

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
Case Type: Other Civil

Ben Braylock, Marvin Breland, and  
Demetrius Mathews,

Plaintiffs,

vs.

The City of Dayton, a Minnesota  
Municipal Corporation,

Defendant.

Court File No. \_\_\_\_\_

**COMPLAINT**

For their Complaint against the Defendant, Plaintiffs state and allege as follows:

**I. INTRODUCTION**

1. This case involves three persons who, until recently, have been civilly committed into the custody of the Minnesota Sex Offender Program ("MSOP") in St. Peter, Minnesota. Each has been determined safe to live in a secured home, pursuant to rigorous standards established by Minnesota law. When City of Dayton officials learned that the Plaintiffs were going to be placed in a secure facility in Dayton, they passed an ordinance specifically designed to prevent them from moving into the facility. This ordinance violates Minnesota law, which carefully and completely regulates how and when persons civilly committed to MSOP should be returned to the community. Further the ordinance violates both the Minnesota and United States Constitutions. Plaintiffs request that the Court issue an order declaring the ordinance illegal and unconstitutional and awarding all appropriate relief, as further discussed herein.

## II. JURISDICTION AND VENUE

2. Jurisdiction in the State of Minnesota is proper as the case raises various issues of state and federal law, including claims arising under the Minnesota Constitution and United States Constitution; all of the parties are citizens of Minnesota or, in the case of Defendant, a municipality of the State of Minnesota; and all acts set forth herein occurred in Minnesota. This case also states a claim under the Minnesota Uniform Declaratory Judgment Act, Minn. Stat. § 555.02, and Minnesota Courts “have long held that a declaratory judgment action is proper to test the validity of a municipal ordinance, regardless of whether another remedy exists.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

3. Venue in this Hennepin County Court is appropriate, because the unlawful conduct alleged herein was committed by the Defendant in Hennepin County, the State of Minnesota.

## III. PARTIES

4. Plaintiffs Ben Braylock (“Braylock”), Marvin Breland (“Breland”) and Demetrius Mathews (“Mathews”) (collectively, “Plaintiffs”) reside at, and are civilly committed to, the custody of the MSOP at St. Peter, Minnesota.

5. The Defendant City of Dayton, Minnesota is a municipal corporation organized under Minnesota law, and thus is an entity that may be sued.

## IV. FACTS

6. Persons who are civilly committed to the MSOP program have the opportunity to request that their level of confinement be reduced, including requesting a less restrictive level of supervision known as a “provisional discharge.” Minn. Stat. § 253D.27. Minnesota’s civil commitment statute includes a rigorous review process to examine such requests. The following

factors must be considered in determining whether to grant a provisional discharge request: (1) whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the current treatment setting; and (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community. Minn. Stat. § 253D.30, Subd. 1(b).

7. Such a request must go through multiple layers of review set forth under Minn. Stat. § 253D. First, the request must be filed with and considered by a panel called the Special Review Board ("SRB"), pursuant to Minn. Stat. § 253D.27, Subd. 2. Various persons, including the original victim, the court that ordered the commitment, and the county attorney for the county that sought the person's confinement, must be notified and given a chance to participate before the SRB holds a hearing on a request. Minn. Stat. § 253D.27, Subd. 3. Following the hearing, the SRB's decision will be reviewed by a panel of judges selected by the Minnesota Supreme Court (the "Judicial Appeal Panel") pursuant to Minn. Stat. § 253B.19, Subd. 1, which may hold a hearing at which interested persons—including the original victim—may participate. Any party aggrieved by an order of the Judicial Appeal Panel may seek review of such an order by the Minnesota Court of Appeals, as in other civil cases. Minn. Stat. §§ 253D.28, Subd. 4, 253B.19, Subd. 5. The filing of such an appeal suspends the operation of any order granting discharge or provisional discharge. After—and only after—this process is complete, may a person in the custody of the MSOP program be placed into a lower level of confinement.

8. Plaintiffs reside at the MSOP program in St. Peter, pursuant to orders for civil commitment issued by the Hennepin County District Court. Pursuant to the procedures referenced above, the MSOP program found that Plaintiffs could be safely confined at a

residence with a lower level of security, pursuant to the factors referenced in Paragraph 6 above. After making this determination, in December 2014, MSOP petitioned the SRB for a reduction in each Plaintiff's custodial status. On March 19, 2015, the SRB issued Findings of Fact and Recommendation recommending granting Braylock's and Mathews' respective petitions for provisional discharge. On March 26, 2015, the SRB issued Findings of Fact and Recommendation recommending granting Breland's petition for provisional discharge.

9. This decision was submitted for review to the Judicial Appeal Panel, which ultimately upheld the SRB's recommendation that each Plaintiff should be put into a lower level of confinement. The Judicial Appeal Panel required, however, that MSOP show that the place where Plaintiffs would be housed offered "a reasonable degree of protection to the public" under Minn. Stat. § 253D.30, subd. 1(b)(2).

10. In 2016, Hennepin County and MSOP (the entities responsible for establishing appropriate custodial supervision for Plaintiffs) located an appropriate residence for the Plaintiffs to reside together under the contracted supervision of R.E.M., Inc.—a private company specializing in finding living spaces for (among others) the mentally ill. MSOP entered into a lease for a three bedroom home within the City of Dayton, on Dayton River Road. Trained supervisory personnel from R.E.M., Inc. prepared the home to receive the Plaintiffs, to offer appropriate security, and to operate as a group home under Minn. Stat. § 462.357, subd. 7. Under this placement program, Plaintiffs would be under 24-hour supervision by trained staff from R.E.M., Inc.

11. The Plaintiffs were determined by supervising staff to be compatible to reside together at the Dayton provisional discharge site. The site was prepared for a move-in during October or November, 2016. The Judicial Appeal Panel granted Breland's and Mathews'

individual petitions for provisional discharge through Findings of Fact, Conclusions of Law, and Order dated September 16, 2016. The panel granted Braylock's petition through Amended Findings of Fact, Conclusions or Law, and Order on September 19, 2016.

12. In August 2016, the City of Dayton learned of the proposed residential placement of the Plaintiffs and subsequently requested advice from the City Attorney Jay T. Squires. The City Attorney provided an advice letter on September 13, 2016, which concluded (following a review of the applicable law) that the City could not directly exclude MSOP from purchasing a group home, but could use its police powers to make it a crime for sex offenders to live in the City of Dayton—although it noted that there were significant constitutional concerns. The City of Dayton (and Squires) never considered or exercised their right to challenge a sex offender's placement under Minn. Stat. § 253D.28, subd. 2(b), although final orders of the Judicial Appeal Panel approving Plaintiffs' provisional discharge to the site were not issued until mid-September 2016.

13. Prior to the proposed move-in date, and under the sex offender notification requirements found at Minn. Stat. Chapter 244, a notification meeting was conducted on October 18, 2016, in the City of Dayton. At the notification meeting, the location of the proposed placement and the identities of the Plaintiffs were disclosed to the general public.

14. On Wednesday, October 26, 2016, at a regular meeting of the City of Dayton City Council, the City Council considered a proposed amendment to Chapter 130 of the City Code that would restrict the residency of sex offenders in the city of Dayton. The Council rejected the recommendation of the Chief of Police Paul Enga and of the Interim City Administrator to simply restrict sex offenders from approaching public facilities such as parks, schools and playgrounds, which would better serve public safety by allowing law enforcement to track sex

offenders' residence location. Dayton's Mayor and members of the City Council instead decided to review a proposed ordinance that would entirely preclude the Plaintiffs from residing within the City of Dayton. A revised draft of the ordinance was discussed at a meeting of the City Council held on October 28, 2016. The Council heard advice from the City Attorney that the proposed ordinance was legally suspect and could be enjoined. Notably, the Council received written guidance from the City Attorney informing the Council that the proposed ordinance as drafted was likely preempted by Minnesota state law and in addition could be judged unconstitutional.

15. At that meeting, Dayton's City Council passed an amendment to the Dayton City Code at Chapter 130 that made it a misdemeanor for sex offenders to live within certain prohibited areas within the City of Dayton. Dayton Ordinance, 130.21 (the "Ordinance"). The definition of prohibited areas is incredibly broad, encompassing the areas within 2,000 feet of any school, day care, park, playground, apple orchard, or other facilities used by children, and within 1,000 feet of any place of worship, public school, or bus stop. Tim McNeil, the Mayor of Dayton, admitted in public Facebook posts the evening of October 28 that the Ordinance as enacted is "far reaching . . . the farthest reaching such ordinance in the State" and that the City had encountered pitfalls in the process. The Ordinance provides misdemeanor penalties for violations, including penalties for any landlord who rents a residence to a sex offender within a prohibited area. The identified residence was within a prohibited area.

16. The Ordinance makes it illegal for the Plaintiffs to live in the home R.E.M. Inc. had selected—indeed, the facts demonstrate that it enacted for this specific purpose. See, e.g., October 20, 2016 letter from Dayton Police Chief Paul Enga (disclosing that city staff will be presenting the Ordinance in response to MSOP and R.E.M., Inc.'s plan for Plaintiffs' move to

the site). Upon its passage, the proposed provisional discharge supervisor, R.E.M, Inc., abandoned all business arrangements for the proposed placement of the Plaintiffs and its lease at the site after investing in extensive improvements and preparations at the location, solely because it was and is prohibited from housing Plaintiffs at the location pursuant to the Ordinance.

17. The move-in planned by the Plaintiffs and the proceedings in the Judicial Appeal Panel for site approval for the petitioned provisional discharges, were abandoned or suspended as a result of the actions of the Defendant. The Plaintiffs continue to reside at MSOP, and would have been released to the Dayton residence in October or November of 2016, but for the offending City of Dayton Ordinance.

#### **COUNT ONE - DECLARATORY JUDGMENT/PREEMPTION**

18. Plaintiffs reallege the allegations in the preceding paragraphs 1 through 17.

19. A municipality “cannot enact a local regulation that conflicts with state law” or enact a regulation when state law “fully occup[ies] a particular field of legislation.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008).

20. The State of Minnesota has enacted a comprehensive scheme of statutory and regulatory law, executed and judicially supervised by the State, for managing, treating, supervising, and releasing sex offenders who are adjudicated under civil commitment, as well as an exclusive process for evaluating the same. Minn. Stat. Chapters 253D, 244. This statutory scheme governs the rights of individuals who are civilly committed to the MSOP program to request that their level of confinement be reduced. Minn. Stat. § 253D.27. It includes a full consideration of “whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.” Minn. Stat. § 253D.30, subd. 1(b)(2). This scheme includes review by two independent bodies, in addition to the MSOP—the SRB and the Judicial Appeal

Panel. Minn. Stat. §§ 253D.27-28. As part of that scheme, for sex offenders who have been civilly committed, and provisionally discharged to the community, the State of Minnesota develops and implements discharge plans for their further treatment in residential placement.

21. By enacting the comprehensive scheme, including vesting oversight authority in the SRB and Judicial Appeal Panel, the State Legislature intended to occupy the field for the supervision and management of sex offenders being partially released from MSOP, as well as the process for determining whether sex offenders should be subject to a lower level of scrutiny. By enacting these regulations, the Legislature has rendered them solely a matter of state concern. Under these provisions, the SRB and Judicial Appeal Panel engaged in a detailed and independent review of the exact conditions of Plaintiffs' release, supervision, and continued treatment at the proposed Dayton residence. Instead of participating in this process, the City of Dayton enacted the Ordinance, which attempts to regulate the treatment, supervision and management of civilly committed sex offenders discharged to the community by significantly restricting the ability of the MSOP, SRB, and Judicial Appeal Panel to determine appropriate housing conditions for offenders. It also seeks to bypass the process established by the Legislature, which provides the exclusive means for resolving these issue. For these reasons, the Ordinance is preempted by state law.

22. Further, the Ordinance obstructs and frustrates the policies and purposes of the law of the State of Minnesota, and has unreasonably adverse effects upon the statewide problem of managing, treating and supervising civilly committed sex offenders. By frustrating the release plans devised and approved by the various state agencies, the Ordinance prevents MSOP from managing, treating and supervising civilly committed sex offenders. In addition, the Ordinance creates direct conflicts with Minnesota laws governing the release of sex offenders who are



adjudicated under civil commitment. The Ordinance prohibits what Minnesota law allows and has determined to be appropriate. For those reasons, the Ordinance is preempted by State of Minnesota law. Because the Ordinance is preempted by state law, it is unenforceable.

23. Indeed, as the City Attorney advised the Dayton City Council in advance of the Ordinance, courts in other states have held that similar ordinances were preempted by similar state law regimes. *See Fross v. Cnty. of Allegheny*, 2011 WL 2039074 (Pa. 2011); *G.H v. Twp. of Galloway*, 951 A.2d 221 (N.J. Super. 2008); *Elwell v. Twp. of Lower*, 2006 WL 3797974 (N.J. Super. Ct. Law Div. 2006). Mr. Squires further correctly concluded that in a challenge to the Ordinance, the City would bear a “difficult burden” to “persuade a court to rule contrary to the precedent these courts have set.”

24. Plaintiffs are persons “whose rights, status, or other legal relations are affected by a . . . municipal ordinance” within the meaning of Minn. Stat. § 555.02. Minnesota Courts “have long held that a declaratory judgment action is proper to test the validity of a municipal ordinance, regardless of whether another remedy exists.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). This matter involves an actual, justiciable controversy because of the direct and imminent injury suffered by Plaintiffs as a result of the unconstitutional Ordinance, namely, that Plaintiffs have been prevented and prohibited from beginning residence at the Dayton residence solely by virtue of the Ordinance.

25. Plaintiffs seek an Order from the Court declaring, pursuant to the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. § 555.01 *et seq.*, that the City of Dayton Ordinance is preempted by Minnesota law.

#### **COUNT TWO - VIOLATIONS OF EX POST FACTO CLAUSES**

26. Plaintiffs reallege the allegations in paragraphs 1 through 25.

27. Plaintiffs further allege that the Ordinance at Section 130.21 was adjusted, studied, and enacted with intention to prevent the Plaintiffs from residing in the City of Dayton based on their prior criminal history and sex offender notification status, and operates as a retroactive criminal punishment upon Plaintiffs.

28. Specifically, the Ordinance provides for criminal penalties for certain activities by individuals who were previously convicted under other criminal statutes. Section 130.21(B). This criminal law imposing misdemeanor penalties was enacted to specifically prohibit Plaintiffs from residing anywhere in the City of Dayton, as demonstrated by the City Council's discussion and revision of the law to ensure that Plaintiffs' placement in the City of Dayton by state authorities would be thwarted. The Ordinance amounts to a deliberate and successful attempt to impose retroactive punishment on Plaintiffs in violation of the Ex Post Facto Clauses of the United States Constitution at Article I, Sections 9 and Section 10 and Article I, Section 11 of the Minnesota Constitution. *See Doe v. Snyder*, 834 F.3d 696 (6th Cir. 2016).

29. Additionally, putting aside the compelling evidence of the Ordinance's punitive aim, the Ordinance has actual punitive effects, including but not limited to: (1) imposing criminal penalties upon classes of convicted sex offenders who do not abide by extreme geographical and temporal restrictions common to other punitive laws, including probation and parole; (2) restricting where persons can live, work, and "loiter," significantly restricting how they live their lives, (3) inflicting punishment in the form of, among other things, incapacitation and retribution (in looking back only to an individual's prior offense, and nothing else, in imposing restrictions); (4) failing to relate to a rational non-punitive purpose, insofar as the Ordinance ignores evidence on recidivism and by its nature specifically targets individuals who state authorities have determined can be safely provisionally discharged; and (5) applies obviously excessive

punishment as compared to any public safety goal in rendering nearly the entire City of Dayton as “off-limits” to persons covered by the law who have been determined to be appropriate for release under the state review process.

30. This Count Two may proceed under 42 U.S.C. § 1983, based on Defendant’s and the Dayton City Council members’ deprivation of Plaintiffs’ rights provided in the Ex Post Facto Clause of the United States Constitution and under Minn. Stat. § 555.02 based on Defendant’s deprivation of Plaintiffs’ rights provided in the Ex Post Facto Clauses of the United States Constitution and Minnesota Constitution.

### **COUNT THREE - VIOLATIONS OF EQUAL PROTECTION CLAUSES**

31. Plaintiffs reallege the allegations in paragraphs 1 through 30.

32. Plaintiffs further allege that the residential exclusion imposed on Plaintiffs by Defendants, through the Ordinance, on grounds of Plaintiffs’ sex offender status violates the Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Minnesota Constitution.

33. The provisions of the Ordinance preventing Plaintiffs from establishing temporary or permanent residency anywhere in the city do not promote a legitimate purpose of the City of Dayton. Furthermore, there is absolutely no evident connection between any “distinctive needs” peculiar to public safety and welfare with respect to sex offenders and the provisions of the Ordinance, which restrict temporary or permanent residency within, for example, the areas within 2,000 feet of any school, day care, park, playground, apple orchard, or any other facilities used by children, and within 1,000 feet of any place of worship, public school, or bus stop.

34. Indeed, compelling scientific evidence cited by other courts demonstrates that restrictions such as those contained in the Ordinance are not rationally related to protecting public safety. *See, e.g., Lawrence A. Greenfield, Recidivism of Sex Offenders Released from*

*Prison in 1994* (2003) (cited in *Snyder*, 834 F.3d at 704-05). Indeed, as explained by other courts, some statistical analyses find that residential restrictions such as those contained in the Ordinance exacerbate risk factors for recidivism and therefore harm public safety—a harm specifically identified by the Dayton Police Chief before the Ordinance was passed. See, e.g. J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161 (2011) (cited in *Snyder*, 834 F.3d at 704-05). The City of Dayton based the draconian restrictions in the Ordinance on nothing more than its unsupported finding “that sexual offenders and sexual predators present an extreme threat to the health, safety, and welfare of the citizens of the city,” without any reasonable grounding or scientific support for that “finding” or connecting that “finding” to the restrictions in the Ordinance.

35. This Count Three may proceed under 42 U.S.C. § 1983, based on Defendant’s and the Dayton City Council members’ deprivation of Plaintiffs’ rights provided in the Equal Protection Clause of the United States Constitution, as well as Minn. Stat. § 555.02, for deprivation of Plaintiffs’ rights provided in the Equal Protection Clauses of the United States Constitution and Minnesota Constitution.

#### **COUNT FOUR – VIOLATION OF DUE PROCESS CLAUSE**

36. Plaintiffs reallege the allegations in paragraphs 1-35 herein.

37. The State of Minnesota has enacted a comprehensive statutory scheme governing persons civilly committed to MSOP. Under this program, civilly committed persons have the opportunity to request that the terms of their confinement be less restrictive. Here, each of the Plaintiffs invoked those procedures, and were ultimately granted the right to live in a less restrictive environment.

38. The Ordinance interferes with this process, insofar as it effectively denies the Plaintiffs the opportunity to live in the less restrictive environment that MSOP, the SRB, and the Judicial Appeal Panel determined was appropriate pursuant to Minnesota's statutory process. Thus, as a practical matter, the Ordinance denies the Plaintiffs the process they are entitled to invoke under Minn. Stat. § 253D, insofar as they are unable to receive the remedy that resulted from that process.

39. This Court Four may proceed under 42 U.S.C. § 1983, based on Defendant's and the Dayton City Council members' deprivation of Plaintiffs' rights provided in the Equal Protection Clause of the United States Constitution, as well as Minn. Stat. § 555.02, for deprivation of Plaintiffs' rights provided in the Due Process Clause of the United States Constitution and Minnesota Constitution.

#### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray that they each be granted the following relief:

1. Issuing a declaration that the Ordinance is preempted by, and otherwise illegal under, Minnesota law, and the Minnesota and Federal Constitutions, and issuing an injunction prohibiting the Defendant from enforcing the Ordinance.
2. Granting a preliminary injunction preventing Plaintiffs' enforcement of the offending Ordinance.
3. Awarding the Plaintiffs reasonable attorneys' fees, costs, expenses and disbursements as provided for in 42 U.S.C. § 1983, 42 U.S.C § 1988, and any applicable statutes and laws relevant to the claims asserted in this Complaint.
4. Awarding Plaintiffs, and each of them, general damages and such additional equitable and legal relief as the Court may find proper and just under the circumstances.

Dated: January 3, 2018

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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions may be imposed under  
Minn. Stat. § 549.211.

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