

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| <p>GREGORY T. ANGELO, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>DISTRICT OF COLUMBIA, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p> | <p>Civil Action No. 1:22-cv-01878-RDM</p> |
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DISTRICT DEFENDANTS’ MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Defendants District of Columbia, Attorney General Brian L. Schwalb, and Chief Robert J. Contee III move under Rule 12(b)(1) and (6) to dismiss Plaintiffs’ First Amended Complaint (Am. Compl.) [34]. Plaintiffs bring claims under 42 U.S.C. § 1983, alleging that D.C. Code § 7-2509.07 violates the Second and Fifth Amendments. Plaintiffs, however, have no standing to invoke this Court’s jurisdiction, and their new claims against Attorney General Schwalb and Chief Contee are improperly pleaded or barred by immunity doctrines.

Plaintiffs first filed suit on June 30, 2022. *See* Compl. [1]. Plaintiffs subsequently filed an application for a preliminary injunction [6]. On December 28, 2022, this Court issued a memorandum opinion and order [32] denying that relief because Plaintiffs had not shown a substantial likelihood of standing. *See Angelo v. District of Columbia*, 2022 WL 17974434 (D.D.C. Dec. 28, 2022). Specifically, the Court found that Plaintiffs had not sufficiently shown that they faced an imminent, credible threat of prosecution under the statute at issue, as needed to sustain a pre-enforcement challenge under D.C. Circuit precedent. *Id.* at *4, *8. In reaching that conclusion, the Court stated: “No plaintiff in this case has been arrested and prosecuted—or

threatened with arrest or prosecution or with the imposition of a civil penalty—for violating the provision of D.C. law at issue here.” *Id.* at *4.

Plaintiffs have now filed their Amended Complaint, but nothing has changed materially. As explained in the accompanying Memorandum, despite the opportunity to supplement their allegations, Plaintiffs still fail to meet their burden to demonstrate standing, both as to their alleged fear of arrest or prosecution under D.C. Code § 7-2509.07 and as to their newly alleged economic injuries. The Court’s prior reasoning remains factually and legally correct and warrants dismissal of the Amended Complaint for lack of jurisdiction.

Plaintiffs have also added new claims against Defendants Attorney General Brian L. Schwalb and Chief Robert J. Contee III, in both their official and individual capacities. Even if this Court finds jurisdiction, Plaintiffs’ individual capacity claims should be dismissed because the Amended Complaint fails to plausibly allege actionable individual wrongdoing. And Plaintiffs’ official capacity claims should be dismissed as duplicative of their claims against the District of Columbia.

A proposed order also accompanies this Motion. Because this Motion is dispositive of the Amended Complaint, Defendants have not sought Plaintiffs’ consent to the relief requested. *See* LCvR 7(m).

Date: March 10, 2023.

Respectfully Submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

STEPHANIE E. LITOS
Interim Deputy Attorney General
Civil Litigation Division

/s/ Matthew R. Blecher

MATTHEW R. BLECHER [1012957]

Chief, Civil Litigation Division, Equity Section

/s/ Helen M. Rave

ANDREW J. SAINDON [456987]

Senior Assistant Attorney General

MATEYA B. KELLEY [888219451]

RICHARD P. SOBIECKI [500163]

HELEN M. RAVE [90003876]

Assistant Attorneys General

Civil Litigation Division

400 6th Street, NW

Washington, D.C. 20001

Phone: (202) 735-7520

Email: helen.rave@dc.gov

Counsel for Defendants