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7/2/2021 11:40 AM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: 14 Other Civil

Minnesota Chiefs of Police Association, Minnesota Sheriffs' Association, Minnesota Police and Peace Officers Association, and Law Enforcement Labor Services, Inc.,

Plaintiffs,

vs.

Governor Timothy Walz and State of Minnesota,

Defendants.

Case No. _____

DECLARATORY JUDGMENT COMPLAINT

COMES NOW Plaintiffs, Minnesota Chiefs of Police Association ("Chiefs"), Minnesota Sheriffs' Association ("Sheriffs"), Minnesota Police and Peace Officers Association ("MPPOA"), and Law Enforcement Labor Services, Inc. ("LELS"), for their Complaint against Defendants Governor Timothy Walz and State of Minnesota, state and allege as follows:

INTRODUCTION

1. This case seeks a declaration that the newly enacted Minn. Stat. § 609.066 is facially unconstitutional as it places a requirement on police officers to forfeit their right to refuse to testify under the Fifth Amendment to the United States Constitution or

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Art. 1, § 7 of the Minnesota Constitution. Plaintiffs also seek an injunction delaying implementation of certain requirements of this statute that were intended to require training and for which there has been insufficient time and opportunity to engage in the requisite training.

JURISDICTION AND VENUE

2. Pursuant to Minn. Stat. § 555.01, the Uniform Declaratory Judgments Act, which grants the Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed," this Court has jurisdiction over this action.

3. The Court has personal jurisdiction over the parties.

4. Venue is proper under Minn. Stat. § 542.18 in that the State of Minnesota and an officer thereof is a party.

THE PARTIES

5. Plaintiff Law Enforcement Labor Services, Inc. (LELS) is an employee organization as defined by the Public Employment Labor Relations Act, (PELRA) Minn. Stat. § 179A.03, subd. 6.

6. LELS was founded in 1977 as a 501(c)(5) labor organization and has a principal place of business located at 2700 Freeway Boulevard, Suite 700, Brooklyn Center, Minnesota.

7. LELS provides legal representation, contract negotiation, discipline, mediation representation and grievance representation, arbitration, and labor advocacy for its 410 locals throughout the State of Minnesota. LELS locals are comprised of public sector essential employees.

8. LELS is the largest public safety labor union in the State of Minnesota, representing nearly 6,400 licensed peace officers, firefighters, corrections officers, emergency dispatchers and public safety support staff.

9. The Minnesota Sheriffs' Association is over 125 years old and consists of the 87 Minnesota Sheriffs and their staffs. The Association represents the elected Sheriffs at the Legislature and provides training and support for chief county law enforcement officers. Sheriffs are responsible for the training, supervision and discipline of the law enforcement officers under their care.

10. The Minnesota Chiefs of Police Association represents hundreds of law enforcement and public safety leaders. The Association represents its members on legislative, regulatory and community issues related to crime, public safety and law enforcement.

11. Plaintiff Minnesota Police and Peace Officers Association (MPPOA) is a statewide professional association that has represented over 8,500 police officers, who are public employees, from the state, local and federal levels in Minnesota since 1922. It

has a principal place of business located at 525 Park Street, Suite 250, Saint Paul, Minnesota.

12. MPPOA is the largest association representing police officers in Minnesota, with approximately 10,500 members. It organizes and coordinates the activities of all police officers in Minnesota; promotes efficiency in police work; maintains the highest standards of ethics, integrity, honor, and courtesy; and encourages and supports the effective, practical and thorough training of police officers. MPPOA provides its membership with numerous services, including legislative advocacy and legal advocacy through its Legal Defense Fund.

13. Plaintiffs have standing to seek this Court's declaratory authority under Minn. Stat. § 555.01 *et seq.* because the decision of the Court "will inure to the benefit of those members of the association actually injured." *Warth v. Seldin*, 422 U.S. 490, 515 (1975); *see also State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 498 (Minn. 1996) ("our approach is consistent with federal cases which relax requirements for associational standing where the relief sought is equitable only.").

14. Plaintiffs, which are associations, have standing because the statute at issue poses an impediment to their activities and mission. *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004). Plaintiffs and their constituents have a direct interest in the validity of the use of force statute that is different in character from the interest of the citizenry in general.

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15. Defendant Governor Timothy Walz was elected as the 41st Governor of the State of Minnesota in 2018 and at all times relevant to this matter has been the Governor of the State of Minnesota, responsible for the execution of the laws of the State and the administration of the Executive Branch of government for the State of Minnesota. Governor Walz principally resides in the County of Ramsey, State of Minnesota.

AMENDED MINNESOTA STATUTES § 609.066 IMPOSES A REQUIREMENT ON POLICE OFFICERS THAT VIOLATES THE U.S. CONSTITUTION.

16. In America, it is said no one is above the law, or below the law either. This is true in the State of Minnesota too.

17. In the summer of 2020, the Minnesota Legislature amended the statutes that describe the acceptable uses of force for police officers, including Minn. Stat. §§ 609.06 and 609.066.

18. Minnesota Statutes § 609.066 establishes an affirmative defense for a criminal charge related to the use of force by a police officer, establishing the parameters for the right to use deadly force in protection of the officer or others.

19. Prior to the most recent amendment, which became effective March 1, 2021, Minn. Stat. § 609.066, subd. 2 stated:

> Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:
>
> (1) to protect the peace officer or another from **apparent** death or great bodily harm;

> (2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
>
> (3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

(emphasis added to show difference from current statute).

20. On July 23, 2020, Governor Walz signed into law Second Special Session H.F. 1, with relevant sections to become effective March 1, 2021, which among other enactments changed the first condition in subdivision 2 to eliminate the word "apparent," so that it now reads "to protect the peace officer or another from death or great bodily harm," Three additional sub-conditions were also added.

21. The new version requires that a threat of death or great bodily harm:

> (i) can be articulated with specificity by the law enforcement officer;
>
> (ii) is reasonably likely to occur absent action by the law enforcement officer; and
>
> (iii) must be addressed through the use of deadly force without unreasonable delay;

Minn. Stat. § 609.066, subd. 2(a)(1)(i)-(iii).

22. The first of these sub-conditions places an obligation on the officer to articulate with specificity his or her perception of the threat—for this to be articulated "by the law enforcement officer"—in order to put forward the affirmative defense that

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is either congruent with, or at least overlapping with, the traditional doctrine of self-defense.

23. It is a fundamental right that a person cannot be compelled to testify against themselves in a criminal proceeding. *See* U.S. Const. amend. V; Minn. Const. Art. 1 § 7 ("No person shall… be compelled in any criminal case to be a witness against himself.").)

24. Under longstanding jurisprudence, a person invoking an affirmative defense in a criminal context is not required to testify, or to personally articulate the defense. *See State v. Johnson*, 719 N.W.2d 619, 630 (Minn. 2006) ("We do not adopt the restrictive view that a defendant must testify and provide direct evidence of his or her state of mind in order to be entitled to an instruction on self-defense. We believe that a self-defense instruction may be warranted when the evidence on self-defense is entirely circumstantial.").

25. Because the amendment to Minn. Stat. § 609.066 requires a person charged with a criminal offense to specifically articulate a defense, and for that articulation to be "by the law enforcement officer," the Minnesota Legislature has enacted a statute that requires a police officer to forfeit her or his constitutional right not to testify at a trial.

26. Moreover, the right to self-defense is embodied in centuries of Anglo-American law and non-police officers presenting an affirmative defense of self-defense to a charge of the unauthorized use of deadly force maintain their constitutional rights

not to testify. Therefore, a police officer faced with the same circumstances as a non-police officer is afforded fewer rights than a similarly situated civilian.

27. Minnesota law affords a person the justification for taking a life "when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode." Minn. Stat. § 609.065.

28. Minnesota Statutes Sec. 609.065, which applies to all persons in the State of Minnesota, does not require the actor to specifically articulate the reasons and permits the assertion of the affirmative defense without implicating the person's constitutional rights under the Fifth Amendment to the U. S. Constitution or Art. 1, § 7 of the Minnesota Constitution.

29. As such, the newly enacted Minn. Stat. § 609.066, subd. 2 puts Minnesota police officers with fewer rights than ordinary citizens, and it requires an unconstitutional forfeiture of basic liberties.

PLAINTIFFS HAVE NOT HAD AN OPPORTUNITY TO TRAIN ON THE NEW REQUIREMENTS OF THE LAW AND GUIDANCE WAS NOT PROVIDED UNTIL LESS THAN TWO WEEKS BEFORE IMPLEMENTATION WAS TO OCCUR.

30. While the Minnesota Legislature passed amendments to the statutes regulating the use of force in 2020, law enforcement officers, and chief law enforcement officers such as Police Chiefs and Sheriffs, have been awaiting guidance and instruction from the State, specifically the Department of Public Safety ("DPS").

31. The effective date of the changes to the use of force statutes was March 1, 2021; however DPS only provided instruction on the implementation of these changes on February 18, 2021, and did not provide law enforcement officers, agencies and chief law enforcement officers sufficient time, or in fact any time, to establish and conduct training on these new principles.

32. According to the Commissioner of DPS, the circumstances that authorize the use of deadly force have been "substantially rewritten." *See* Ex. 1, Memo to Minnesota Law Enforcement from Commissioner John M. Harrington (Implementation of New Statutes Pertaining to the Authorized Use of Force and Deadly Force by Peace Officers), dated Feb. 18, 2021 ("Harrington Memo").

33. Commissioner Harrington succinctly describes some of the key elements of this rewriting, explaining that the legislation "added a third-party standard, and the law now authorizes deadly force only when an *objectively reasonable peace officer* would believe that the circumstances pose a threat of death or great bodily harm. In addition, the Legislature has added three 'threat criteria' for evaluating both the sufficiency of the threat and the need to respond with deadly force." (Ex. 1 at 4 (emphasis in the original).) The new legislation also outlawed certain restraints, such as choke holds, unless deadly force is authorized. *See* Minn. Stat. § 609.06.

34. Added to Minn. Stat. § 609.066 is a statement of the legislative intent of the statute, which the Office of the Attorney General of Minnesota has stated should be

regarded as part of the "objectively reasonable officer" standard. (*Id.* at 2 ("The Minnesota Attorney General's Office (AGO) has expressed the opinion that law enforcement should regard these statements as part of the objectively reasonable peace officer standard.").)

35. This statement includes four principles:

> (1) that the authority to use deadly force, conferred on peace officers by this section, is a critical responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;
>
> (2) as set forth below, it is the intent of the legislature that peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case;
>
> (3) that the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force; and
>
> (4) that peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

Minn. Stat. § 609.066, subd. 1a.

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36. A major element of these new principles is that "peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm," which represents a change from the prior law that permitted use of deadly force "only when necessary" to arrest, capture or prevent the escape of someone "whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force." Minn. Stat. § 609.066 (2018).

37. The complexity of the new statutory scheme, and need for officer training, cannot be doubted. According to the Attorney General's Office review of Minn. Stat. § 609.066, subd. 2, "the authority to use deadly force is not determined by whether a peace officer is being objectively reasonable in some general sense, but rather, whether the peace officer reasonably concludes that the *statutory criteria* for using deadly force, listed in subdivision 2, are present." (Harrington Memo at 4 (emphasis in the original).)

38. As the Attorney General and Commissioner note, an officer must not rely on a general sense of what is reasonable, but she or he must learn this 229-word statement of principles in order to follow the statutory guidance. *Id.* ("The incorporation of this standard into Minnesota law should encourage peace officers to pay even closer attention during training, and to reflect on their experiences in the field. Peace officers are obligated to evaluate the level of threat faced in any encounter through the lens of training and experience. Peace officers should avoid utilizing rules

of thumb and must evaluate their use of force on the totality of the circumstances from the perspective of a reasonable peace officer.")

39. In addition to the four principles used to define an "objectively reasonable officer," Minn. Stat. § 609.066 also now includes what the Commissioner and the Attorney General's Office has referred to as "the three threat criteria."

40. Under these criteria, "before a threat of death or great bodily harm will justify the use of deadly force, it must be one that, according to the statute: (1) Can be articulated with specificity by the peace officer; and (2) Is reasonably likely to occur, absent action by the peace officer; and (3) Must be countered through the use of deadly force without unreasonable delay."[1] (Harrington Memo at 5-6.)

41. Commissioner Harrington, in his Memo, alerted law enforcement to the fact that this is a major change and that "understanding the implications of this change is of critical importance." However, he gave them 10 days to do so, including to establish and implement training around this change. This was and is not possible.

42. The Harrington Memo did not sugarcoat the complexity of the new standard. In describing what constitutes an articulable threat, the Commissioner states:

> The prior version of the statute allowed peace officers to respond to an "apparent" threat of death or great bodily harm. In common usage, "apparent" may mean either an obvious threat, or one that appears to the perceiver as actual. In simpler terms, the previous standard accepted the idea that a threat did not have to be real, merely the appearance of reality. Under the new language, the threat must be one that a reasonable peace

[1] As discussed above, the first criterion is unconstitutional.

> officer can articulate with specificity. Courts often use the plain meaning of a word to define terminology. In this case, to be specific means free from ambiguity. Finally, something is ambiguous if it can be interpreted in more than one way.
>
> Interpreting the statute in this manner creates a zone of considerable uncertainty. For example, if a suspect suddenly turns on a peace officer with an object in their hands that could be a gun or could be a cellphone, does this qualify as a threat that can be articulated with specificity? As the law now stands, that is an issue that the courts will need to resolve. Subdivision 1a of the section 609.066 provides that the evaluation of peace officer decisions to use deadly force "shall account for occasions when peace officers may be forced to make quick judgments. . . ." Even objectively reasonable peace officers can arrive at mistaken conclusions. Yet this uncertainty, combined with the sanctity of life principle, should encourage peace officers to avoid rushing into ambiguous situations where "one wrong move" by the suspect could prompt the peace officer to take an irreversible action—unless there are sound reasons for doing so.]

(*Id.* at 6.)

43. Among responsibilities of Chiefs of Police and Sheriffs is that they must see that the officers under their command are properly trained, the training meets the demands of the community and the training correctly inculcates officers with a sort of "muscle memory" for doing the correct thing. This involves both classroom curricula and situational training.

44. To develop the best training curriculum, Plaintiffs need to engage supervisors, use of force instructors, and command personnel, as well as obtaining feedback from community associations and political agencies in order to ensure that the training and its goals meets the needs of their communities and the provisions of the statute.

45. The time frame for development of such curricula is measured in months, rather than the days allotted Plaintiffs, with a likely timeframe of at least six months to overhaul the current training curricula.

46. Implementing training is also not an instantaneous matter. Officer training in general has been hampered by the COVID-19 pandemic, as certain training modules that require larger groups of officers would have been unsafe under the circumstances. Even so, an agency such as in the City of Bloomington, which has approximately 125 peace officers, would require rotation of officers to maintain an active on-duty force during training. Officers would either be required to train on off-duty days or be pulled from their regular duties to train, necessitating additional overtime to cover the training time.

47. Included in the strategies for achieving optimal training is the development of scenario-based tools for hands-on training. Police agencies frequently engage third party specialists, industry experts, to assist with this training, or the development of the scenarios, based on their experience in developing police training programs, but these industry experts have yet to develop curricula or comprehensive programming for the provisions of the new use of force statute.

48. The changes to the use of force statute are nuanced, raising the need for more extensive and properly focused training in order to develop the necessary reactive capacity to meet the dynamic situations police officers confront in the community.

Inadequate training leads to confusion, uncertainty, indecision, and ultimately can result in physical harm to the police and/or the public. The variety of situations that require training, including for instance a wide gamut of possibilities from a threat or violence to a canine officer, which was developed under the previous version of the statute, or how to interpret the statute for a sniper, who is relying on third party reports of situations on the ground, or the more common situation with an armed felon fleeing a police encounter into a populated setting. Hesitant, untrained and uncertain responses will likely lead to bad outcomes for both the officer and the public they serve.

49. The prior use of force training principles have been in place for decades, developed as they were around the United States Supreme Court cases of *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Connor*, 490 U.S. 386 (1989). In order to respond quickly, efficiently and effectively, police officers are conditioned to "let the training take over." Without the ability to train to allow that to happen, police officers will revert to their prior training, undermining the purpose of the statutory changes and setting Minnesota's police officers up to fail. The consequences of the bad outcomes that can result from insufficient training include, for officers, effects such as: personal liability, potential job loss, licensure issues, anxiety, reduced job satisfaction, depression, traumatic stress or death. Communities can see their police force lose experienced officers to the anxiety and stress of uncertain requirements and trained experience that is now not attuned to these new requirements.

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50. Border jurisdictions in Minnesota, such as in the Fargo/Moorhead area, are known to receive assistance from agencies outside Minnesota. On information and belief, Governor Walz received notice in the form of a letter from the City of West Fargo on or about April 30, 2021, stating it and other North Dakota jurisdictions would be discontinuing mutual aid and cross-border law enforcement resource sharing with Minnesota communities.

51. The City expressed concerns in line with the constitutional issues brought forth in this Complaint.

> The recently revised and implemented Minnesota Statute Section 609.066 (2020) governing Use of Force exposes law enforcement officers to criminal prosecution (prison) and presumes guilt of an officer using deadly force unless the officer provides, and the court accepts, a statement covering a three-part test documenting the necessity of deadly force. The three-part test is subject to interpretation and does not appear to reflect basic due process protections included in the Fifth and Sixth Amendments to the U. S. Constitution, including compelling the government to produce witnesses and evidence to prove the alleged crime and not compelling a defendant (here a police officer) to be a witness against themselves. Prior to this change, Minnesota's statute on use of force was very similar to North Dakota's, following federal case law Graham vs. Connor.

52. Also included in the concerns expressed by the City of West Fargo were issues of training.

> The West Fargo Police Department has reviewed options thoroughly. It is not feasible to require our officers to discern between two state standards on use of force in often times rapidly evolving situations where most times officers divert back to how they are trained. We see strong potential for our officers being seriously harmed by the confusion caused by the differences in MN/ND laws. We will not subject our officers to this risk.

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53. Uncertainty regarding dangerous situations enhances the danger to Minnesota's peace officers and the public. Minnesota's law enforcement officers require training and development of a curriculum to put the new standards into practice. Minnesota's Chiefs of Police and Sheriffs bear a responsibility not only to these officers, but to the public to see that this training is developed and then accomplished. Untrained and uncertain officers are a danger to themselves and cannot optimally ensure that the public safety is maintained.

54. The Commissioner's statements, and the reality of the new laws, might generate an argument about vagueness and placing law enforcement officers in positions where their actions in compliance with the new law is not clear. Yet Plaintiffs are not making this claim; Plaintiffs are sworn to uphold the law and wish to do so.

55. Instead, Plaintiffs seek an injunction to delay implementation of the new standards that were to become effective March 1, 2021, in light of the fact that the guidance from the State was not forthcoming until February 18, 2021, and there has not been sufficient time for Plaintiffs to develop, distribute and implement training sufficient to meet these new requirements.

CLAIM FOR RELIEF

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

56. Plaintiffs incorporate by reference all preceding paragraphs.

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57. Minnesota Statutes Section 609.066 applies use of force restrictions on Minnesota police officers that violate their constitutional rights.

58. The police and peace officers of Minnesota, as represented by Plaintiffs Minnesota Police and Peace Officers Association, Law Enforcement Legal Services, Inc., the Minnesota Chiefs of Police, and the Minnesota Sheriff's Association all have a substantial interest in protecting the rights of police officers, and ultimately the public, from this legislation, and seek a declaration that it is facially unconstitutional.

59. Plaintiffs are entitled to declaratory judgment that the requirement in Minn. Stat. § 609.066 that a police officer specifically articulate an affirmative defense is unconstitutional.

60. The Minnesota Legislature has drastically altered the landscape of law enforcement use of force requirements without providing sufficient time for law enforcement stakeholders to develop, implement and complete training that the Commissioner of Public Safety and Attorney General's Office have deemed necessary.

61. An inability to train and incorporate the changed state policies will lead to indecision and uncertainty in law enforcement, which operates to create an enhanced risk to the health, safety and the very lives of Minnesota's police and peace officers, and ultimately the public.

62. Plaintiffs are therefore entitled to injunctive relief, requiring that the State of Minnesota, and Governor Walz, as the Chief Executive of the State, are enjoined from

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enforcing the newly enacted provisions of Minn. Stat. § 609.066, subd. 2 and to provide additional time for the implementation of the remaining elements of Minn. Stat. § 609.066.

63. Plaintiffs are entitled to costs pursuant to Minn. Stat. § 555.10.

WHEREFORE, Plaintiffs respectfully request the following relief from the Court:

A. A declaratory judgment stating that Minn. Stat. § 609.066, subd 2 is unconstitutional inasmuch as it requires a police officer to testify to justify the use of force as an affirmative defense.

B. Injunctive relief delaying implementation of the amendments to Minn. Stat. § 609.066 until such time as training can be developed and implemented.

C. An award to Plaintiffs for their costs and disbursements incurred in bringing this action, including attorney fees.

D. Such other and further relief as the Court deems just, equitable and appropriate under the circumstances.

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CHESTNUT CAMBRONNE PA

Dated: July 1, 2021

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