

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

RACHEL WELTY, et al.,)	
)	
Plaintiffs,)	
)	Case No. 3:24-cv-00768
v.)	
)	
BRYANT C. DUNAWAY, et al.,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs' recently filed notice of supplemental authority asserts that the Tennessee Court of Appeals' decision in *City of Milan v. Agee*, No. W2024-00200-COA-R3-CV, 2025 WL 1276617 (Tenn. Ct. App. May 2, 2025) "supports [their] standing arguments because it reinforces the credibility of their fear of prosecution," Notice, D.E. 78, 1077.

Plaintiffs read too much into that decision. While it does "explain[] that district attorneys . . . are obligated to enforce state criminal law" and does "address[] limitations on [their] discretionary authority not to prosecute," *id.*, it also recognizes that district attorneys "clearly" retain the discretion "to assess the facts and circumstances of a case to determine how, when, and even *if* [they] will prosecute a particular case." *City of Milan*, 2025 WL 1276617, at * 10 (emphasis added). The only "limitation," Notice, D.E. 78, 1077, the court identifies is their inability "to refuse to prosecute cases based upon the court in which they are filed rather than according to their respective qualities," *City of Milan*, 2025 WL 1276617, at * 10.

Here, however, Defendants have argued that Plaintiffs cannot establish standing because they've shown no "certain threat" of enforcement by any of the named district attorneys. Defs.'

MSJ Mem., D.E. 69, 832–38. To be sure, that argument rests, in part, on those district attorneys’ “discretion to prosecute criminal matters.” *Id.* at 834. Defendants’ arguments, though, do not depend at all on discretion to choose not to prosecute *any* cases in a particular court. The argument, rather, is that they retain full discretion to make the case-by-case determination not to prosecute these Plaintiffs for their intended actions—an argument that is, if anything, bolstered by *City of Milan*. *See* 2025 WL 1276617, at * 10.

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2025, a copy of the foregoing document was filed using the Court's electronic court-filing system, which sent notice of filing to the following counsel of record:

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