subd. 2(a)(2). If a poll challenger acts on information they know to be materially false, they do not have personal knowledge that an individual is not an eligible voter as required by Section 204C.12. The knowledge requirement of the election-integrity statute, along with its intent requirement, address Plaintiffs' concerns regarding Section 204C.12.

Plaintiffs' vagueness challenge fails as a matter of law. They attempt to identify hypothetical scenarios in which someone could potentially be confused about what the statute prohibits, but a statute is not unconstitutional merely because it does not mean the same thing to all people, all the time, everywhere. *See Roth v. United States*, 354 U.S. 476,

491 (1957). The common terms used in the statute give an ordinary person exercising common sense fair notice of what the statute prohibits and of how to comply.

III. THE ELECTION-INTEGRITY LAW DOES NOT HAVE THE IMPACTS PLAINTIFFS CLAIM.

In addition to misstating the scope of speech prohibited by the election-integrity law, Plaintiffs also seek to gin up constitutional violations by misstating the law's procedural impacts. Specifically, Plaintiffs devote considerable time to arguing that the election-integrity law is a prior restraint and that the mere possibility that unknown individuals might bring claims that ultimately prove meritless means that the Court should enjoin all enforcement. Both arguments fail.

A. The Election-Integrity Law Is Not a Prior Restraint.

Plaintiffs contend that because the election-integrity law allows people to bring actions to enjoin speech before it is uttered, the law is itself a prior restraint. (Doc. 32, at 24–25.) In so doing, however, Plaintiffs conflate orders that might result from such proceedings with the authorization of the proceedings themselves.

The fact that a statute imposes consequences after speech is uttered does not make it a prior restraint; instead, courts have "carefully limited the prior restraint doctrine to administrative and judicial orders prohibiting speech before it is actually uttered." *Auburn Police Union v. Carpenter*, 8 F.3d 886, 902 n.25 (2d Cir. 1993). Neither is present here: the election-integrity law is neither an administrative order nor a judicial order prohibiting speech before it is actually uttered. Instead, on its own terms it only "punishes after the fact," which is not a prior restraint. *Id.*

It is true that the statute authorizes courts to issue injunctions before speech is uttered. But in cases where such orders are issued, it is the court's order that constitutes a prior restraint, not the statute itself. And in such cases, the court can take adequate precautions to ensure that the prior restraint satisfies constitutional requirements. Indeed, the Second Circuit reached just this conclusion in a challenge to a statute that authorized injunctions to prevent solicitation. *Id.* at 889. In that case, the court rejected a facial challenge to the statute's injunctive provisions, recognizing that injunctions could be "narrowly tailored, based upon a continuing course of repetitive speech, and granted only after a final adjudication on the merits that the speech is unprotected" and consequently would not constitute unlawful prior restraints. *Id.* at 903. This court should likewise hold that the statute does not facially constitute an unconstitutional prior restraint and leave for those individual cases determinations of whether the prior restraint is constitutional.

B. The Possibility of Litigation Regarding Speech Does Not Make the Election-Integrity Law Unconstitutional.

Throughout their brief, Plaintiffs repeatedly refer the specter of lawsuits enforcing the election-integrity law, as if the mere possibility of litigation regarding speech makes a law unconstitutional. (*E.g.*, Doc. 32, at 2, 10, 25, 31.) But this has never been, nor could it ever coherently be, the law.

The Supreme Court has repeatedly allowed causes of action (both statutory and common law) to stand notwithstanding that the party bringing a claim may ultimately be unsuccessful in showing that the speech in question is actionable. For example, a consumer-fraud claim may fail because it turns out the statements were true, or a

prosecution for making threats may fail because the state may be unable to prove the required mens rea. *See, e.g.*, *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012) (dismissing consumer fraud claims because "the advertisements were not fraudulent"); *Counterman*, 600 U.S. at 82 (reversing threats conviction for failure to show required mens rea); *see also, e.g.*, *McGuire v. Bowlin*, 932 N.W.2d 819, 829–30 (Minn. 2019) (dismissing defamation claims on basis of qualified privilege). But the fact that a claim may ultimately lack evidentiary support is not a basis for overturning the law under which the claim is made. Otherwise, the mere possibility that someone could bring a meritless fraud (or threat, or defamation) claim would mean that no one could ever bring such a claim. That such claims do exist shows that Plaintiffs' argument to the contrary is wholly meritless.

CONCLUSION

Plaintiffs cannot establish the election-integrity law is facially unconstitutional because it prohibits only unprotected speech and does not constitute a prior restraint. The Court should dismiss Plaintiffs' complaint.

Dated: December 19, 2023

Respectfully submitted,

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