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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

MINNESOTA CHAPTER OF

ASSOCIATED BUILDERS AND

CONTRACTORS, INC.,BUILDERS

ASSOCIATION OF MINNESOTA,and

J & M CONSULTING, LLC,

Plaintiffs,

v.

Court File No.

**COMPLAINT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NICOLE BLISSENBACH, in her official

capacity as the Commissioner of the

Minnesota Department of Labor and

Industry,KEITH ELLISON, in his official

capacity as the Attorney General of

Minnesota,

Defendants.

**EXPEDITED RELIEF REQUESTED**

Fortheir Complaint, Plaintiffs Minnesota Chapter of Associated Builders and

Contractors, Inc.,Builders Association of Minnesota, and J & M Consulting, LLC

(collectively, “Plaintiffs”) state and allege as follows:

**COMPLAINT**

1.Plaintiff Minnesota Chapter of Associated Builders and Contractors, Inc.

(“MNABC”) invokes the federal constitutional and statutory rights ofitsmembers and

seeksa judgment:(1) declaring Minnesota Statute §181.723(2024)is unconstitutional as

well aspreempted by the National Labor Relations Act (“NLRA”), 29 U.S.C. §§ 151,*et*

*seq*., (2) enjoining Defendants’ enforcement of Minn. Stat. § 181.723againstMNABC’s

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members; and (3) issuing a statewide injunction entirely barring enforcement because

Minn. Stat. § 181.723’s vagueness renders it facially unconstitutional.

2.Plaintiff Builders Association of Minnesota (“BAM”) invokes the federal

constitutional and statutory rights ofitsmembers and seeksa judgment:(1) declaring

Minn. Stat.§181.723 is unconstitutional as well as preempted by theNLRA;(2)

enjoining Defendants’ enforcement of Minn. Stat. § 181.723againstBAM’smembers;

and(3) issuing a statewide injunction entirely barring enforcement because the Minn.

Stat.§ 181.723’s vagueness renders it facially unconstitutional.

3.J & M Consulting, LLC (“JMC”) invokes its federal constitutional and

statutory right to seek a judgment: (1) declaringMinn. Stat.§181.723 is unconstitutional

as well as preempted by the NLRA;(2) enjoining Defendants’ enforcement ofMinn. Stat.

§ 181.723against JMC;and(3) issuing a statewide injunction entirely barring

enforcement becauseMinn. Stat. § 181.723’svagueness renders it facially

unconstitutional.

4.This casearises afterthe State of Minnesota Legislature (the “Legislature”)

stuffed hundreds of laws into a1,492-pageOmnibus Bill (the “Omnibus”) and passed it

shortlybefore midnight on Sunday, May 19, 2024. Legislators and the public were given

no time for review or debate theOmnibus. In theLegislature’s rush to push through the

Omnibus before the expiration of the legislative session, it violated the Minnesota

Constitution’s Single Subject and Title Clause—all while also cutting short or flat-out

ignoring vital debates about this crucial piece of legislation—and thereby violated

Plaintiffs’members’federal constitutional rights.

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5.Article IV, Section 17 of the Minnesota Constitution requires that “[n]o

law shall embrace more than one subject, which shall be expressed in its title.”*See*Minn.

Const.Art. IV,Sec. 17.

6.The Minnesota Supreme Court has repeatedly emphasized the importance

of both Clauses, declaring that “[t]he Single Subject and Title Clause, as Minnesota’s

first ‘sunshine law,’ requires that the legislature not fold into larger, more popular bills,

wholly unrelated and potentially unpopular provisions that may not pass as a stand-alone

bill.”*Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 303 (Minn. 2000).

7.Despite the Minnesota Supreme Court’s multiple warnings, the Minnesota

Legislature enacted theOmnibus, themost blatant violation ofArticle IV, Section 17 of

the Minnesota Constitutioninstate history.

8.The Omnibus violates the Single Subject and Title Clause of Section 17.

The Omnibus’ title page is nearly six pages long and the billgovernseverything from

employee misclassification to rental assistance, to guest licensing formarriage and family

therapists, to increasing penalties for transferring firearms, and to agriculture policy,

among other items.

9.Buried within the Omnibus is a revision to Minnesota Statute §181.723 (the

“Statute”) set to take effect on March 1, 2025 that adversely affects the construction

industry,and Plaintiffs’members.

10.The Statute, asamended,relates to the misclassification of construction

employees andnow provides an unconstitutionallyvague and ambiguous 14-part test (not

including numerous subparts) to determine whether an individual qualifies as an

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independent contractor. Failure to meet a single one of the 14-factor test can result in the

Minnesota Department of Labor and Industry (“DOLI”) finding that ageneralcontractor

has misclassifiedasubcontractorasanindependent contractor; or that a prime

subcontractor—the subcontractor immediately below the general contractor in the

contractual chain—has misclassified a sub-subcontractor as an independent contractor.

For Plaintiffs’ members, it is very common for the general contractor-members to

contract withprimesubcontractorswho provide thelabor, materials, or both, to complete

construction projects.The prime subcontractors then further contract work out to their

sub-subcontractors.Theprimesubcontractors’and sub-subcontractors’workforce

includesvarious individuals perform work on the construction project.In addition to

various penaltiesassessed, if a misclassification isfoundunder the Statute,all theprime

subcontractors’workersbecome employees of thegeneralcontractorand are entitled to

the wages and benefits offered by thegeneralcontractor to its employees.The same

applies to the prime subcontractors because the Statute may deem that their sub-

subcontractors workersbecome the prime subcontractors’ employees.

11.Not only does the Statute failto clearly define when a worker in the

construction industry should be classified as an independent contractor,itinstitutes

criminal penalties for violators of the Statute underMinnesota law.*See*Minn. Stat.

§609.52, subd. 1(13), subd. 3; Minn. Stat.§ 181.721, subd. 5; Minn. Stat. § 181.74, subd.

1.The criminal penalties includejail timeand a range of fines.Minn. Stat. § 609.02,

subd. 4; Minn. Stat.§ 609.0341, subd. 1; Minn. Stat. § 609.02, subd. 3; Minn. Stat.

§ 609.52, subd. 3.The inclusion of potential criminal penalties requires that the Statute

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strictlysatisfy the “void-for-vagueness doctrine”, which requires that a penal statute

define the criminal offense with sufficient definiteness that ordinary people can

understand what conduct is prohibited and in a manner that does not encourage arbitrary

and discriminatory enforcement.*Kolender v. Lawson*, 461 U.S. 352, 351 (1959).

Vagueness “must be judged in light of the conduct that is charged to be violative of the

statute.”*Id*. at 369 (White, J. dissenting). A law is impermissibly vague when it fails to a

draw a reasonably clear line between lawful and unlawful conduct.*Smith v. Goguen*, 415

U.S. 566, 574–78 (1974).

12.Additionally, the Statute provides for excessive fines in violation of the

U.S. Constitution. In addition to compensatory damages, theStatuteprovides a penalty

of up to $10,000 for each individualthe contractorfailed to properly classify, represent or

treat as an employee, a penalty of up to $10,000 for each violation of the multiple

subparts contained in Minn. Stat.§181.723,subd. 7 (including misclassification), and a

$1,000 per day fine for obstructing or delaying an investigation byDOLI—all on top of

the compensatory damages already owed to the misclassified individual.*See*Minn. Stat.

§ 181.723, subd. 7(g).Moreover, if a contractor hinders or delaysDOLI’sinvestigation

into alleged misclassification, the contractor is guilty of a misdemeanor.Minn. Stat.

§ 177.32, subd. 1(1).

13.Statutory penalties must bear a reasonable “relationship to the gravity of the

offense that [the statute] is designed to punish.”*U.S. v. Bajakajian*, 524 U.S. 321, 334

(1998). Therefore, a statutory penaltythat “is grossly disproportional to the gravity of a

[party’s] offense”violates theEighth Amendment.*Id*.;*accordTyler v. Hennepin County*,

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*Minn*., 143 S. Ct. 1369, 1381-82 (2023) (Gorsuch, J., concurring) (statutory penalties,

even those labeled as being“remedial” in nature, violate the Eighth Amendment “when

… they bear no correlation to any damages sustained by society or to the cost of

enforcing the law;” as such, “[e]conomic penalties imposed to deter willful

noncompliance with the law are fines by any other name [,a]nd the Constitution has

something to say about them: They cannot be excessive.”) (partial quotation omitted).

14.The disproportionate penalties contemplated under the Statute violate the

Excessive Fines clausecontained inthe Eighth Amendment.*Seee.g*.,*Tyler v. Hennepin*

*County, Minn*., 143 S. Ct. 1369, 1381-82 (2023);*Bajakajian*, 524 U.S. at 334;*St. Louis,*

*I.M. & S. Ry. Co. v. Williams*, 241 U.S. 63, 66-67 (1919);*accordMissouri Pac. R. Co. v.*

*Tucker,*230 U.S. 340, 349, 351 (1913)*Sw. Tel. & Tel. Co. v. Danaher*, 238 U.S. 482,

486-87, 491 (1915);*Golan v. FreeEats.com*, 930 F.3d 950, 962 (8th Cir. 2019);*Capitol*

*Records, Inc. v. Thomas-Rasset*, 692 F.3d 899, 910 (8th Cir. 2012).

15.In addition to requiring ageneralcontractor to pay its wage and benefits

package to a misclassified subcontractor’s employees(and any other misclassified subtier

subcontractor’s employees), the Statute, as amended also makes it a violation for a

contractor to fail to report or disclose to any person or federal, state, or local government

agency an individual who is an employee when required to do so under applicable law.

These provisions are pre-empted under theNLRA, and intrude upon the province of the

National Labor RelationsBoard(“NLRB”). Thus, beyond the unconstitutional

provisions, the Statute further is preempted under theNLRA.

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**JURISDICTION AND VENUE**

16.Plaintiffs bring this cause of action under 42 U.S.C. § 1983, for the

violation of their rights and the rights ofMNABC’sand BAM’smembers, secured by the

Eighth and Fourteenth Amendments to the United States Constitution. This Court has

jurisdiction over these federal claims under 28 U.S.C. §§ 1331 (federal question) and

1343(a) (redress for deprivation of civilrights). Declaratory relief is authorized by the

Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

17.MNABC’sand BAM’smembers, including JMC,are directly and

adversely affected by the Omnibus and accordingly have standing to sue. TheStatuteis

at odds with eachMNABC’sand BAM’spolicy objectives, and challenging theStatuteis

germane toMNABC’sand BAM’spurposes. Neither the claims asserted nor the relief

requested requires individual members to participate in the suit.

18.JMC has separate standing to sue because the Statute will irreparably harm

JMC’s ongoing business operations, and if effective come March 1, 2025, will subject

JMC to compensatory damages, monetary penalties, and criminal penalties. All in

violation of JMC’s constitutional rights.

19.Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). The District

of Minnesota is where a substantial part of the events giving rise to Plaintiffs’ claims

have occurred, are now occurring, and will occur in the future if not curtailed. Plaintiffs

MNABC’s and BAM’smembers, including JMC,are situated in this District and are and

will continue to be adversely affected by the irreparable harms sought to be remedied and

prevented by this Court’s action upon this Complaint.

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**NATURE OF ACTION**

20.Plaintiffs seek declaratory relief thatthe Statute, as amended by the

Omnibus, isin violation of the United States Constitutionandispreempted by the

NLRA, 29 U.S.C. § 151,*et seq*. Plaintiffs seek injunctive relief, enjoining Defendants’

enforcement of theStatuteagainst their members.

**PARTIES**

21.MNABCis incorporated under Minnesota law as a nonprofit corporation.

MNABC maintains its principal place of business in Eden Prairie, Minnesota. MNABCis

a statewide professional trade organization representing theinterests of 330-plus

construction-related firmsacross Minnesota.Those firms are members of MNABC and

provide residential and commercial construction services in this state.MNABC aids its

members in a variety of ways, such as advocating for the members’interests before the

government, educating them about developments in the industry, and providing

networking opportunities.The full list of benefits that MNABC provides its members

may be found on its websiteand incorporated herein.*The Benefits of Membership at a*

*Glance*, ABCMINNESOTA ANDNORTHDAKOTA,

https://www.mnabc.com/Membership/I-am-a-Considering-Membership/Benefits-of-

Membership (last visitedFeb. 11, 2025.)MNABC’s advocacy for its members extends to

taking reasonable steps to prevent unconstitutional laws from harming its members.

*Government Affairs*,ABCMINNESOTA ANDNORTHDAKOTA,

https://www.mnabc.com/Government-Affairs (last visitedFeb. 11, 2025) (“ABC has

always made government affairs the core of our mission . . . Although a simple concept,

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ABC is constantly forced to beat attempts to impose discriminatory laws and regulation

. . . Fight overreach in regulation and stop unnecessary licensure.”)

22.MNABC brings this lawsuit to further its mission and to vindicate the

constitutional rights of affected members. MNABC’s 330-plus employer members and

their approximately 22,000 employees, who provide commercial and residential

construction services in Minnesota, are directly affected by the Statute, because the

members frequently utilize both independent contractors and employees on construction

projects.Fortheiremployees, these members provide various employee-specific wages

and benefits (such as overtime, minimum wage, PTO, health insurance, retirement

account matching, etc.)

23.BAM is incorporated under Minnesota law as a nonprofit corporation.

BAM maintains its principal place of business in St. Paul, Minnesota.BAMisa

statewide trade association constituting acollaboration of ninelocal associations, all of

whomcollectively represent the interests of homebuilders across Minnesota.BAM aids

its members in a variety of ways, such as advocating for the members’ interests before

the government, educatingthem about developments in the industry, and providing

networking opportunities.The full list of benefits that BAM provides its members may be

found on its website andincorporated herein.*Who We Are*,BUILDERSASSOCIATION OF

MINN., https://bamn.org/about/ (last visitedFeb. 11, 2025.)BAM’s advocacy for its

members extends to taking reasonable steps to prevent unconstitutional laws from

harming its members. (*Id*.) (“We’re the ones who work with state legislators to keep your

best interests inmind when new laws are passed and assure your ability to remain

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competitive is never sacrificed under new laws . . . As your advocate, we push for

common sense laws that will benefit our members and our industry. As your watchdog,

we strive to protect ourindustry from harmful legislation, regulation and litigation.”).

24.BAM brings this lawsuit to further its mission and to vindicate the

constitutional rights of affected members. BAM’s 900 employer-members and their

approximately 45,000 employees, who provide residential construction services in

Minnesota, are directly affected by the Statute, because the members frequently utilize

both independent contractors and employees on construction projects. For their

employees, these members provide various employee-specific wages and benefits (such

as overtime, minimum wage, PTO, health insurance, retirement account matching, etc.)

25.JMC is a Minnesota limited liability company. JMC provides commercial

construction services, either as a general contractor or project manager, across Minnesota.

JMC maintains its principal place of business at 432 Lakewood Lane NW, Rochester,

MN 55901.JMC is acurrentmember of MNABC and BAM.

26.Defendant Keith Ellison is the Attorney General of Minnesota(“MN AG”).

The MN AGis empoweredto enforce Chapter 181 of the Minnesota Statutes under the

powers granted to him by Minnesota Statute 8.31. *See*Minn. Stat. §§8.31,181.1721.

27.Defendant Nicole Blissenbach is the Commissioner ofDOLI(“the

Commissioner”). The Commissioner is empowered to enter and inspect places of

employment and investigate facts, conditions, practices or matters as appropriate to

enforce the laws within the Commissioner’s jurisdiction and to carry out the purposes of

Chapter 181. *See*Minn. Stats. §§ 175.20, 177.27.

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28.Once the Statute is in effect, there is an actual and imminent threat of

enforcement by Defendants.The MN AG created an advisory taskforce on how to “put

an end” to the problems surrounding worker misclassification.*Advisory Task Force on*

*Worker Misclassification*,

OFFICE OF

MINN.

ATTORNEY

GENERAL,

https://www.ag.state.mn.us/Taskforce/Misclassification/ (last visitedFeb.11, 2025). The

MN AGalsohas a known history of going after employers for alleged employee

misclassification.*Attorney General Ellison wins restitution for workers that gig-work*

*company misclassified*,OFFICE OFMINN.ATTORNEYGENERAL,

https://www.ag.state.mn.us/Office/Communications/2024/12/19\_AriseVirtualSolutions.asp(last

updated Dec. 19, 2024).Earlier in 2024, the Commissionervoiced supportforH.F. No.

4444, whoseterms were later largely incorporated into the Statute.*Compare*H.F. No.

4444-3,

MINN.

OFFICE OF THE

REVISOR OF

STATUTES,

https://www.revisor.mn.gov/bills/text.php?number=HF4444&type=bill&version=3&sessi

on=ls93&session\_year=2024&session\_number=0&format=pdf, pp. 7–14*with*H.F. No.

5247,

MINN.

OFFICE

OF

THE

REVISOR OF

STATUTES,

https://www.revisor.mn.gov/bills/text.php?number=HF5247&type=bill&version=4&sessi

on=ls93&session\_year=2024&session\_number=0&format=pdf,pp. 186–193.In many

respects, H.F. No. 4444 is nearly identical to the Statute, including how H.F. No. 4444

containsa substantially identical14-factor test on who qualifies as an independent

contractor, expands on the scope of prohibited conduct, and provides stacking monetary

penalties for misclassification.When speaking in support of HF No. 4444, the

Commissioner stated:

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. . .My name is Nicole Blissenbach and I am the Commissioner of the

Minnesota Department of Labor and Industry. Thank you for the

opportunity to testify in support of House File 4444. The bill addressing

employer misclassification fraud. Misclassification fraud has a significant

impact on employees, law-abiding employers, taxpayers, and social safety

net programs. Currently, the law address misclassification in a piecemeal

approach and does not set the government up to successfully address this

problem or prevent the problem from growing further. This legislation

specifically addresses deficiencies in thelaws meant to address both

general misclassification and misclassification in the construction industry.

Many of the changes outlined are direct responses to challenges that DLI

has faced and experienced in enforcing the current law. The legislation

provides more clarity which will promote compliance allow investigations

to be more impactful, streamline and expand enforcement authority, and

strengthen the consequences for the employers who do in fact violate the

law.

*Labor committee approves bill to prohibit misclassification of employees 3/5/24*,

MNHOUSEINFO, https://www.youtube.com/watch?v=w\_1-jkjGs4Y&t=293s (last visited

Feb.11, 2025),*see*timestampsat7:22–8:38.

The comments and actions by Defendants demonstrate that once the Statute takes

effect, they willvery likelyenforce its terms and pursue contractors for alleged employee

misclassification.

29.For the 2026–2027 BiennialBudget, DOLI proposed funding for an

additional 2.5 full time labor investigators, “to increase and strengthen enforcement of

worker misclassification laws in construction and non-construction industries.”*At a*

*Glance*,MINN.DEP’T OFLABOR ANDINDUSTRY,

https://mn.gov/mmb-stat/documents/budget/2026-27-biennial-budget-books/governors-

recommendations-january/labor-and-industry.pdf,*see*p. 26 (last visitedFeb.11, 2025).

Governor Walzproposed$281,000.00 for fiscal year 2026 and $286,000.00 for each

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proceeding year “to increase funding for the enforcement of worker misclassification

laws.” (*Id*.p. 25.)DOLI estimated that misclassification enforcement action will generate

“$712,000 in misclassification-related penalties per year,” with an additional $90,000.00

per year if additional staff are added.(*Id*.p. 26.)

**FACTS**

30.Article IV, Section 17 of the Minnesota Constitution states that “[n]o law

shall embrace more than one subject, which shall be expressed in its title.”*See*Minn.

Const.Art. IV,Sec. 17.

31.The Single Subject Clause was enacted to ensure accountability. It was

enacted to preclude the possibility that the legislature fold into larger, more popular bills,

wholly unrelated and potentially unpopular provisions that may not pass as a stand-alone

bill.*Associated Builders & Contractors*, 610 N.W.2d at 293.

32.The Title Clause was enacted to prevent legislation from being given a

vague or fraudulent title that “gives no intimation of the nature of the proposed

legislation, or of the interests likely to be affected byits[*sic*]becoming a law.”*Johnson*

*v. Harrison,*50 N.W. 923, 924 (Minn. 1891).

33.TheState ofMinnesota’sjudiciary has been joined by legislators and

governors from both parties in emphasizing the importance of an open legislative process

that ensures bills arenot being put together in the final hours of a sessionand that they

comply with Article IV, Section 17 of the Minnesota Constitution.

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34.The Judiciary, Legislative Branch, and Executive Branch of the State of

Minnesota are in alignment regarding the importance of creating a more accountable and

transparent system to comply withArticle IV, Section 17 of the Minnesota Constitution.

35.In 2000, theMinnesotaSupreme Court declared: “We fully recognize that it

is the legislature’s prerogative to establish our state’s public policy. . .and that the

legislative process is not bound by rigid textbook rules. Nonetheless, lawmaking must

occur within the framework of the constitution.”*See Assoc. Builders & Contractors*, 610

N.W.2d at 303 (emphasis added).

36.In 2018, the Minnesota Supreme Court issued a warning to the Legislature:

“We remain firmly committed to our constitutional duty ‘to prohibit infringements by

either the legislative or executive branch of the government of [the] constitutional rights

vested in the people.’. . .We trust that the Legislature has heard, and will heed, these

warnings.”*Ottov. Wright County*, 910 N.W.2d446,459(Minn.2018).

37.Despite the Supreme Court’srulings, the 2024 Legislature disregarded the

Article IV, Section 17 of the Minnesota Constitution in passing an expansiveand

unconstitutionalOmnibus.

38.The Omnibus passed last minute on May 19, 2024 during the 93rd

Minnesota Legislative Session on a party-line vote. H.F. No. 5247,

MINN.

OFFICE

OF

THE

REVISOR

OF

STATUTES,

https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF5247&y=2024&ssn=0,*see*4th

Engrossment (last visitedFeb.11, 2025). The 93rd Session ended on May 20, 2024. Rep.

Patricia Mueller,*RELEASE: 93rd Legislature Concludes with Some Wins Amongst*

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*Misplaced Priorities*,

MINN.

HOUSE

OF

REPRESENTATIVES,

https://www.house.mn.gov/members/profile/news/15561/49713 (last updated May 20,

2024.) The Minnesota Senate Republican Caucus, those in the minority party, confirmed

that legislators lacked any real opportunityto read or debate the Omnibus before it

passed.*Democrats Abandoning Minnesotans*,MINN.SENATEREPUBLICANCAUCUS,

https://www.mnsenaterepublicans.com/democrats-abandoning-minnesotans/ (last visited

Feb.11, 2025.) Around 11 PM on May 19, 2024—*i.e*., one hour before the end of the

legislative session—the Omnibus was presented to the Minnesota Senate for a vote. (*Id*.)

Coupled with how it was impossible to read over 1,400 pages within an hour, there were

not enough paper copies for legislators to read, and the electronic version of the bill

crashed. (*Id*.) Before midnight, legislators tried to get answers on what was in the bill.

(*Id*.) Legislators were concerned with they could not cast an informed vote because of the

inability to fully review the Omnibus’ contents before midnight and how they lacked

access to the final language of the bill. (*Id*.)

39.On May 24,2024,Governor Tim Walz signed the Omnibus into law.

40.Contained within the massiveOmnibuswas anamendmentMinnesota’s

worker classification statutes.*See*Article 10, Section8. The same section amended the

factors considered when determining when an individual may qualify as an independent

contractor in the construction industry.

41.Anotherprovision of the Omnibus(Article 10, Section6)clarifiesthat

individuals may bring actions directly to district court against partiesfound in violation

of Minn. Stat. § 181.723.

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42.TheStatuteprovides that an individual is an independent contractorin the

commercial or residential building construction or improvement services industryif the

individual is operating as a business entity that meets*all*the following 14 requirements*at*

*the time the services were provided or performed,*the individual**:**

(1) was established and maintained separately from and independently of

the person for whom the services were provided or performed;

(2) owns, rents, or leases equipment, tools, vehicles, materials, supplies,

office space, or other facilities that are used by the business entity to

provide or perform building construction or improvement services;

(3) provides or performs, or offers to provide or perform, the same or

similar building construction or improvement services for multiple persons

or the general public;

(4) is in compliance with all of the following:

(i) holds a federal employer identification number if required by

federal law;

(ii) holds a Minnesota tax identification number if required by

Minnesota law;

(iii) has received and retained 1099 forms for income received for

building construction or improvement services provided or

performed, ifrequired by Minnesota or federal law;

(iv) has filed business or self-employment income tax returns,

including estimated tax filings, with the federal Internal Revenue

Service and the Department of Revenue, as the business entity or as

a self-employed individual reporting income earned, for providing or

performing building construction or improvement services, if any, in

the previous 12 months; and

(v) has completed and provided a W-9 federal income tax form to

the person for whom the services were provided or performed if

required by federal law;

(5) is in good standing as defined by section 5.26, if applicable;

(6) has a Minnesota unemployment insurance account if required by

chapter 268;

(7) has obtained required workers’ compensation insurance coverageif

required by chapter

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176;

(8) holds current business licenses, registrations, and certifications if

required by chapter

326B and sections 327.31 to 327.36;

(9) is operating under a written contract to provide or perform the specific

services for theperson that:

(i) is signed and dated by both an authorized representative of the

business entity and of the person for whom the services are being

provided or performed;

(ii) is fully executed no later than 30 days after the date work

commences;

(iii) identifies the specific services to be provided or performed

under the contract;

(iv) provides for compensation from the person for the services

provided or performed under the contract on a commission or per-

job or competitive bid basis and not on any other basis; and

(v) the requirements of item (ii) shall not apply to change orders;

(10) submits invoices and receives payments for completion of the specific

services provided or performed under the written proposal, contract, or change

order in the name of thebusiness entity. Payments made in cash do not meet this

requirement;

(11) the terms of the written proposal, contract, or change order provide the

business entity control over the means of providing or performing the specific

services, and the business entity in fact controls the provision or performance of

the specific services;

(12) incurs the main expenses and costs related to providing or performing

the specific services under the written proposal, contract, or change order;

(13) is responsible for thecompletion of the specific services to be provided

or performed under the written proposal, contract, or change order and is

responsible, as provided under the written proposal, contract, or change order, for

failure to complete the specific services; and

(14) may realize additional profit or suffer a loss, if costs and expenses to

provide or perform the specific services under the written proposal, contract, or

change order are less than or greater than the compensation provided under the

written proposal, contract, or change order.

Minn. Stat. § 181.723, subd. 4(as amended).

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43.The14-factortest is vague and ambiguous. Some of these new or amended

factors in the testwill undoubtedlylead to unintendedor innocentmisclassifications, and

worse, areimpossible to decipher both when read separately, and when read in

conjunction with the rest of the factors.The Statute does not even answerthis

fundamental question: if the Statute considers an individual to be an employee, how long

must the contractortreat that individual as an employee?

44.For example,Factor 9(iv) of the 14-factortestis vague when itprovides

that an individual must be operating under a written contract to provide or perform the

specific services on a commission or*per-job*or competitive bid basis and*not on any*

*other basis*to be considered an independent contractor. Minn. Stat. § 181.723, subd.

4(a)(9)(iv).By illustration, the Statute is vague as to whether asubcontractorthatenters

intoaMaster Service Agreementwithageneralcontractor,inwhichtheyparties

negotiate and ultimately agreethe subcontractorwillprovideservices to thegeneral

contractor on a per unit basis (*i.e*., per window, per square yard for drywall or flooring,

etc.)over the course of a yearon multiple projects, regardless of how many contracts

they are awarded, will comply with Factor 9(iv).

45.SimilarlyFactor 12 of the 14-factor test provides that an individual must

incur the main expenses and costs related to providing or performing the specific services

under the written proposal, contract, or change order to be considered an independent

contractor. Minn. Stat. § 181.723, subd. 4(a)(12). TheStatute, however, provides no

explanation for determination of what “main expenses and costs” mean. For instance, if a

contractor only provided laboronlyfor installing the sidingon a residence, but a different

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contractor provided thesidingmaterial, it not clear whatisconsideredthe “main

expenses and costs.”

46.The Statute further requires that any paymentsbe made pursuant to an

invoice.Minn. Stat.§181.723,subd.4(a)(10). Yetthe Statutefails toexplainwhat

technicallyconstitutesan“invoice,”includinghowtheStatutefailstoprovidethe

specificcharacteristicsof aninvoice.DOLIdoesnotdisputetheStatutefailstoprovide

additionalrequirements ontheformof theinvoice.*Misclassification FAQs*,MINN.

DEP’TOFLABORANDINDUSTRY,https://www.dli.mn.gov/business/employment-

practices/misclassification-faqs

(lastvisitedFeb.11,2025)(“Thetest does notcontainadditional requirementsabout

theform of invoices.”)

47.The Statute further requires that for an individual to qualify as an

independent contractor, the individualmaybe able to “realize additional profit or suffer a

loss[.]” Minn. Stat. § 181.723, subd. 4(a)(14). Yet the Statute does not specify whether an

individualreceivingasethourlyrateundera“timeandmaterials”contractsatisfiesthis

factor or not.

48.Since the new test indicates that an individual is only an independent

contractor if they meet all 14 factors “at the time at which services are provided or

performed,” ageneralcontractor could be found to have misclassified subcontractors who

inadvertentlyfail totimelysign a written contract, fail to incorporate specific language

intoa contract,allow their state required licenses, registrations or certifications to lapse.

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Similarly, if thegeneralcontractor pays its subcontractors prior to receiving an invoice, it

could be found to have misclassified the workers.*See*Minn. Stat. § 181.723, subd. 4(a).

49.The Statute further requires the contractor to treat an individual as an

employee if the individual does not meet the 14-factor test. Yet the Statute does notstate

how long the contractor must treat the individual as an employee.

50.TheStatute also makes it unlawful to fail to “report or disclose” employees

to any person or federal government agency when required to do so. Such failure is

already prohibited by the NLRA. 29 U.S.C. § 158(a)(5); 29 C.F.R. § 102.62(d) 29 C.F.R.

§ 102.63(b)(1)(i).

51.In addition to civil penalties for worker misclassification under the Statute,

employers are subject to criminal penalties for wage theft as a result of misclassifying

workers. *See*Minn. Stat. § 609.52, subd. 3; Minn. Stat. § 181.721; Minn. Stat. § 181.74.

52.Specifically, Minn. Stat. § 609.52, subd. 1(13) defines “wage theft” as an

employer “fail[ing] to pay an employee all wages, salary, gratuities, earnings, or

commissions at the employee’s rate or rates of pay or at the rate or rates required by law,

including any applicable statute, regulation, rule, ordinance, government resolution or

policy, contract or other legal authority, whichever rate of pay is greater.”*Id.*

53.The inclusion of potential criminal penalties requires that the Statute satisfy

a heightened burden with respect to the“void-for-vagueness”doctrine, which requires

that a penal statute define the criminal offense with sufficient definiteness that ordinary

people can understand what conduct is prohibited and in a manner that does not

encourage arbitrary and discriminatory enforcement.*Kolender v. Lawson,*461 U.S. 352,

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351 (1959). Vagueness “must be judged in light of the conduct that is charged to be

violative of the statute.”*Id.*at 369 (White, J. dissenting). A law is impermissibly vague

when it fails to a draw a reasonably clear line between lawful and unlawful conduct.

*Smith v. Goguen,*415 U.S. 566, 574-78 (1974).

54.Even without the criminal penalties, the Statute is impermissibly vague—an

ordinary personcannot reasonably understand what conduct it prohibits, and it further

encourages arbitrary enforcement on the part of Defendants.

55.The numerous factors enumerated within the Statute makes it impossible

forcontractorsto fully understand when an individual should be classified as an

independent contractor versus as an employee. Thus, the Statute violates the void-for-

vagueness doctrine,especiallysincecontractorscan facecriminal penalties if they violate

those provisions—heighteningthe need for theLegislature, and Defendants,to clearly

enumerate the line between lawful and unlawful conduct.

56.The United States Constitution prohibitsthe state of Minnesota from

imposing “excessive fines.” U.S. Const. amend. VIII;*see also Qwest Corp. v. Minnesota*

*Pub. Utilities Comm’n,*427 F.3d 1061, 1069 (8th Cir. 2005) (“The Eighth Amendment’s

prohibition of excessive fines applies to the states through the Due Process Clause of the

Fourteenth Amendment.”) (citation omitted).

57.TheStatuteprovidescompensatory damages to aggrieved workers, and also

institutes a penalty of up to $10,000 for each individual the person failed to classify,

represent or treat as employee, a penalty of up to $10,000 for each violation of the

prohibitedactivities outlined in the Statute, and a $1,000 fineper dayfor any person who

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delays, obstructs, or otherwise fails to cooperate with theCommissioner’s investigation.

*See*Minn. Stat. §181.723, subd.7(g). TheStatute fails to define a “delay” or

“obstruction”, further establishing its failure to clearly define what is lawful versus

unlawful conduct.Since each violation is a separate penalty,the fines stackupon each

other. If ageneralcontractor misclassified a subcontractorthat employs ten individuals

simply because they failed to sign a contract on one project, they couldbefined hundreds

of thousands of dollars undersubdivision 7 of the Statute.In short, the fineswould

rapidly compound for a large employer who made oneminormistakein the14-factor

test.

58.MNABC’s and BAM’s members range from small to mid-size construction

companiesandarein an untenable position.The members likely will not have enough

money tofund their general business operations, while also setting aside enough money

to cover the monetary penalties imposed by the Statute—especially because the fines

stack on top of each other and apply per misclassified individualand violation.For any

oneproject, there may be dozens of subcontractor-workers. If Defendants deem that the

members misclassified those workers as independent contractors, then the members are

likely on the hook for hundreds of thousands of dollars in fines.Depending onamount of

the fines, the members may have to take drastic austerity measures, such asimposing

layoffs, shutting down, or declaring bankruptcy.

59.The imposition of a civil fine may be found constitutionally excessive

where “the penalty prescribed is so severe and oppressive as to be wholly

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disproportionate to the offense and obviously unreasonable.” *Williams*, 251 U.S. at 66-

67.

60.The imposition of thepenalties on top of compensatory damages can only

be described as a punitive measure designed for retributive or deterrent purposes, which

triggers the Excessive Fines Clause of the Eighth Amendment.*See, e.g., U.S. v. Aleff*, 772

F.3d 508, 512 (8th Cir. 2014) (“The Excessive Fines Clause [of the Eighth Amendment]

applies to civil penalties that are punitive in nature.”);*Sabri Props., LLC v. City of*

*Minneapolis*, No. 18-cv-3098, 2019 WL 2052597, at \*3 (D. Minn. May 9, 2019)

(statutory fines and penalties are “subject to the restrictions of the Excessive Fines

Clause” where they do not serve solely a remedial purpose, but are imposed in whole or

in part for “retributive or deterrent purposes”);*Clark v. Dep’t of Pub. Safety*, No. 19-cv-

2802, 2020 WL 5204271, at \*5 (D. Minn. Sept. 1, 2020) (same).

61.The Excessive Fines Clause prohibits the imposition of statutory penalties

bearing no reasonable “relationship to the gravity of the offense that [the statute] is

designed to punish.”*Bajakajian*, 524 U.S. at 334.

62.Therefore, a statutory penalty that “is grossly disproportional to the gravity

of a [party’s] offense” violates the Eighth Amendment.*Id*.;*Tyler v. Hennepin County,*

*Minn*., 143 S. Ct. 1369, 1381-82 (2023) (Gorsuch, J., concurring) (statutory penalties,

eventhose labeled as being “remedial” in nature, violate the Eighth Amendment “when

. . .they bear no correlation to any damages sustained by society or to the cost of

enforcing the law;” as such, “[e]conomic penalties imposed to deter willful

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noncompliance with the law are fines by any other name [,a]nd the Constitution has

something to say about them: They cannot be excessive.”) (partial quotation omitted).

63.Further, grossly excessive fines or arbitrary punishments are prohibited by

the Due Process Clause of the Fourteenth Amendment.*Cooper Indus., Inc. v.*

*Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001);*BMW of N. Am., Inc. v. Gore*, 517

U.S. 559 (1996);*State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003)

(“The Due Process Clauseof the Fourteenth Amendment prohibits the imposition of

grossly excessive or arbitrary punishments on a tortfeasor.”). Those decisionsheld that

punitive damages out of proportion to actual damages could violate due process. The

“most commonly cited indicium of an unreasonable or excessive punitive damages award

is its ration to the actual harm inflicted on the plaintiff.” *BMW*, 517 U.S. at 580.

64.The penalties associated with violations of the Statute far outweigh any

actual harm to misclassifiedcontractors. Compensatory damages include, by itself,the

value of supplemental pay including minimum wage; overtime; shift differentials;

vacation pay, sick pay, and other forms of paid time off; health insurance; life and

disability insurance; retirement plans; savings plans and any other form of benefit;

employer contributions to unemployment insurance; Social Security and Medicare; and

anyothercosts and expenses incurred by the individual resulting from the person's failure

to classify, represent, or treat theindividual as an employee.Minn. Stat. § 181.723, subd.

7(g)(1).But, in addition tothe compensatory damages, the State has also chosen to assess

massive and compounding fines.

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65.When determining proportionality for the purposes of whether the level of

fine violates the Eighth Amendment, the Eighth Circuit holdscourts are to review “[t]he

absolute amount of the award, [and] not just the amount per violation.”*Capitol Records,*

*Inc. v. Thomas-Rasset*, 692 F.3d 899, 910 (8th Cir. 2012). Indeed, the Eighth Circuit has

explicitly stated that the argument “that we may not consider the aggregate award here,

but only the amount per violation. . .is plainly foreclosed by our precedents.”*Golan v.*

*FreeEats.com, Inc.*, 930 F.3d 950, 963 (8th Cir. 2019)(citing*Thomas-Rasset*, 692 F.3d at

910).

66.Stated plainly, the penalties enumerated in the Statute constitute egregious

penalties,far out of proportion to the actual harm suffered by allegedly misclassified

workers (whose actual harm would be no greater than compensatory damages). Such

egregiousanddisproportionate penalties violate Excessive FinesClausesof the 8th

Amendment.

67.The injury to Plaintiffs’ membersis concrete, particularized, and imminent,

particularly given the fact the Statute takes effect on March 1, 2025, violates Plaintiffs’

members’constitutional rights, is unconstitutionally vague and is preempted by the

NLRA. Plaintiffs’ memberswill suffer irreparable harm that is fairly traceable to the

Statute taking effect. Plaintiffs refer to and incorporate the Declarations of John

McGuine, Michael Gohman, and Chad Kompelien, whose Declarations exemplify the

sort of harm Plaintiffs’ members will suffer if the Statute takes effect.FED.R.CIV.P.

10(c).Moreover, as those Declarations make clear, the Statuemakes unlawful, or even

illegal, common practices in the construction industry. Plaintiffs would like to continue

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following those common practices,but if they do so, the Statute will very likely penalize

them.

68.The foregoing Declarations make clear that the Statute conflicts with

common industry standards. The Statute conflicting with common industry standards will

lead to Plaintiffs’ members following those standards, and in doing so,inadvertently

convert their subcontractors’ workers to employees. Plaintiffs’ members then must treat

those workers asemployees,orelsefaceenforcement action by Defendants, all in

violation of theEighthandFourteenthAmendments.

69.Plaintiffs’ members have no adequate legal remedies, because due to

Defendants’ enjoying sovereign immunity, Plaintiffs cannot sue Defendants to

retroactively recover money spent complying with the unconstitutional Statute, or

retroactively recover the penalty amount that Defendants unlawfully impose.Nor can

Plaintiffs’ members sue Defendants to retroactively recover the money that they pay out

in compensatory damages to resolve claims brought by the misclassified individual.

70.The Court declaring the Statute asunconstitutionalwillpreventthe

irreparable harm that the Statute will inflict onto Plaintiffsand their members.

**COUNT I**

**DECLARATORYJUDGMENT–VIOLATION OFDUE PROCESS UNDERTHE**

**UNITED STATESCONSTITUTION**

71.Plaintiffsreallege and incorporate by reference all preceding allegations of

this Complaint as if fully set forth herein.

72.Plaintiffs challenge the Statute as unconstitutionally vague as applied to

their members.

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73.JMC challenges the Statute as unconstitutionallyvagueapplied to JMC.

74.The Statute’s vagueness further renders it facially unconstitutional, because

there are no circumstances where the Statute may beconstitutionallyapplied.

75.The United States Constitution prohibitsstatutes which violate the void-for-

vagueness doctrine pursuant totheDue Process Clause.

76.The Statute,essentially incorporatedby referenceinto Minn. Stat. § 609.52,

imposes criminal penalties for misclassification. Statutes imposing criminal penalties

must meet a higher standard of certainty of meaning. *State v. Ness*, 819 N.W.2d 219, 228

(Minn. Ct. App. 2012),*aff’d,*834 N.W.2d 177 (Minn. 2013).Violation of the Statute also

may lead to criminal penalties under Minn. Stat. § 177.32, subd. 1(1); Minn. Stat.

§ 181.721, subd. 5; Minn. Stat. § 181.74.

77.For instance, the Statute does notdefinethe terms “per-job basis”or “main

expenses and costs” within the 14-factor independent contractor, rendering those terms

vague.

78.Anaverage citizen could not generally determine what is necessary to

comply with the Statute to avoid criminal penalties.

79.Even if the Statute did not impose potential criminal penalties, it would still

be unconstitutionally vague, as it fails to provide people of ordinary intelligence a

reasonable opportunity to understand what conduct it prohibits, and further encourages

arbitrary enforcement. *Hill v. Colorado*, 530 U.S. 703, 732 (2000).

80.As such, Plaintiffs request the Court declare the Statuteunconstitutionally

vague in violation of the Fourteenth Amendmentof the United States Constitution.

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**COUNTII**

**DECLARATORY JUDGMENT–VIOLATION OF THE EXCESSIVE FINES**

**CLAUSES OF THE UNITED STATES CONSTITUTION**

81.Plaintiffs reallege and incorporate byreference the foregoing allegationsof

this Complaint as if fully set forth herein.

82.The Eighth Amendment to the United States Constitution requires that

“excessive bail shall not be required,*nor excessive finesimposed*, nor cruel and unusual

punishments inflicted.” (emphasis added).

83.The Statute imposes massive, compounding finesfor eveninadvertent,

innocent, ortechnical violations, even after accounting for compensatory damages.

84.TheStatuteviolatestheU.S. Constitution’s Excessive FinesClause.

85.As such, Plaintiffs request the Courtdeclare that theStatuteviolatesthe

EighthAmendment’s Excessive Fines Clause, anddeclareitvoid.

**COUNT III**

**DECLARATORY JUDGMENT–PREEMPTION BY THE NATIONAL LABOR**

**RELATIONS ACT**

86.Plaintiffs reallege and incorporate by reference the foregoing allegations as

if fully set forth herein.

87.The NLRA comprehensively regulates labor matters throughout the United

States.*SeeSan Diego Building Trades Council*v.*Garmon*, 359 U.S. 236 (1959)

(forbidding States to regulate activity that the NLRA protects, prohibits, or arguably

protects or prohibits)(“*Garmon*preemption”) and*Machinistsv.Wisconsin Employment*

*Relations Comm’n*, 427 U.S. 132, 140 (1976) (forbidding both the National Labor

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Relations Board (NLRB) and States from regulating conduct that Congress intended be

left to be controlled by the free play of economic forces) (“*Machinist*preemption”).

88.The Statute is preempted by the NLRA pursuant to*Garmon*preemption.

*Garmon*“prevents States not only from setting forth standards of conduct inconsistent

with the substantive requirements of the NLRA,but also from providing their own

regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act.”

*Wisconsin Dep’t of Indus., Lab. & Hum. Rels. v. Gould Inc.*, 475 U.S. 282, 286, 106 S.

Ct. 1057, 1061, 89 L. Ed. 2d 223 (1986). To that end,*Garmon*is intended to prevent

conflict “*in the broadest sense*” with the “complex and interrelated federal scheme of

law, remedy, and administration”, and any conflict in potential remedies “can be fully as

disruptive to the system Congress erected as conflict in overt policy.” *Id*. (emphasis

added). Where there is “potential for conflict” between “two separate remedies” on the

same activity, such conflict necessarily resultsin preemption of the State statutory

scheme. *Id.*at 289.

89.The Statute prohibits employers from failing to “report or disclose to any

*person*, or local, state, or*federal*government agency an individual who is an employee

pursuant to subdivision 3, as an employee when required to do so under any applicable

local, state, or federal law. Each failure to report or disclose an individual as an

employee shall constitute a separate violation of the provision.” (emphasis added).

90.The NLRA already explicitly requires an employer to disclose employees,

both to the National Labor Relations Board (“NLRB” or “Board”) itself, and to unions

who are the certified as the bargaining representative of a given bargaining unit. Section

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8(a)(5) of the NLRA, in requiring employers to bargain in good faith, necessarily requires

employers to provide information to certified unions—including employee lists. *In Re*

*Watkins Contracting, Inc.*, 335 NLRB 222 (2001) (employer has a duty to provide list of

current employees to union in response to request, and failure to do so is a violation of

the NLRA). Moreover, the NLRB’s Rules and Regulations require employers to disclose

lists of employees to the Board itself (and a union) in the context of a representation

petition. 29 C.F.R. § 102.62(d) (requiring employer to provide a “voter list” of all

eligible voting employees to both the Board and the petitioning union); 29 C.F.R.

§ 102.63(b)(1)(i) (requiring the employer to provide the Board and the petitioning union a

Statement of Position which includes a list of all employees in the union’s proposed

bargaining unit, as well as all employees who the employer contends must be excluded or

included to make the unit appropriate for bargaining).

91.In short, failure to “reportor disclose” a list of employees to both the Board

and a union is not only arguably, butactually, prohibited by the NLRA. The Statute

creates a bifurcated scheme in which a union may seek remedy through the Board, and

also seek remedyfor each individual employeewho was not disclosed through the

remedies outlined in the Statute.

92.The proper remedies for such failure to report or disclose employees to the

Board or a union lie solely within the province of theNLRB, and must remain within the

Board’s grasp.

93.The NLRA preempts any state regulation of labor-related activity, such as

collective bargaining.*SeeChamber of Commerce v. Brown*, 554 U.S. 60 (2008);

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*Machinistsv.Wisc.Emp’tRelationsComm’n*,427 U.S.132,140 (1976).In*Machinists*,

the Courtrecognizedthat Congressintendedcertainconducttobe unregulatedby

government andleft to“the free play of economicforces,” and that“Congress strucka

balance ofprotection,prohibition,andlaissez-faireinrespecttounion organization,

collectivebargaining,and labordisputes.”*Brown*,554U.S. at 65.Accordingly,States

may not regulate “withina zone protected and reserved for marketfreedom” by the

NLRA.*Id*. at 66. In determining whether Congress meant to insulate a particular zone of

activityfromstate regulation,“[w]hatCongressleft unregulatedisas important as the

regulations that it imposed.”*Golden State Transit Corp. v. City of Los Angeles*, 493 U.S.

103, 110 (1989) (citation and internal quotations ommited).

94.Congress expressly determined that independent contractors should be

unregulated and excluded them from collective-bargaining requirements. 29 U.S.C.

§152(3) “The term ‘employee’ . . . shall not include any individual . . . having the status

of an independent contractor.”). This provision reflects Congress’s intent to ensure that

independent contractors remain regulated by “the free play of economic forces,” or

market forces, rather than by collective bargaining.

95.In sum, the Statute alsoconflictswith federal labor policy as embodied in

the NLRA because it imposes a collective bargaining scheme on independent contractors,

whose labor practices Congress intended should remain unregulated. Under the Statute, a

misclassifiedsubcontractor’s workersaresubject tothewages and benefits of ageneral

contractor’scollective bargaining agreementwith a union if the subcontractor failsto

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meet any one of the 14 factors set forth under the Statute. By its operation, the Statute

thereby creates a remedyfor activity that regulated by the NLRA.

96.As such, Plaintiffs request the Court declare that the Statute is preempted

by theNLRA.

**COUNTIV**

**VIOLATION OF PROCEDURAL DUE PROCESS**

97.Plaintiff reallege and incorporate by reference the foregoing allegationsas

if fully set forth herein.

98.Section 1983 of Chapter 42 of the United States Code not only protects

substantive due process rights, but it also protects procedural due process rightsunder the

following circumstanceswhere there is (1) a substantialprivate interest; (2) there is arisk

that the process will result in an erroneous deprivation of the private interest and the

probable value of additional or substitute procedural safeguardsis ineffective; and (3) the

state’s interestis minimal.*Mathewsv.Eldridge,*424U.S.319,335(1976).

99.Count Imakesclear that Plaintiffs’ membershave asubstantialprivate

interest inavoidingimprisonment.

100.Plaintiffs’ members also have a substantial private interest inavoidingany

otheradverse state action. The U.S. andthe Minnesota Constitutionsstatepersonscannot

be deprived of their life, liberty, or property, without due process of law. Defendants

imposing monetary fines under the Statute erroneouslydeprives Plaintiffs’ members of

their property(money),by operation of the Statute’sunconstitutionally vague and

excessive terms.

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101.Minnesota law further requires that if the government seeks to lawfully

strip citizens of their liberty or property, it must do so under a single-subject law. Art. IV,

Sec. 17;*Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 303–04

(Minn. 2000).The Statute is undeniably part of the Omnibus, which covers a host of

unrelated subjects.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffsrespectfully request relief the Court enter a judgment

as follows:

1.Declaring that theStatute contained withintheOmnibus:

(a)Is unconstitutionally vague as applied toJMC and all ofPlaintiffs’

members;

(b)Is facially unconstitutional;

(c)Violates the Eighth Amendment’s prohibition on excessive fines;

(d)Is preempted by the NLRA; and

(e)Violates the Due Process Clause of Fourteenth Amendment.

2.To the fullest extent provided by law, awarding Plaintiffs their costs and

reasonable attorneys’ fees expended on this action, jointly and severally against

Defendants, in accordance with 42 U.S.C. § 1988 and any other applicable law.

3.Ordering thatDefendants and all of their respective officers, agents,

servants, employees, and attorneys, and any person in active concert or participation with

them who receive actual notice of the Court’s injunction order(s)are herebytemporarily,

preliminarily, and permanentlyenjoined from the following:

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(a)

(b)

Enforcing the Statute against any of MNABC’s and BAM’s

members, including JMC; and

Enforcing the Statute against any other construction contractor in the

State of Minnesota.

4.For such other and further relief as this Court deems just and proper.

Dated:February12, 2025

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