

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.

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.

Court File No. _____

COMPLAINT

EXPEDITED RELIEF REQUESTED

For their 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 of its members and seeks a judgment: (1) declaring Minnesota Statute § 181.723 (2024) is unconstitutional as well as preempted by the National Labor Relations Act (“NLRA”), 29 U.S.C. §§ 151, *et seq.*, (2) enjoining Defendants’ enforcement of Minn. Stat. § 181.723 against MNABC’s

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 of its members and seeks a judgment: (1) declaring Minn. Stat. §181.723 is unconstitutional as well as preempted by the NLRA; (2) enjoining Defendants’ enforcement of Minn. Stat. § 181.723 against BAM’s members; 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) declaring Minn. Stat. §181.723 is unconstitutional as well as preempted by the NLRA; (2) enjoining Defendants’ enforcement of Minn. Stat. § 181.723 against JMC; and (3) issuing a statewide injunction entirely barring enforcement because Minn. Stat. § 181.723’s vagueness renders it facially unconstitutional.

4. This case arises after the State of Minnesota Legislature (the “Legislature”) stuffed hundreds of laws into a 1,492-page Omnibus Bill (the “Omnibus”) and passed it shortly before midnight on Sunday, May 19, 2024. Legislators and the public were given no time for review or debate the Omnibus. In the Legislature’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.

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 the Omnibus, the most blatant violation of Article IV, Section 17 of the Minnesota Constitution in state 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 bill governs everything from employee misclassification to rental assistance, to guest licensing for marriage 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, as amended, relates to the misclassification of construction employees and now provides an unconstitutionally vague and ambiguous 14-part test (not including numerous subparts) to determine whether an individual qualifies as an

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 a general contractor has misclassified a subcontractor as an independent 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 with prime subcontractors who provide the labor, materials, or both, to complete construction projects. The prime subcontractors then further contract work out to their sub-subcontractors. The prime subcontractors’ and sub-subcontractors’ workforce includes various individuals perform work on the construction project. In addition to various penalties assessed, if a misclassification is found under the Statute, all the prime subcontractors’ workers become employees of the general contractor and are entitled to the wages and benefits offered by the general contractor to its employees. The same applies to the prime subcontractors because the Statute may deem that their sub-subcontractors workers become the prime subcontractors’ employees.

11. Not only does the Statute fail to clearly define when a worker in the construction industry should be classified as an independent contractor, it institutes criminal penalties for violators of the Statute under Minnesota 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 include jail time and 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

strictly satisfy 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 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, the Statute provides a penalty of up to \$10,000 for each individual the contractor failed 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 by DOLI—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 delays DOLI’s investigation 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 penalty that “is grossly disproportional to the gravity of a [party’s] offense” violates the Eighth Amendment. *Id.*; accord *Tyler v. Hennepin County*,

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 clause contained in the Eighth Amendment. *See e.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); *accord Missouri 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 a general contractor 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 the NLRA, and intrude upon the province of the National Labor Relations Board (“NLRB”). Thus, beyond the unconstitutional provisions, the Statute further is preempted under the NLRA.

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 of MNABC's and BAM's members, 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 civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

17. MNABC's and BAM's members, including JMC, are directly and adversely affected by the Omnibus and accordingly have standing to sue. The Statute is at odds with each MNABC's and BAM's policy objectives, and challenging the Statute is germane to MNABC's and BAM's purposes. 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's members, 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.

NATURE OF ACTION

20. Plaintiffs seek declaratory relief that the Statute, as amended by the Omnibus, is in violation of the United States Constitution and is preempted by the NLRA, 29 U.S.C. § 151, *et seq.* Plaintiffs seek injunctive relief, enjoining Defendants' enforcement of the Statute against their members.

PARTIES

21. MNABC is incorporated under Minnesota law as a nonprofit corporation. MNABC maintains its principal place of business in Eden Prairie, Minnesota. MNABC is a statewide professional trade organization representing the interests of 330-plus construction-related firms across 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 website and incorporated herein. *The Benefits of Membership at a Glance*, ABC MINNESOTA AND NORTH DAKOTA, <https://www.mnabc.com/Membership/I-am-a-Considering-Membership/Benefits-of-Membership> (last visited Feb. 11, 2025.) MNABC's advocacy for its members extends to taking reasonable steps to prevent unconstitutional laws from harming its members. *Government Affairs*, ABC MINNESOTA AND NORTH DAKOTA, <https://www.mnabc.com/Government-Affairs> (last visited Feb. 11, 2025) ("ABC has always made government affairs the core of our mission . . . Although a simple concept,

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. For their employees, 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. BAM is a statewide trade association constituting a collaboration of nine local associations, all of whom collectively 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, educating them 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 and incorporated herein. *Who We Are*, BUILDERS ASSOCIATION OF MINN., <https://bamn.org/about/> (last visited Feb. 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 in mind when new laws are passed and assure your ability to remain

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 our industry 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 a current member of MNABC and BAM.

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

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 visited Feb. 11, 2025). The MN AG also has a known history of going after employers for alleged employee misclassification. *Attorney General Ellison wins restitution for workers that gig-work company misclassified*, OFFICE OF MINN. ATTORNEY GENERAL, https://www.ag.state.mn.us/Office/Communications/2024/12/19_AriseVirtualSolutions.asp (last updated Dec. 19, 2024). Earlier in 2024, the Commissioner voiced support for H.F. No. 4444, whose terms 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&session=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&session=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 contains a substantially identical 14-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:

. . . 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 the laws 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* timestamps at 7:22–8:38.

The comments and actions by Defendants demonstrate that once the Statute takes effect, they will very likely enforce its terms and pursue contractors for alleged employee misclassification.

29. For the 2026–2027 Biennial Budget, 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 OF LABOR AND INDUSTRY, <https://mn.gov/mmb-stat/documents/budget/2026-27-biennial-budget-books/governors-recommendations-january/labor-and-industry.pdf>, *see* p. 26 (last visited Feb. 11, 2025). Governor Walz proposed \$281,000.00 for fiscal year 2026 and \$286,000.00 for each

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 by its [*sic*] becoming a law.” *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891).

33. The State of Minnesota’s judiciary has been joined by legislators and governors from both parties in emphasizing the importance of an open legislative process that ensures bills are not being put together in the final hours of a session and that they comply with Article IV, Section 17 of the Minnesota Constitution.

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 with Article IV, Section 17 of the Minnesota Constitution.

35. In 2000, the Minnesota Supreme 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.” *Otto v. Wright County*, 910 N.W.2d 446, 459 (Minn. 2018).

37. Despite the Supreme Court’s rulings, the 2024 Legislature disregarded the Article IV, Section 17 of the Minnesota Constitution in passing an expansive and unconstitutional Omnibus.

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 visited Feb. 11, 2025). The 93rd Session ended on May 20, 2024. Rep.

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

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 opportunity to read or debate the Omnibus before it passed. *Democrats Abandoning Minnesotans*, MINN. SENATE REPUBLICAN CAUCUS, <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 massive Omnibus was an amendment Minnesota’s worker classification statutes. *See* Article 10, Section 8. The same section amended the factors considered when determining when an individual may qualify as an independent contractor in the construction industry.

41. Another provision of the Omnibus (Article 10, Section 6) clarifies that individuals may bring actions directly to district court against parties found in violation of Minn. Stat. § 181.723.

42. The Statute provides that an individual is an independent contractor in the commercial or residential building construction or improvement services industry if 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, if required 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 coverage if required by chapter

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 the person 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 the business 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 the completion 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).

43. The 14-factor test is vague and ambiguous. Some of these new or amended factors in the test will undoubtedly lead to unintended or innocent misclassifications, and worse, are impossible to decipher both when read separately, and when read in conjunction with the rest of the factors. The Statute does not even answer this fundamental question: if the Statute considers an individual to be an employee, how long must the contractor treat that individual as an employee?

44. For example, Factor 9(iv) of the 14-factor test is vague when it provides 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 a subcontractor that enters into a Master Service Agreement with a general contractor, in which they parties negotiate and ultimately agree the subcontractor will provide services to the general contractor on a per unit basis (*i.e.*, per window, per square yard for drywall or flooring, etc.) over the course of a year on multiple projects, regardless of how many contracts they are awarded, will comply with Factor 9(iv).

45. Similarly Factor 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). The Statute, however, provides no explanation for determination of what “main expenses and costs” mean. For instance, if a contractor only provided labor only for installing the siding on a residence, but a different

contractor provided the siding material, it not clear what is considered the “main expenses and costs.”

46. The Statute further requires that any payments be made pursuant to an invoice. Minn. Stat. § 181.723, subd. 4(a)(10). Yet the Statute fails to explain what technically constitutes an “invoice,” including how the Statute fails to provide the specific characteristics of an invoice. DOLI does not dispute the Statute fails to provide additional requirements on the form of the invoice. *Misclassification FAQs*, MINN. DEP’T OF LABOR AND INDUSTRY, <https://www.dli.mn.gov/business/employment-practices/misclassification-faqs> (last visited Feb. 11, 2025) (“The test does not contain additional requirements about the form of invoices.”)

47. The Statute further requires that for an individual to qualify as an independent contractor, the individual may be 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 individual receiving a set hourly rate under a “time and materials” contract satisfies this 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,” a general contractor could be found to have misclassified subcontractors who inadvertently fail to timely sign a written contract, fail to incorporate specific language into a contract, allow their state required licenses, registrations or certifications to lapse.

Similarly, if the general contractor 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 not state how long the contractor must treat the individual as an employee.

50. The Statute 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,

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 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 person cannot 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 for contractors to 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, especially since contractors can face criminal penalties if they violate those provisions—heightening the need for the Legislature, and Defendants, to clearly enumerate the line between lawful and unlawful conduct.

56. The United States Constitution prohibits the 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. The Statute provides compensatory 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 prohibited activities outlined in the Statute, and a \$1,000 fine per day for any person who

delays, obstructs, or otherwise fails to cooperate with the Commissioner's investigation. *See* Minn. Stat. § 181.723, subd. 7(g). The Statute 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 stack upon each other. If a general contractor misclassified a subcontractor that employs ten individuals simply because they failed to sign a contract on one project, they could be fined hundreds of thousands of dollars under subdivision 7 of the Statute. In short, the fines would rapidly compound for a large employer who made one minor mistake in the 14-factor test.

58. MNABC's and BAM's members range from small to mid-size construction companies and are in an untenable position. The members likely will not have enough money to fund 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 individual and violation. For any one project, 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 on amount of the fines, the members may have to take drastic austerity measures, such as imposing 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

disproportionate to the offense and obviously unreasonable.” *Williams*, 251 U.S. at 66-67.

60. The imposition of the penalties 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, 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).

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 Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.”). Those decisions held 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 ratio 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 misclassified contractors. 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 any other costs and expenses incurred by the individual resulting from the person's failure to classify, represent, or treat the individual as an employee. Minn. Stat. § 181.723, subd. 7(g)(1). But, in addition to the compensatory damages, the State has also chosen to assess massive and compounding fines.

65. When determining proportionality for the purposes of whether the level of fine violates the Eighth Amendment, the Eighth Circuit holds courts 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 egregious and disproportionate penalties violate Excessive Fines Clauses of the 8th Amendment.

67. The injury to Plaintiffs’ members is 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’ members will 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 Statue makes unlawful, or even illegal, common practices in the construction industry. Plaintiffs would like to continue

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 as employees, or else face enforcement action by Defendants, all in violation of the Eighth and Fourteenth Amendments.

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 as unconstitutional will prevent the irreparable harm that the Statute will inflict onto Plaintiffs and their members.

COUNT I
DECLARATORY JUDGMENT – VIOLATION OF DUE PROCESS UNDER THE
UNITED STATES CONSTITUTION

71. Plaintiffs reallege 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.

73. JMC challenges the Statute as unconstitutionally vague applied to JMC.

74. The Statute's vagueness further renders it facially unconstitutional, because there are no circumstances where the Statute may be constitutionally applied.

75. The United States Constitution prohibits statutes which violate the void-for-vagueness doctrine pursuant to the Due Process Clause.

76. The Statute, essentially incorporated by reference into 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 not define the terms "per-job basis" or "main expenses and costs" within the 14-factor independent contractor, rendering those terms vague.

78. An average 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 Statute unconstitutionally vague in violation of the Fourteenth Amendment of the United States Constitution.

COUNT II
DECLARATORY JUDGMENT – VIOLATION OF THE EXCESSIVE FINES
CLAUSES OF THE UNITED STATES CONSTITUTION

81. Plaintiffs reallege and incorporate by reference the foregoing allegations of 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 fines imposed*, nor cruel and unusual punishments inflicted.” (emphasis added).

83. The Statute imposes massive, compounding fines for even inadvertent, innocent, or technical violations, even after accounting for compensatory damages.

84. The Statute violates the U.S. Constitution’s Excessive Fines Clause.

85. As such, Plaintiffs request the Court declare that the Statute violates the Eighth Amendment’s Excessive Fines Clause, and declare it void.

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. *See San 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 *Machinists v. Wisconsin Employment Relations Comm’n*, 427 U.S. 132, 140 (1976) (forbidding both the National Labor

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 results in 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

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 “report or disclose” a list of employees to both the Board and a union is not only arguably, but actually, prohibited by the NLRA. The Statute creates a bifurcated scheme in which a union may seek remedy through the Board, and also seek remedy for each individual employee who 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 the NLRB, and must remain within the Board’s grasp.

93. The NLRA preempts any state regulation of labor-related activity, such as collective bargaining. *See Chamber of Commerce v. Brown*, 554 U.S. 60 (2008);

Machinists v. Wisc. Emp't Relations Comm'n, 427 U.S. 132, 140 (1976). In *Machinists*, the Court recognized that Congress intended certain conduct to be unregulated by government and left to “the free play of economic forces,” and that “Congress struck a balance of protection, prohibition, and laissez-faire in respect to union organization, collective bargaining, and labor disputes.” *Brown*, 554 U.S. at 65. Accordingly, States may not regulate “within a zone protected and reserved for market freedom” by the NLRA. *Id.* at 66. In determining whether Congress meant to insulate a particular zone of activity from state regulation, “[w]hat Congress left unregulated is as 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 omitted).

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 also conflicts with 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 misclassified subcontractor’s workers are subject to the wages and benefits of a general contractor’s collective bargaining agreement with a union if the subcontractor fails to

meet any one of the 14 factors set forth under the Statute. By its operation, the Statute thereby creates a remedy for activity that regulated by the NLRA.

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

COUNT IV
VIOLATION OF PROCEDURAL DUE PROCESS

97. Plaintiff reallege and incorporate by reference the foregoing allegations as 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 rights under the following circumstances where there is (1) a substantial private interest; (2) there is a risk that the process will result in an erroneous deprivation of the private interest and the probable value of additional or substitute procedural safeguards is ineffective; and (3) the state's interest is minimal. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

99. Count I makes clear that Plaintiffs' members have a substantial private interest in avoiding imprisonment.

100. Plaintiffs' members also have a substantial private interest in avoiding any other adverse state action. The U.S. and the Minnesota Constitutions state persons cannot be deprived of their life, liberty, or property, without due process of law. Defendants imposing monetary fines under the Statute erroneously deprives Plaintiffs' members of their property (money), by operation of the Statute's unconstitutionally vague and excessive terms.

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, Plaintiffs respectfully request relief the Court enter a judgment as follows:

1. Declaring that the Statute contained within the Omnibus:
 - (a) Is unconstitutionally vague as applied to JMC and all of Plaintiffs’ 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 that Defendants 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 hereby temporarily, preliminarily, and permanently enjoined from the following:

- (a) Enforcing the Statute against any of MNABC's and BAM's members, including JMC; and
 - (b) 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: February 12, 2025

s/ Thomas R. Revnew

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