

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

Civil Action No. 1:25-cv-03530-RBJ

ACA INTERNATIONAL and FRESNO CREDIT BUREAU,

Plaintiffs,

v.

ADMINISTRATOR OF THE UNIFORM CONSUMER CREDIT CODE, MARTHA
FULFORD, in her official capacity, ATTORNEY GENERAL OF COLORADO, PHILIP
WEISER, in his official capacity,

Defendants.

REPLY IN SUPPORT OF PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

COME NOW Plaintiffs ACA International and Fresno Credit Bureau and, pursuant to
D.C.COLO.LCivR 7.1(d), hereby submit their Reply in Support of Plaintiffs' Request for
Judicial Notice, as follows.

FACTUAL BACKGROUND

Plaintiffs assert in their Second Amended Complaint that the Attorney General's enforcement authority reinforces the State's content-based suppression of protected speech by ensuring that CRAs who would otherwise speak through the reporting of accurate medical debt information face the threat of government action if they do so. Dkt. 28 ¶ 83. This is relevant to the *Ex parte Young* analysis. Dkt. 40 at 5. Defendants stated in their Motion to Dismiss the Sec. Am. Compl. that, "[T]here is no evidence the Attorney General has ever used his CCPA powers to enforce the CCRA's limitations on medical debt reporting or has plans to do so in the future." Dkt. 38 at 10 (emphasis added). In response to this Motion to Dismiss argument based on extrinsic facts, Plaintiffs proffered the Facebook video at issue to point out its falsity: a publicly available

recording of Defendant Attorney General Philip Weiser in which he discusses the very statutes challenged in this litigation, takes credit for their passage, describes what they do, and pledges to fight for their continued enforcement. Dkt. 39. The video shows that the government actor took action to chill protected speech when he posted the video in November 2025 and the video directly refutes a factually-incorrect argument in the Defendants’ Motion to Dismiss.

INTRODUCTION

This is a case where government actors are chilling protected First Amendment speech, where the mere threat of action that chills speech is enough to state a claim for relief. *D.L.S. v. Utah*, 374 F.3d 971, 975 (10th Cir. 2004). This Court must avoid relying on inaccurate statements from Defendants in their Motion to Dismiss. Hence, the Request to Take Judicial Notice seeks to inform the court of published statements by a Defendant that are evident on their face. The statements are relevant, and the Request for Notice is germane to an in-process contested Motion. Plaintiffs’ Request for Judicial Notice should be granted. Alternatively, this Court could strike or disregard Defendants’ inaccurate statement about the Attorney General’s planned use of his enforcement authority—as it is clear that the injury has already occurred and speech is chilled due to his threats.

ARGUMENT

I. THE FACEBOOK VIDEO IS AN APPROPRIATE SUBJECT OF JUDICIAL NOTICE UNDER FEDERAL RULE OF EVIDENCE 201.

A. Plaintiffs Seek Judicial Notice of the Video’s Existence and Contents, Not Its “Meaning” or “Significance.”

Defendants’ central argument that the video’s meaning is disputable conflates two distinct concepts: (1) judicial notice of a public record’s existence and contents with (2) judicial notice of disputed interpretive conclusions. Plaintiffs do not ask this Court to determine what the Attorney General’s statements “mean” in some abstract sense. Rather, Plaintiffs ask the Court to take notice

of a simple, indisputable fact: that Attorney General Weiser made these specific statements about the specific statutes at issue in this case.

Courts take judicial notice of public statements, social media posts, and website content for the limited purpose of establishing that the statements were made. The Court may take judicial notice of the publication because it is a public statement issued by the relevant entity and its authenticity cannot reasonably be questioned. *See Fla. Immigrant Coal. v. Uthmeier*, 787 F. Supp. 3d 1323, 1331 n.4 (S.D. Fla. 2025) (taking judicial notice of the Florida Attorney General's social media posts because the Attorney General himself published the statements, placing their contents beyond reasonable dispute). As in *Uthmeier*, the Court is not asked to accept the truth of the publication's assertions, but merely to recognize the existence and contents of an authentic, publicly available publication. *See also O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web.”); *Cafe Plaza de Mesilla Inc. v. Cont. Cas. Co.*, 2021 WL 601880, at *1 n.3 (D.N.M. 2021) (taking judicial notice of excerpts of Facebook page); *Driskell v. Thompson*, 971 F. Supp. 2d 1050, 1057 n.8 (D. Colo. 2013) (“[T]he Court may consider outside documents subject to judicial notice, including ... matters of public record.”); *Bank v. Allied Jewish Fed'n of Colo.*, 4 F. Supp. 3d 1238, 1240 (D. Colo. 2013).

The fact that Attorney General Weiser spoke these words is not subject to reasonable dispute. His statement was video recorded and he posted the video on his own campaign page, “Phil for Colorado.” And his spoken words in the video include: “That’s why I fought for legislation in Colorado. Medical debt can’t be placed on your credit record. . . . We’ll fight for these protections. I’ll always fight for Colorado.” That Phil Weiser made these statements is simply not subject to “reasonable dispute.”

B. Defendants’ Cited Authorities Are Inapposite.

- a. Fuqua’s noticed record was confusing and introduced to refute allegations in a complaint.

Defendants rely primarily on *Fuqua v. Santa Fe Cnty. Sheriff’s Off.*, 157 F.4th 1288 (10th Cir. 2025) *cited in* Resp., Dkt. 41 at 2, but that case is readily distinguishable due to the content and intended use of the noticed footage. First, in *Fuqua*, defendants in an excessive force case sought judicial notice of body camera footage that would have required the court to “weigh evidence and make factual findings—such as whether the officers saw [the victim] drop his BB gun, or whether [the victim] ran toward the occupied car.” *Id.* at 1299. The footage captured split-second physical events in a chaotic, rapidly evolving encounter, the interpretation of which was hotly disputed. Here, the spoken and printed words are not contested or in dispute.

Fuqua is also distinguishable because the purpose for which Defendants sought to submit those videos was to dispute the allegations of the complaint, which request ran contrary to “[t]he court’s function on a Rule 12(b)(6) motion . . . to assess whether the plaintiff’s complaint alone is legally sufficient to state a claim for which relief may be granted” in doing which it “must assume the truth of the plaintiff’s factual allegations.” *Fuqua v. Santa Fe Cnty. Sheriff’s Off.*, 157 F.4th 1288, 1299 (10th Cir. 2025) (citations omitted). Here, Plaintiffs proffer the Facebook post to provide a real-world example consistent with allegations in the Sec. Am. Compl. (Dkt. 28 ¶ 83) and contrary to extrinsic evidence stated in a Motion to Dismiss. *See* Dkt. 38 at 10.

Unlike *Fuqua*, the Attorney General’s Facebook post is not proffered to improperly challenge the factual assertions of the complaint, but instead to respond to Defendants’ claim that the Attorney General plays no role in enforcing the statute. As the Tenth Circuit directs, “[i]n essence, judicially noticeable facts are incorporated into the complaint,” the judicial notice here is

both functionally and actually consistent with what plaintiffs have already alleged. *Pompa v. Am. Family Mut. Ins. Co.*, 520 F.3d 1139, 1149 (10th Cir. 2008).

b. Lockett does not address a Defendant’s own authored and published statements

Defendants’ reliance on *Estate of Lockett by & through Lockett v. Fallin*, 841 F.3d 1098, 1111 (10th Cir. 2016) *cited in* Resp., Dkt. 41 at 3, is similarly misplaced because the court there refuses to notice news articles and a factual recitation in another court case. The Facebook video is not a news article, but is in fact the Attorney General’s own words, from his own account, recorded and published by his own campaign. The *Lockett* decision’s particular issues as to news or other factual summaries are not applicable here.

C. The Attorney General’s Statements Are Not Subject to Reasonable Dispute.

Defendants suggest that the statement “[w]e will fight for these protections” could be “directed at national political developments, expressing opposition to efforts by the current Presidential Administration to weaken consumer protections.” Resp., Dkt. 41 at 2-3. Possibly. But all effects on the listener must be taken into consideration. Where the injury is chilled speech, the Court is required to consider all relevant circumstances of state action. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 69–70 (1963). Also, Defendant’s characterization ignores the full context of the Attorney General’s remarks. Attorney General Weiser did not make a vague reference to “protections” in the abstract. Mot., Dkt. 39 at 4 (emphasis added). The Attorney General first identifies the *Colorado* legislation. He then describes what that legislation does—precisely what HB 23-1126 and C.R.S. § 5-18-109(1)(f)(I) do. He then pledges to “fight for these protections”—the protections he just described under Colorado law. And he frames this as a personal, ongoing commitment: “I’ll always fight for Colorado.”

Plaintiffs do not ask the Court to adopt any particular interpretation of these statements at this stage. They ask only that the Court take notice that Defendant Weiser made these statements.

Whether the Court ultimately finds them relevant to sovereign immunity is a separate question from whether judicial notice is appropriate. As explained below, the statements are plainly relevant—but even if the Court were to disagree on relevance, that would not render the fact of the statements “subject to reasonable dispute” within the meaning of Rule 201.

II. PLAINTIFFS’ REQUEST IS NOT AN IMPROPER ATTEMPT TO SUPPLEMENT THE PLEADINGS.

A. Judicial Notice Is Proper at Any Stage of the Proceedings.

Defendants’ argument that Plaintiffs should have included allegations about the video in their complaint fundamentally misapprehends the nature and purpose of judicial notice. Federal Rule of Evidence 201(d) provides that a court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” This obligation is mandatory, not discretionary, when the prerequisites of Rule 201 are met. And Rule 201(e) further provides that judicial notice “may be taken at any stage of the proceeding”—including, as relevant here, in connection with a motion to dismiss.

The Tenth Circuit has recognized that courts may—and routinely do—consider judicially noticeable facts when evaluating motions to dismiss. *Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006); *Pace v. Swerdlow*, 519 F.3d 1067, 1072 (10th Cir. 2008) (“Facts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment.”). In evaluating a Rule 12(b)(6) motion to dismiss, the Court may consider documents incorporated by reference, documents referred to in the complaint that are central to the claims, and matters of which a court may take judicial notice. *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). There is no requirement that judicially noticeable facts first be pled in a complaint before they may be brought to the Court’s attention.

B. The Video’s Relevance Arose from Defendants’ Own Motion to Dismiss.

Defendants’ complaint that Plaintiffs had two opportunities to amend their complaint ignores a critical fact: the video became directly relevant because of arguments *Defendants* raised in their Motion to Dismiss. In their partial Motion to Dismiss, Defendants asserted that “[t]here is no evidence the Attorney General has ever used his CCPA powers to enforce the CCRA’s limitations on medical debt reporting or has plans to do so in the future.” Mot, Dkt. 38 at 10. Defendants thus placed enforcement intent squarely at issue and alluding to “no evidence,” when clearly some evidence existed.

Plaintiffs’ Request for Judicial Notice is a direct response to Defendants’ own assertion. When a defendant affirmatively argues in a motion to dismiss that there is “no evidence” of enforcement intent, the opposing party is entitled to bring to the Court’s attention publicly available evidence that contradicts that representation. This is not “supplementing” the pleadings—it is responding to false facts raised in Defendants’ own motion. Plaintiffs alleged that CRAs “face the threat of government action” by the Attorney General. Dkt. 28 ¶ 83. The noticed Facebook page is a mere example. *See Pompa*, 520 F.3d at 1149 (“In essence, judicially noticeable facts are incorporated into the complaint.”).

C. Defendants’ Pleading-Stage Argument is Unpersuasive.

If Defendants’ argument were accepted, it would produce an absurd result: a defendant could make sweeping *factual* assertions in a motion to dismiss—as Defendants do here with their claim that there is “no evidence” of enforcement intent—and then block the opposing party from presenting publicly available, judicially noticeable evidence that directly contradicts those assertions. This would allow defendants to insulate false or misleading representations from scrutiny at the motion to dismiss stage simply by arguing that the plaintiff should have anticipated those representations and pled responsive facts in advance.

In evaluating a Rule 12(b)(6) motion to dismiss, the Court may consider documents incorporated by reference, documents referred to in the complaint that are central to the claims, and matters of which a court may take judicial notice. *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). The *EEOC v. 'Murica, LLC*, 694 F. Supp. 3d 1356, 1365 (D. Colo. 2023), decision cited by Defendants does not supersede this holding and nothing in *'Murica* holds that judicial notice is limited to facts pled in the complaint.

III. THE VIDEO IS DIRECTLY RELEVANT TO THE SOVEREIGN IMMUNITY AND ENFORCEMENT-INTENT ISSUES BEFORE THE COURT.

Defendants' argument as to whether the video is enough to defeat their Motion to Dismiss misses the relevant question. *See Resp.*, Dkt. 41, at 2 (arguing that the video “does not establish that claims against the Attorney General fall within the *Ex parte Young* exception to sovereign immunity”). Whether the video is ultimately dispositive of the *Ex parte Young* analysis is not the question before the Court on this motion. The question is whether the video is appropriate for judicial notice—and it plainly is.

That said, the video is directly relevant to the issues raised by Defendants' Motion to Dismiss. The *Ex parte Young* exception to Eleventh Amendment sovereign immunity requires a showing of “some connection” between the state officer and “the enforcement of the act.” *Ex parte Young*, 209 U.S. 123, 157 (1908). In determining whether this connection exists, courts examine the particular statutory framework and its enforcement mechanisms and whether the named official has authority to enforce the challenged provision. *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012).

An *Ex parte Young* suit is against an individual. Whether he fights for Colorado as Attorney General, or as the Governor directing the next Attorney General is of no matter, the speech is chilled in any event and an *Ex parte Young* injunction is warranted.

The video directly contradicts Defendants’ argument that the Attorney General has no enforcement intent with respect to the medical debt credit reporting ban. In the video, Attorney General Weiser: (1) takes personal credit for the legislation at issue (“That’s why I fought for legislation in Colorado”), (2) describes precisely what the challenged statute does (“Medical debt can’t be placed on your credit record”), (3) pledges to fight for the statute’s continued enforcement (“We’ll fight for these protections”), and (4) frames this as an enduring personal commitment (“I’ll always fight for Colorado”). These are not ambiguous statements about national policy. They are specific statements about specific Colorado legislation by the state official charged with enforcing that legislation and who is running for an office that will supervise the next Attorney General.

At the merits stage, the Court can determine whether this evidence is ultimately dispositive of the *Ex parte Young* inquiry. But the notion that a named Defendant’s own public statements about the very statute at issue are “irrelevant” to whether that defendant has a sufficient connection to enforcement defies common sense and settled law. *See, e.g., Planned Parenthood of Kan. & Mid-Mo. v. Moser*, 747 F.3d 814, 828 (10th Cir. 2014) (examining state official’s enforcement authority and connection to challenged statute in *Ex parte Young* analysis).

IV. DEFENDANTS’ PROCEDURAL OBJECTIONS ARE WITHOUT MERIT.

A. To the Extent Any Duty-to-Confer Obligation Exists, It Should Be Excused.

Defendants contend that Plaintiffs failed to confer before filing their Request for Judicial Notice as required by D.C.COLO.LCivR 7.1(a). Even *assuming arguendo* that the Request constitutes a “motion” within the meaning of the Local Rule, any failure to confer was harmless and should be excused. The Request for Judicial Notice was filed in connection with Plaintiffs’ Opposition to Defendants’ Motion to Dismiss and relates directly to the evidence and arguments presented therein. Defendants have suffered no prejudice whatsoever—they received full notice of the Request, had ample opportunity to respond, and in fact filed an opposition brief.

Moreover, the purpose of the conferral requirement is to determine whether the opposing party will oppose the motion, thereby potentially avoiding unnecessary briefing. *See* D.C.COLO.LCivR 7.1(a). That purpose would not have been served here. Given that Defendants filed a Motion to Dismiss specifically arguing the absence of enforcement intent—the very issue the video addresses—there was no reasonable prospect that Defendants would have consented to judicial notice of a video contradicting their position. Requiring conferral under these circumstances would have been a futile formality.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Request for Judicial Notice and take judicial notice of the Facebook video posted by Defendant Attorney General Philip Weiser. The video is a publicly available statement by a named party to this litigation, its existence and contents are not subject to reasonable dispute, and it is directly relevant to the sovereign immunity and enforcement-intent issues raised by Defendants' own Motion to Dismiss.

Dated: September 11, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2026, I electronically filed the foregoing **REPLY
IN SUPPORT OF PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE** with the Clerk of
Court using the CM/ECF system which will send notification of such filing to all parties of record.

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