MOHRMAN, KAARDAL & ERICKSON, P.A.

ATTORNEYS AND COUNSELORS AT LAW

150 SOUTH FIFTH STREET
SUITE 3100
MINNEAPOLIS, MINNESOTA 55402

ERICK G. KAARDAL

TELEPHONE: 612/465-0927
FACSIMILE: 612/341-1076
WRITER'S E-MAIL: KAARDAL@MKLAW.COM

June 5, 2018

Via ECF

The Honorable Wilhelmina M. Wright
U.S. Courthouse
316 North Robert Street, Suite 334
Saint Paul, Minnesota 55101

RE: Dwight D. Mitchell, et al. v. Dakota County Social Services
USDC-MN 18-CV-1091 WMW/BRT

Dear Clerk of Court:

In accordance with this Court's Practice Pointers and Preferences (Sept. 2017), the Plaintiffs in the instant matter seek permission to file a motion for partial summary judgment before discovery. Because the issues are facial challenges to the constitutionally of Minnesota statutes terminating parental rights, discovery is not necessary and the disposition of these legally intense challenges would effectively enhance judicial efficiency and costs to all parties. No discovery has occurred.

The Plaintiffs, the Mitchell family and Stop Child Protection Services from Legally Kidnapping, seek partial summary judgment on liability regarding their facial claims based on the unconstitutionality of Minnesota statutes temporarily or permanently terminating parental rights through Minnesota's child in need of protection or services statutory procedures and standards under § 260C.007. Section 260C.007 incorporating §§ 609.224 (assault in the fifth degree), 609.377 (malicious punishment of a child), and 626.556 (reporting of maltreatment of minors), and 260C.301 (standards to permanently terminate parental rights).

The Plaintiffs challenge the constitutionality of the above noted statutes in the requested filing for partial summary judgment. The disposition of the constitutional facial challenges Counts I through VI of Amended Complaint will also explore, as a matter of first impression, whether constitutionally protected parental rights include a fit parent's use of corporal punishment to discipline or correct a child without fear of government intervention and trauma of forced separation between child and parent. The challenged provisions of Minnesota laws are similar in context regarding the termination of parental rights of Iowa law where Iowa statutory provisions were held unconstitutionally vague and violative of substantive and procedural due process. *Alsager v. District Court of Polk County*, 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd by* 545 F.2d 1137 (8th Cir. 1976). For example, the Plaintiffs challenge Minnesota Statutes §§

626.556, subd. 2(r) and subd. 2(f) as unconstitutionally vague in the context of § 207C.007, subd. 7, processes for a child in need of protection or services. Likewise, the same statutes are, on their face, violative of the Equal Protection Clause since the provisions consider culture as a prohibitive racial classification. Meanwhile, § 260C.007, subds. 6(3)–(5) are also alleged as unconstitutionally vague as it pertains to the definition of a child in need of protection or services.

Similarly, Minnesota Statutes § 260C.301 governing the termination of parental rights is alleged as violating substantive due process and procedural due process.

There is no need to develop a factual record as the claims are facial challenges. No policy arguments or allegations are asserted relating to the constitutional claims against the state statutes as found under Count I (void for vagueness) challenging Minnesota Statutes § 260C.007, subd. 5, subd. 6(2)(i)–(iii), (4), (5) and subd. 13; § 260C.301, subd. 1, (b)(2), (4), (5); and § 626.556, subd 2(f), (k). The same statutes are challenged as violating substantive due process (Count III), and procedural due process (Count IV), inclusive of § 260C.301 governing the termination of parental rights. Violation of the Equal Protection Clause (Count V) is based upon the language of Minnesota Statutes §§ 626.556, subds. 2(r) and 2(f) wherein "culture" is a constitutionally impermissible categorization involving race. Allegations of the lack of rational basis is found under Count VI, particularly as to § 260C.007, subd. 6(2)(i)–(iii).

In short, the constitutionality of the challenged statutes, with the resultant injunctive relief requested, is an inquiry that is textual. Moreover, under the Counts mentioned, the Plaintiffs have brought their facial challenges "to vindicate not only [their] own rights, but those of others who may also be adversely impacted by the statute in question." *City of Chicago v. Morales*, 527 U.S. 41, 55 n. 22 (1999). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745 (1987); *see also Wash. State Grange v. Wash. State Republican Party,* 552 U.S. 442, 449–50 (2008) (reaffirming the *Salerno* test outside the context of certain First Amendment challenges). The Counts mentioned above meet this test.

Judicial economy would be served here because if found facially unconstitutional, any reference to an as applied challenge would be futile for the government to defend. This of itself would also reduce the number of Counts and may encourage settlement *before* discovery is started due to the facts and circumstances alleged in the remaining claims. Therefore, we respectfully request this Court to allow for the filing of a partial motion for summary judgment on the facial claims (Counts I through VI).

Sincerely,

/s/Erick G. Kaardal
Erick G. Kaardal

EGK/mg