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Paul Babeu, Pinal County Sheriff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

| | | |
|-----------------------------|---|------------------------------|
| FRIENDLY HOUSE, et al., |) | No. CV10-1061-PHX-JWS |
| |) | |
| Plaintiffs, |) | MOTION TO DISMISS |
| |) | PLAINTIFFS' COMPLAINT |
| v. |) | |
| |) | |
| MICHAEL B. WHITING, et al., |) | |
| |) | |
| Defendants. |) | (Honorable John W. Sedwick) |

Defendants Pinal County Sheriff, Paul Babeu, and Pinal County Attorney, James P. Walsh, move the Court to dismiss Plaintiffs' complaint filed on or about May 17, 2010. This motion is made pursuant to Rules 8, 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure. The complaint fails to establish subject matter jurisdiction and fails to state a claim against either Defendant upon which relief may be granted. Defendants' motion is more fully supported in the accompanying memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background

Paul Babeu is the duly elected Sheriff of Pinal County. He is authorized to enforce the Arizona Criminal Code within the jurisdictional boundaries of Pinal County, Arizona. A.R.S. § 11-441(A). James P. Walsh is the duly elected County Attorney of Pinal County. He is authorized to prosecute petty offenses, misdemeanors and felony criminal offenses committed within the jurisdictional boundaries of Pinal County, Arizona. A.R.S. § 11-532(A). They will be referred to as the Pinal County Defendants. This motion sets out the position of both, and each of them.

Arizona Senate Bill 1070, as amended by Arizona House Bill 2162, was recently passed by the Arizona Legislature and signed into law by the Governor of Arizona. SB 1070 will not take effect until July 29, 2010. Arizona Constitution Article 4, Part 1, §1(3). The title of this prospective change to Arizona law is the “Safe Neighborhoods; Immigration; Law Enforcement Act,” commonly referred to as “SB 1070.” The changes are not yet the law in Arizona.

For purposes of this motion, the Plaintiffs are divided into two groups, the “Organizational Plaintiffs” and the “Individual Plaintiffs.” The Organizational Plaintiffs are: Action Network, Tonatierra, Community Development Institute, Muslim American Society, Japanese American Citizens League, Valle Del Sol, Inc. and Coalición De Derechos Humanos. The Individual Plaintiffs are Andrew Anderson, Vicki Gaubeca, C.M., a minor, Luz Santiago, Jim Shee, Jose Angel

1 Vargas, Jesus Cuauhtémoc Villa, John Doe #1, Jane Doe #1, and Jane Doe #2.
2 Both sets of Plaintiffs seek declaratory and injunctive relief against Sheriff Babeu
3 and County Attorney Walsh, yet allege no specific act or failure to act by either in
4 their official capacities within the jurisdictional boundaries of Pinal County. As
5 importantly, until SB 1070, as amended by HB 2162, takes effect on July 29, 2010,
6 none of the Plaintiffs can allege or establish any fact against either county official
7 that amounts to actual harm, a deprivation of a constitutional right or that
8 establishes an actual case or controversy. The complaint fails to establish that this
9 Court has subject matter jurisdiction to decide any issue raised in the complaint and
10 fails to state a claim against either of the Pinal County Defendants upon which relief
11 can be granted.
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13 II. Compliance with Rule 8 Pleading Requirement

14 Plaintiffs' complaint fails to comply with Rules 8(a) and (d), Federal Rules
15 of Civil Procedure, as there is neither a short and plain statement of the Court's
16 jurisdiction nor a short and plain statement of the claim showing that Plaintiffs are
17 entitled to relief against either Pinal County Sheriff Babeu or Pinal County Attorney
18 Walsh. Rule 8(a) calls for a "short and plain statement of the claim showing that
19 the pleader is entitled to relief." Rule 8(d) requires that each allegation in a
20 pleading be "simple, concise and direct." Plaintiffs' complaint against Pinal County
21 Sheriff Babeu and Pinal County Attorney Walsh meets neither requirement. The
22 complaint should be dismissed because of its noncompliance with Rule 8
23 requirements, the complaint's failure to establish this Court's subject matter
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jurisdiction, and the complaint's failure to state a claim upon which relief can be granted against either Pinal County Sheriff Babeu or Pinal County Attorney Walsh. 5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357.

III. Standing

Plaintiffs' complaint fails to establish that any of the Plaintiffs, either Organizational or Individual, have standing to bring this action against Pinal County Sheriff Babeu or Pinal County Attorney Walsh. To establish Article III standing, a plaintiff must show that it (organization) or he (individual person) has suffered an "injury in fact" that is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical; that the injury is fairly traceable to the challenged action of the defendant; and that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000)). The Pinal County Defendants concede that Plaintiffs need not "await the consummation of threatened injury to obtain preventive relief." *Blum v. Yaretsky*, 457 U.S. 991, 1000, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982). However, where a party seeks prospective relief, "[t]he question becomes whether any perceived threat to [the plaintiff] is sufficiently real and immediate to show an existing controversy." See *Lujan v. Defenders of Wildlife*, 504 U.S. at 564, 112 S.Ct. 2130 (1992) (examining imminence of asserted injury); and *City of Los Angeles v. Lyons*, 461 U.S. 95, 105, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983)

1 (examining likelihood that plaintiff would suffer future injury). *Long Beach Area*
2 *Chamber of Commerce v. City of Long Beach* 603 F.3d 684, 689 (9th Cir, 2010).
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4 In this matter, the complaint alleges no facts specific to either Pinal County
5 Sheriff Babeu or Pinal County Attorney Walsh to establish that any of the
6 Organizational or Individual plaintiffs have met the standing requirements. The
7 only allegation in the entire complaint that refers to Pinal County Sheriff Babeu is
8 numbered paragraph 57 and states: “Defendant Sheriff Paul Babeu is the County
9 Sheriff of Pinal County, Arizona. As such, Defendant Babeu is responsible for the
10 enforcement of SB 1070 within Pinal County. Defendant Babeu is sued in his
11 official capacity.” The only allegation in the entire complaint that refers to Pinal
12 County Attorney Walsh is numbered paragraph 42 and states: “Defendant James P.
13 Walsh is the County Attorney of Pinal County, Arizona. As such, Defendant Walsh
14 is responsible for the enforcement of SB 1070 within Pinal County. Defendant
15 Walsh is sued in his official capacity.” None of the other numbered allegations
16 state facts as to whether either Defendants Babeu or Walsh has or will cause “an
17 injury in fact” to any plaintiff that is concrete and particularized, and that such
18 injury (1) is imminent and not conjectural or hypothetical; (2) is fairly traceable to
19 the challenged action of Defendants Babeu or Walsh; (3) is likely, as opposed to
20 merely speculative; and (4) will be redressed by a favorable decision. No plaintiff
21 is able to establish standing to bring this suit against either Pinal County Sheriff
22 Babeu or Pinal County Attorney Walsh.
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1 None of the Organizational Plaintiffs has alleged anything other than
2 possible, prospective harm and, at most, a setback to the organization's abstract
3 social interests. The Organizational Plaintiffs have failed to establish standing in
4 this case regarding claims against Defendants Babeu or Walsh. *Havens Realty*
5 *Corp v. Coleman*, 455 U.S. 363 (1982). No Individual Plaintiff has alleged
6 anything other than generalized hypothetical or possible threats of detention or
7 arrest, and none has made those allegations directly against either Pinal County
8 Sheriff Babeu or Pinal County Attorney Walsh. The Individual Plaintiffs have
9 failed to establish standing to maintain this action against Pinal County Sheriff
10 Babeu or Pinal County Attorney Walsh.
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14 IV. Ripeness

15 Even if any plaintiff is able to establish standing to bring this action against
16 either Pinal County Sheriff Babeu or Pinal County Attorney Walsh, the matters
17 pleaded are not ripe for review by this court. Because SB 1070, as amended, will
18 not take effect until July 29, 2010, the matters alleged in the complaint against them
19 are not fit for judicial decision. Further factual development is necessary to
20 advance the Federal Court's ability to deal with the legal issues presented in the
21 complaint. *Allen v. Wright*, 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556
22 (1984); *Lujan v. Nat'l Wildlife Federation*, 497 U.S. 871, 110 S.Ct. 3177 (1990).
23
24 There is no past or present action alleged in any count of the complaint by either
25 Pinal County Sheriff Babeu or Pinal County Attorney Walsh that has caused an
26 injury to any Plaintiff. Consideration of the issues raised in the complaint will
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1 benefit from a more concrete setting after implementation of SB 1070 in Pinal
2 County. At this point, it is premature and speculative to determine if or how
3 implementation may occur in the office of either Sheriff Babeu or County Attorney
4 Walsh, and whether any Plaintiff will be harmed by that implementation.
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6 The Ninth Circuit Court of Appeals has described ripeness as “standing on a
7 timeline.” *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134, 1138
8 (9th Cir. 2000). Here, the complaint’s allegations against Defendants Babeu or
9 Walsh are premature and abstract, especially since SB 1070 will not take effect until
10 July 29, 2010. The facts alleged in the complaint are neither particularized nor
11 sufficiently developed and are not far enough on the timeline to be “prudentially
12 ripe” for judicial determination. *Socialist Labor Party v. Gilligan*, 406 U.S. 583,
13 588, 92 S.Ct. 1716, 32 L.Ed.2d 317 (1972). *Lujan v. Nat’l Wildlife Federation*,
14 *supra*; *Institute of Governmental Advocates v. Bowen*, 2009 WL 1664073 (E.D.Cal.
15 2009).
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19 The complaint should be dismissed because (1) the complaint fails to comply
20 with Rule 8 pleading standards; (2) none of the Organizational or Individual
21 Plaintiffs have established standing to maintain this action against either Pinal
22 County Sheriff Babeu or Pinal County Attorney Walsh; (3) the subject matter
23 jurisdiction of this Court has not been established; and (4) the complaint fails to
24 state a cause of action against either Pinal County Sheriff Babeu or Pinal County
25 Attorney Walsh upon which relief can be granted.
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1 **RESPECTFULLY SUBMITTED** this 18th day of June, 2010.

2 JAMES P. WALSH
3 PINAL COUNTY ATTORNEY

4
5 By: /s Joe A. Albo
6 Joe A. Albo
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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