

IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA

DIANNA SCHIMEK, <i>et al</i> ,)	Case No. CI 25-137
)	
Plaintiffs,)	
)	
)	ORDER ON
)	MOTION TO DISMISS
vs.)	AND
)	TEMPORARY INJUNCTION
JAMES PILLEN, in his official)	
capacity, as Governor of Nebraska and)	
ROB JEFFREYS, in his official)	
Capacity as Director of the Nebraska)	
Department of Correctional Services,)	
)	
Defendants.)	

This matter comes before the Court on the 24th day of October, 2025 on the 1) Defendants’ Motion to Dismiss, and 2) Plaintiff’s Motion for Temporary Injunction. The Plaintiffs are represented by Nicholas Grandgenett and Robert McEwen. The Defendants are represented by Jennifer Huxoll, Lincoln Korell and Joseph McKechnie. The Plaintiffs offer Exhibits 1-27 and 31. The Defendants make objections to parts of Exhibits 1, 15-27 and 31 (only as to the Motion to Dismiss). The Defendants offer Exhibits 28-30. The Court receives Exhibits 2-14 and 28-30 and those paragraphs of the remainder of the Exhibits not objected to. The Court to review the objections to the identified paragraphs. Counsel argue the Motions. The Court takes the Motions under advisement.

Now on this 27th day of October, 2025, the Court after reviewing the Motions, case law, statutes, Exhibits, briefs and arguments of parties, finds and orders as follows:

1. Defendants Objections to Exhibits: Defendants objected to certain paragraphs of the Affidavits, Plaintiffs’ Exhibits 1 and 15-27. The foundational objections to the affidavits were various paragraphs in each Exhibits referencing the use of public funds to repurpose the Work Ethic Camp (“WEC”) and use of WEC to detain non-citizens These foundational objections are overruled as to each Exhibit as the basis for such statements are based on Defendants statements contained in Exhibits 2 and 3. The objection to legal conclusions in each affidavit

concern statements made regarding each affiant's statement that the Defendants' actions are characterized as an unlawful expenditure of public funds will violate the separation of powers doctrine which harms the affiant. This objection is overruled as this simply sets forth the affiant's position regarding the Defendants actions and the Court will give it the appropriate weight. The hearsay objection made to a couple of the Exhibits are solely the affiant's impression of vague negative comments the affiant perceived in the community. This objection is overruled. Exhibits 1 and 15-27 are received in their entirety. Exhibit 31 is also received for purposes of the Motion to Dismiss.

2. ***Plaintiffs' Complaint:*** The Plaintiffs' Complaint filed on October 15, 2025 contains two causes of action: Count I: Separation of Powers & *Neb. Const.* art. IV, § 19; and Count II: Separation of Powers & *Neb. Rev. Stat.* § 72-801. The Plaintiffs seek a temporary injunction i) prohibiting the Defendants from creating a state owned and operated immigration detention facility, entering and/or executing any agreement to that effect, and expending public funds for that purpose, and ii) prohibiting the Defendants from repurposing the WEC as an immigration detention facility. This includes repurposing the WEC buildings for immigration detention, transferring current WEC inmates to other NDCS facilities in order to make space for non-citizens, housing non-citizens in the WEC detained for immigration violations and removal processes, entering and/or executing any agreement to that, or expending public funds for these purposes.

The Plaintiffs further seek a judgment i) declaring that the creation of a state owned and operated immigration detention facility, and any agreement to that effect, is ultra vires under Nebraska's separation of powers doctrine because the Legislature has not vested in the Defendants the power to manage, control, or govern an immigration detention facility under *Neb. Const.* art. IV, § 19, and declare the expenditure of public funds for this purpose as unlawful; and ii) declaring, as ultra vires, the repurposing of the WEC buildings for immigration detention, and any agreement to that effect, as a violation of Nebraska's separation of powers doctrine because the Defendants lack the authority to do so, and declare the expenditure of funds for this purpose as unlawful.

3. **Defendants' Motion to Dismiss:** The Defendants Filed a Motion to Dismiss on October 20, 2025 that moves this Court to dismiss Plaintiffs' Complaint under *Neb. Ct. R. Pldg.* § 6-1112(b)(1) and (b)(6) (effective Jan. 1, 2025). When presented with a motion to dismiss on the basis of 12(b)(1) and 12(b)(6), the Court must analyze the 12(b)(1) basis first. "When dismissal of a complaint is requested under both Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim, courts should consider the Rule 12(b)(1) grounds first and should consider the Rule 12(b)(6) grounds only if the court determines it has subject matter jurisdiction." *Larsen v. Sarpy County School Dist. No. 77-0027*, 319 Neb. 823, 831-32, 25 N.W.3d 185, 194 (2025); *Anderson v. Wells Fargo Fin. Accept.*, 269 Neb. 595, 694 N.W.2d 625 (2005).

Because the Court held a hearing on Defendants' Motion to Dismiss at which the issue of standing was presented and evidence outside the pleadings was received, Defendants' Motion is considered a factual challenge to standing.

A court's consideration of standing will vary depending on when the issue is raised during the progression of a case. If standing is challenged at the pleadings stage, before an evidentiary hearing and before any evidence outside of the pleadings is admitted, it is deemed a facial challenge. In considering a facial challenge, a court will typically review only the pleadings to determine whether the plaintiff has alleged sufficient facts to establish standing. But when an issue of standing is presented and the court holds an evidentiary hearing and reviews evidence outside the pleadings, it is considered a factual challenge. When a factual challenge is made, the party opposing the motion must offer affidavits or other relevant evidence to support its burden of establishing subject matter jurisdiction.

North Star Mut. Ins. Co. v. Stewart, 311 Neb. 33, 41, 970 N.W.2d 461, 468 (2022) (internal quotation marks omitted)

A. **Failure to Join Indispensable Parties:** Defendants' first argument in their Motion alleges that the Court lacks jurisdiction as a result of the Plaintiffs failing to add Outback Fence and the United States Department of Homeland Security ("DHS") U. S. Immigration and Customs Enforcement ("ICE") as Defendants to this action. Defendants claim that under the Uniform Declaratory

Judgments Act, “[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” *Neb. Rev. Stat.* § 25-21,159. The Defendants have executed contracts with Outback Fence (Ex, 28, Att. B) and DHS (Ex, 28, Att. A). The Defendants’ argument is that this Court cannot order relief as requested by the Plaintiffs without affecting the rights of these entities that the Defendants have entered into contracts with.

The Court does not agree with the Plaintiffs characterization of the contracting parties as indispensable.

An indispensable or necessary party to a suit is one whose interest in the subject matter of the controversy is such that the controversy cannot be finally adjudicated without affecting the indispensable party's interest, or which is such that not to address the interest of the indispensable party would leave the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience.

Midwest Renewable Energy, LLC v. American Engr. Testing, 293 Neb. 73, 90-91, 894 N.W.2d 221, 236 (2017). The Court continued and stated, “we consider all persons interested in the contract or property involved in the suit to be necessary parties, and all persons whose interests therein may be affected by the decree in equity to be indispensable parties.” *Id.* at 91, 894 N.W.2d at 236. The Plaintiffs’ claims for relief do not involve these contracts but the alleged violations of the Nebraska Constitution and statutes by the Defendants in their course of action leading to the contracts at issue. While it is true that if the Plaintiffs were successful there would be potential impact on the contracting party with the Defendants, the contracts are not at issue. Assuming the Plaintiffs are successful, the fact that the Defendants entered into contracts that they constitutionally or statutorily could not enter into, this has nothing to do with the Plaintiffs claims. These contracting parties may have a remedy against the Defendants for such actions which is entirely unrelated to the relief sought by the Plaintiffs. The Court finds that DHS and Outback Fence are not indispensable parties to this action.

B. Plaintiffs Lack Standing: “Standing is a jurisdictional component of a party's case because only a party who has standing may invoke the jurisdiction of a court.” *Preserve the Sandhills, LLC v. Cherry County*, 313 Neb. 590, 596, 895 N.W.2d 599, 607 (2023). The *Preserve the Sandhills* Court continued:

We have emphasized that to show standing, it is generally insufficient for a plaintiff to have “merely a general interest common to all members of the public.” And we have said that a person seeking to restrain the action of a governmental body must show some special injury peculiar to himself or herself aside from and independent of the general injury to the public unless it involves an illegal expenditure of public funds or an increase in the burden of taxation.

Id. at 597, 895 N.W.2d at 607. The Court in *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015) stated:

But taxpayer standing is an exception to the injury-in-fact requirement. Here, the district court determined that the landowners had taxpayer standing for two reasons. First, taxpayers have an equitable interest in public funds, including state public funds. So a resident taxpayer, without showing any interest or injury peculiar to itself, may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes. Additionally, a taxpayer's action sometimes raises matters of great public concern that far exceed the type of injury in fact an individual could normally assert in an action against government officials or entities. So we have recognized a limited exception for taxpayer actions that raise such matters.

Id. at 814-15, 857 N.W.2d at 747. It has long been held that a resident taxpayer, without showing any interest or injury peculiar to itself, may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes. *Rath v. City of Sutton*, 267 Neb. 265, 673 N.W.2d 869 (2004); *Chambers v. Lautenbaugh*, 263 Neb. 920, 644, 920 (2002).

Exceptions to the rule of standing must be carefully applied in order to prevent the exceptions from swallowing the rule. *Other than challenges to the unauthorized or illegal expenditure of public funds*, our more recent cases have narrowed such exceptions to situations where matters of great

public concern are involved and a legislative enactment may go unchallenged unless the plaintiff has the right to bring the action.

State ex rel. Reed v. State Game And Parks Comm'n, 278 Neb. 564, 571, 773 N.W.2d 349, 355 (2009)(emphasis added).

The Defendants argue that this public funds exception does not apply to these Plaintiffs as they “do not challenge a direct expenditure and cannot show that no other party is better suited to bring this action.” Part of the Defendants’ argument is that the expenditures on the part of the State are to be reimbursed by the DHS. This argument is not persuasive. A similar argument was rejected in the *Thompson* case. There will clearly be State funds expended now, as evidenced with the fence contract, and in the future. The fact that these funds will be reimbursed under the DHS contract and the State made whole, should not deprive the taxpayer the standing to challenge alleged unlawful actions or expenditures.

Further, the Court disagrees that there are potential parties better suited to bring this action. The other parties suggested by the Defendants include the displaced inmates, future detainees and the Legislature. Why the displaced inmates are better suited is not explained nor can a logical reason be surmised. The future detainees suggested remedy is a habeas corpus action, Under Nebraska law, which is much more limited than federal law, is in the case of a prisoner held pursuant to a judgment of conviction, habeas corpus is available as a remedy only upon a showing that the judgment, sentence, and commitment are void. *Childs v. Frakes*, 312 Neb. 925, 981 N.W.2d 598 (2022). This would not constitute a more suitable party and could only occur after the WEC facility was receiving detainees. There is little reason to believe the Legislature is a more suitable party as it has taken no action to this date. The Court finds that the Plaintiff taxpayers have demonstrated that they are the most suitable party to bring this action. The Plaintiffs have standing as taxpayers to challenge the Defendants alleged unauthorized or illegal expenditure of public funds. The Court further finds that the Plaintiffs have established that this litigation does raise matters of great public concern given the potential violation of the constitutional separation of powers issue in which executive action may go unchallenged unless the Plaintiffs have the right to bring this action. *Cunningham v. Exon*, 202 Neb. 563, 276 N.W.2d 213 (1979).

Finally, the Defendants state that the Plaintiffs have failed to meaningfully comply with the demand requirement placed on taxpayers in as set out in *Johnson v. City of Omaha*, 319 Neb. 402, 421-22, 23 N.W.3d 420, 437 (2025). This demand is not necessary if the demand would be “useless”. *Id.* In the case at bar, the Plaintiffs gave the Defendant one day notice. Given the fact that the Defendants had already entered into the contracts with DHS and Outback Fence, and the opening of the WEC facility as a detention center is imminent, the Court finds that the demand was useless and there is no evidence that the Plaintiffs have intentionally delayed their demand.

The Court finds that the Plaintiff taxpayers have standing to bring this action. The Defendants’ Motion to Dismiss is overruled and denied.

4. Plaintiffs’ Motion for Temporary Injunction:

Grounds for a temporary injunction in Nebraska are controlled by *Neb. Rev. Stat. § 25-1063*:

When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act, subject to the limitations of sections 25-1062 to 25-1080. It may also be granted in any case specifically authorized by statute.

The statute requires courts to examine the Plaintiffs Complaint; in other words, it requires an underlying claim for relief before a court may grant a temporary injunction. Generally, the purpose of a temporary injunction is to protect the subject matter of litigation and preserve the status quo of the parties until a determination of the case on the merits. *Pennfield Oil Co. v. Winstrom*, 272 Neb. 219, 720 N.W.2d 886 (2006). “An injunction is an extraordinary remedy, and it ordinarily should not be granted unless the right is clear, the damage is

irreparable, and the remedy at law is inadequate to prevent a failure of justice.” *County of Cedar v. Thelen*, 305 Neb. 351, 357, 940 N.W.2d 521, 526 (2020). “An injury is irreparable when it is of such a character or nature that the party injured cannot be adequately compensated therefor in damages, or when the damages which may result therefrom cannot be measured by any certain pecuniary standard.” *Rath v. City of Sutton, supra*, at 280, 673 N.W.2d at 884, (internal quotation marks omitted). “[I]rreparable harm should be assumed whenever a plaintiff proves an expenditure of public funds is contrary to law. Stated otherwise, irreparable harm should be assumed whenever a plaintiff proves an expenditure of public funds is contrary to law.” *Id.* at 281, 673 N.W.2d at 885. “[U]nlawful acts by public officers may, in a proper case, be restrained”. *Hogelin v. City of Columbus*, 274 Neb. 453, 464, 741 N.W.2d 617, 626 (2007). “[A] remedy at law is not adequate if the situation requires and the law permits preventative relief as preventing the repetition and continuance of wrongful acts.” *Id.* at 465, 741 N.W.2d at 627.

[I]njunction may be withheld when it is likely to inflict greater injury than the grievance complained of. If the protection of a legal right even would do a plaintiff but comparatively little good and would produce great public or private hardship, equity will withhold its discreet and beneficent hand and remit the plaintiff to his legal rights and remedies.

Id. at 466, 741 N.W.2d at 627. “[I]njunctive relief is available only where there is no adequate remedy at law, probable success on the merits has been demonstrated, and the balance of equities favors the moving party.” *Abboud v. Lakeview, Inc.*, 237 Neb. 326, 354, 466 N.W.2d 442, 459 (1991).

The Plaintiffs, in seeking a temporary injunction, must show (1) irreparable harm; (2) probability of success on the merits; (3) the balance of hardships; and, if relevant, (4) the public interest favors the issuance of the injunction. John Lenich, "Requirements for interlocutory injunctions," 5 *Neb. Prac., Civil Procedure* § 18.2, (March 2019).

The Plaintiffs’ two causes of action invoke the separation of powers issue involving i) constitutional and ii) statutory provisions and the Defendants’ actions

contrary to these provisions. The separation of powers is found in the *Neb. Const.*, art. II, § 1, which provides:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as expressly directed or permitted in this Constitution.

Neb. Const. art. IV, § 19 provides:

The general management, control and government of all state charitable, mental, reformatory, and penal institutions shall be vested as determined by the Legislature.

Neb. Rev. Stat. § 72-801 provides:

Any public building that is erected or repaired and for which an appropriation is made by the Legislature shall be constructed or repaired in a complete manner within the limits of such appropriation. Except as provided in sections 72-811 to 72-818 and 79-11,109, no building shall be changed or diverted from the use or purpose, kind, or class of building from that for which the appropriation was originally made.

The Defendants respond that they have complied with these constitutional and statutory provisions stating “to fulfill these duties, the Legislature authorized the Department to “[e]stablish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation *of persons committed to the department.*” *Neb. Rev. Stat.* § 83-173(3) (Reissue 2024) (emphasis added). Persons committed to the Department include “any person ... sentenced or committed under any provision of law to a specific facility within the department.” *Id.* § 83-176(1) (Reissue 2024).” Defendants’ Brief, p. 13.

COUNT I

The first prong of analysis of the temporary injunction is a showing of irreparable harm. Irreparable harm should be assumed whenever a plaintiff proves an expenditure of public funds is contrary to law. *Hogelin v. City of Columbus, supra*. The Defendants position on this prong of the analysis is concerning at best. It is argued that since the State will be reimbursed by DHS and that there will be a “net positive” and that Defendants have already executed contracts and paid out 90% of the fencing, that this somehow eliminates irreparable harm. The logical extension to this argument is that since the Defendants are making the State money, regardless of the legality of the actions, irreparable harm can never be established. Such a Machiavellian approach is not recognized in the law. Rather the analysis of irreparable harm turns on the establishment that the expenditure of public funds is contrary to law. This in turn leads to the second prong of the analysis.

This second prong refers to the probability of success on the merits in Count I of the Complaint. This analysis begins with whether the Legislature has vested the general management, control and government of the penal institutions with another entity under Art. IV, § 19. The answer is obviously “yes”. *Neb. Rev. Stat. § 83-171* (Reissue 2024) provides in pertinent part:

There is hereby created a Department of Correctional Services which shall:

- (1) Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department and for the safekeeping of such other persons as may be remanded to the department in accordance with law;
- (2) Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department;

§ 83-172 establishes the authority of the Governor to appoint a Director of Correctional Services. The Director’s duties are set forth in § 83-173 which provides in pertinent part:

The Director of Correctional Services shall:

- (1) Supervise and be responsible for the administration of the Department of Correctional Services;
- (3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the department;
- (13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

This statute was recently amended adding additional duties, but none addressing the issues of this litigation.

Defendant Pillen, as Governor, has the following authority in § 84-109:

Wherever statewide projects contributed to by any federal agency are initiated within the state, and there is no state agency which is authorized by law to sponsor the same, the same may be sponsored by the Governor under his general power to take care that the affairs of the state be efficiently and economically administered. This power granted to the Governor shall include the power to cooperate with, or to supervise or to act in an advisory capacity as to any and all projects contributed to by any federal agency, as to which statewide supervision, direction, or advisory control may be deemed expedient; *Provided*, that for the purpose of efficient execution of the powers hereby bestowed, the Governor may delegate actual performance of such duties as may be necessary to any department or agency of the state to which it may seem proper and expedient to him to make such delegation.

The Court finds that the Governor clearly has the authority to enter into contracts with the federal government and delegate those contractual duties to the Department. The contract at issue is between DHS/ICE and the Department (the “Contract”). (Ex 28, Ex. A). The Contract provides that the Department “shall provide ICE with 300 adult male/female beds”. The Contract provides:

All persons in the custody of ICE are aliens. This term recognizes that ICE detained aliens are not charged with criminal violations and are only held in custody to ensure their presence throughout the administrative hearing process and to assure their presence for removal from the US pursuant to lawful final order...

The issue in Count I then turns on whether the Defendants have the authority to run the WEC as an immigration detention facility to detain and process ICE non-citizen immigrant detainees for civil immigration processing pursuant to a contractual arrangement with DHS. The Plaintiffs' position is clear that in review of the above statutes, while the Legislature has vested certain duties and powers with the Department, the authority to house the ICE detainees pursuant to the civil immigration processing is not among those authorized powers that the Legislature has vested with the Department and Director.

The Plaintiffs position is that "NDCS's actual vested powers, the state correctional system is criminal in nature. See e.g., *Neb. Rev. Stat.* § 83-939(1) (requiring NDCS to establish a Division of Adult Services to administer facilities for adult offenders); § 83-964 et seq. (requiring NDCS to administer capital punishment); & § 83-907 (executing and maintaining plans to prevent prison overcrowding). The statutorily identified purpose of NDCS's correctional infrastructure is to prepare inmates for "lawful community living" by offering diversified programing and individualized treatment. § 83-901..... NDCS, furthermore, is vested only with the power to "fulfill those functions of *state government* relating to the custody, study, care, discipline, training, and treatment of persons in correctional and detention institutions." *Neb. Rev. Stat.* § 83-922 (emphasis added)." Plaintiffs' Brief in Support, p. 11.

The Defendants respond that the powers granted the Department and Defendant Jeffreys by the Legislature set forth above authorizes such actions. Further, the Director is given the authority in § 83-176 (1) as follows:

- (1) Whenever any person is sentenced or committed under a provision of law to a specific facility within the department or to the custody of the warden or superintendent of such facility, he or she shall be deemed to be sentenced or committed to the department.

“When such duties are delegated, they remain a function entirely within the province of the Legislature and are not subject to judicial review.. However, when the Legislature delegates authority, it may place such restrictions and limitations upon the authority granted as it chooses.” *State ex rel. Steinke v. Lautenbaugh*, 263 Neb. 652, 660, 642 N.W.2d 132, 140 (2002). The Defendants rely on the Director’s authority under § 83-173 (3) which allows him to establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the Department. The term “committed” is important in the analysis and is found in § 83-176 (1) which also relied on by the Defendants. A “committed offender” means any person who, under provision of law, is sentenced or committed to a facility operated by the Department. § 83-170 (2). A person “committed” to the Department means any person sentenced or committed to a facility within the Department. § 83-170 (11). While the definition section defining “committed” is not extremely helpful, it is clear it references an action different than, or in addition to, a sentence for criminal charges.

The definition analysis of the term “law” is likewise at issue as contained in § 83-176 (1). The Plaintiffs argue that a person “committed under a provision of law” references only State law. The Defendants argue this includes all law, federal or state, and provides statutory examples of this. The definitional section in § 83-170 is of no assistance. As set forth above, the Legislature has the clear power to “place such restrictions and limitations upon the authority granted as it chooses.” *Steinke, supra*. It has not done so. The Court agrees with the Defendants that the term “laws” includes federal law.

Based on the above, the Court concludes that the Defendants have the authority under the law vested to the Defendant Jeffreys and the Department by the Legislature to detain and house “ICE detained aliens” as defined in the Contract. As set forth above, when the Legislature delegates authority, it may place such restrictions and limitations on that authority it chooses. It has not done so here. It broadly references persons committed to the Department. It does not limit those committed persons to those “sentenced” to the Department. It has intentionally made that definition broader in § 83-170 (11) and § 83-176 (1). Further, the Legislature does not limit the “provision of law” that a person is sentenced or committed to the Department. It is clear that the current situation

with the Department and ICE detainees was never contemplated when the statutes were created, but the language utilized by the Legislature is broad enough to allow the Defendants to take the action they have chosen. The Court finds that Defendant Jeffreys has the authority to exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities which would include the Defendants' responsibilities under the Contract. The Court further finds that there has been no violation of the separation of powers in the Defendants' actions. Based on these findings, the Court finds that the Plaintiffs have failed to prove the probability of success on the merits. The Motion for Temporary Injunction is overruled and denied on Count I.

COUNT II

As set forth above, the first prong of the analysis, irreparable harm, turns on whether the Plaintiffs can establish the probability of success on the merits on Count II. This Count involves the usage of the WEC facilities for the ICE detained aliens under the Contract. The Plaintiffs' Brief in Support sets out the origins of the buildings at WEC.

The WEC was created by statute and its buildings were constructed via legislative appropriation. See *Neb. Rev. Stat. § 83-4,142 et seq.*; In 1997, the Nebraska Legislature passed Legislative Bill ("L.B.") 887 to operate a work ethic camp to rehabilitate people serving criminal sentences and reduce prison overcrowding. L.B. 882, 95th Leg. 1st Sess. (Neb. 1997) (slip law). That same year, the Legislature passed L.B. 882A which appropriated \$5,885,614 over the next two fiscal years "for site acquisition, site development, design, and construction of a one-hundred-bed, stand-alone incarceration work camp facility." L.B. 882A, 95th Leg. 1st Sess. (Neb. 1997) (slip law). In 1999, the Legislature passed L.B. 878, appropriated an additional \$776,887, and reaffirmed the L.B. 882A directive. L.B. 878, 96th Leg. 1st Reg. Sess. § 27 (Neb. 1999) (slip law). Specifically, L.B. 882 and L.B. 882A directed that the buildings be constructed for a work ethic camp to:

(1) house criminal, felony offenders, incarcerated by court sentence, if certain conditions, such as being an adult, non-violent offender who is medically and mentally fit, were met. L.B. 882, 95th Leg. 1st Sess. §§ 2 & 3 (Neb. 1997) (slip law);

(2) facilitate the rehabilitation of criminal offenders by providing access to work programs, vocational training, and programs related to money management, substance abuse, and behavioral management. *Id.* at § 2; and (3) reduce prison overcrowding and make bedspace available for violent offenders. *Id.*

Over time, by legislative act, the Legislature expanded the population of people eligible for placement in the WEC buildings and the number of people that may be housed there. In 2007, for example, the Legislature passed L.B. 83 to allow the Board of Parole, not just a court, to place felony offenders in the WEC “prior to release on parole” along with other first time non-violent, mentally sound felony offenders “currently incarcerated” in a NDCS facility. L.B. 83, 100th Leg. 1st Reg. Sess. (Neb. 2007) (slip law). In 2009, L.B. 274 was passed and allowed the NDCS director to incarcerate any offender currently serving a term of incarceration in the WEC if they believed it was in the best interest of the offender and society. L.B. 274, 101st Leg. 1st Reg. Sess. (Neb. 2009) (slip law). During this time, the Legislature has continued to appropriate money to maintain and repair the WEC buildings so they may serve their statutory purpose. L.B. 198, 103rd Leg. 1st Reg. Sess. (Neb. 2013) (slip law) (appropriating money in 2013 to make modifications to the control centers of Buildings A and C).

Plaintiffs’ Brief in Support, p. 4-6.

The Defendants counter and argue that there is no statutory requirement that the WEC is exclusively in McCook. They further argue that the statutes set forth above give the Director the power to exercise all powers and perform all duties necessary and proper in carrying out his responsibilities. Defendants maintain that § 72-801 is not violated by the Defendants’ actions in carrying out the detention provisions of the Contract. The Defendants assert that § 72-801 applies to the initial funding and construction of a building when referencing “no building shall be changed or diverted from the use or purpose, kind, or class of building from that for which the appropriation was originally made.” However, such an interpretation ignores the entire sentence that contains this language. It reads “ Except as provided in sections 72-811 to 72-818 and 79-11,109, no building shall be changed or diverted from the use or purpose, kind, or class of building from that for which the appropriation was originally made.” §§ 72-811-818 involve buildings, or part of buildings, that have become unoccupied or

unused for the purposes which the “building was designed, intended or remodeled”. § 72-811(3). By the very language of the statute, the prohibition from any change or diversion of the use or purposes of a building referenced in § 72-801 continues until the provisions of §§ 72-811-818 take effect. Further, Defendants argument that federal law preemption applies citing *CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315 (3rd Cir. 2025) is misplaced. *CoreCivic* involved a newly enacted New Jersey law that forbid state and private parties from contracting to detain people for civil immigration violations. The plaintiff had been contracting to do this since 1996. The Third Circuit did not decide the preemption issue but struck down the law as an intergovernmental immunity violation. *Id.* at 329. This is obviously not the situation in this case.

The issue becomes do the Defendants have the authority vested in them to use the current WEC facility for purposes of detaining ICE aliens under the Contract. The authority for an incarceration work camp is found in *Neb. Rev. Stat.* § 83-4,142. The Court finds that this set of statutes (§§ 83-4,142-4,147) does not direct the location of such a camp in McCook, Red Willow County. These statutes require a work camp and where that work camp would be is within the authority granted the Director. If there is not such a facility for qualified inmates, that is not the subject matter of this lawsuit. Based on the conclusions and findings of the Court in Count I that the Defendants have the authority to enter into the Contract and house ICE detainees, and the finding that the WEC facility is not required to be located in McCook, Red Willow County, the Court finds that the Director has the authority to house the detainees under the Contract in the WEC facility. The Court further finds that there has been no violation of the separation of powers in the Defendants’ actions. Based on these findings, the Court finds that the Plaintiffs have failed to prove the probability of success on the merits. The Motion for Temporary Injunction is overruled and denied on Count II.

IT IS THERFORE ORDERED, ADJUDGED AND DECREED that the Defendants’ Motion to Dismiss is overruled and denied.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs’ Motion for Temporary Injunction on Counts I and II is overruled and denied.

5. ***Other Requests:*** Any other outstanding request made by either party in either Motion and not addressed by the Court herein is denied.

IT IS SO ORDERED

DATED this 27th day of October, 2025.

BY THE COURT:


PATRICK M. HENG
District Court Judge

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