UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAYDAY HEALTH, *Plaintiff,* v. **MARTY J. JACKLEY,** Attorney General for the State of South Dakota in his official capacity, *Defendant.*	* * * * * * * * * * * * *	1:26-cv-00078-KPF

DEFENDANT'S MEMORANDUM OF LAW RE: DEFENDANT'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE AS TO WHY THIS CASE SHOULD NOT BE DISMISSED FOR LACK OF JURISDICTION.

Defendant, South Dakota Attorney General Marty J. Jackley, *pro se*, and by and through his counsel, Deputy Attorney General Amanda J. Miiller, respectfully submits this memorandum of law in response to the Court's Order to Show Cause as to why this case should not be dismissed for lack of jurisdiction.

BACKGROUND

The State of South Dakota, through the South Dakota Office of the Attorney General, commenced a civil enforcement proceeding against Mayday Health (Mayday) on December 22, 2025, in the Sixth Judicial Circuit Court, Hughes County, South Dakota, file #32CIV25-339. On January 6, 2026, Mayday filed a complaint for injunctive and declaratory relief against Attorney General Marty Jackley in the instant action. In a hearing held February 11, 2026, this Court concluded that it must abstain under the *Younger* abstention doctrine.

ARGUMENT

A. The Court must abstain under *Younger*.

Under the *Younger* abstention doctrine, federal courts must "abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state

proceedings." *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (citing *Younger v. Harris*, 401 U.S. 37, 43-444, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)). Abstention is required if the following three conditions are met: "(1) there is an ongoing state proceeding; (2) an important state interest is implicated in that proceeding; and (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of the federal constitutional claims." *Id.* (citing *Grieve v. Tamerin*, 269 F.3d 149, 152 (2d Cir.2001)). "[W]hen *Younger* applies, abstention is mandatory and its application deprives the federal court of jurisdiction in the matter." *Id.* at 197 (citing *Colorado Water Conserv. Dist. v. United States*, 424 U.S. 800, 816 n. 22, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)). Here, all three conditions have been met, and the Court must abstain.

1. There is an ongoing state proceeding.

a. This Court correctly found that a state civil enforcement proceeding is pending that requires abstention.

Courts have generally held that "there are some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do.'" *Gristina v. Merchan*, 131 F.4th 82, 86 (2d Cir.), *cert. denied*, 146 S. Ct. 248 (2025) (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989)). From this notion came three identifiable classes of cases requiring abstention: "(1) where there is a pending state criminal prosecution; (2) where there is a pending civil enforcement proceeding; or (3) where there is a pending civil proceeding uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* This Court correctly determined that an ongoing state civil enforcement proceeding was pending under SDCL § 37-24-23. Exhibit A at page 12-13, lines 25, 1-5. Not only does the ongoing state proceeding meet the definition of a civil enforcement proceeding, but it also meets the

requirements of a qualifying civil proceeding for *Younger*. "When the state proceeding is civil rather than criminal, the action must be 'in aid of or closely related to' criminal statutes, the state must be a party, and an important state enforcement policy must be at stake for *Younger* to apply." *OMYA, Inc. v. Vermont*, 80 F. Supp. 2d 211, 215 (D. Vt. 2000) (quoting *Huffman v. Pursue*, 420 U.S. 592, 604 (1975). The state statute, SDCL § 37-24-23, comes from the South Dakota Deceptive Trade Practices and Consumer Protection Act, which permits a civil injunction action for the South Dakota Attorney General when it is believed SDCL § 37-24-6 has been or will be violated. But SDCL § 37-24-6 does not limit the Attorney General to civil remedies—it also permits the Attorney General to pursue felony criminal charges. As to an important enforcement policy, "courts have repeatedly held that state actions to enforce consumer-protection statutes and laws against deceptive business practices are sufficiently important for *Younger* purposes." *In re Standard & Poor's Rating Agency Litig.*, 23 F. Supp. 3d 378, 410 (S.D.N.Y. 2014) (citations omitted). Because the State is a party to this ongoing civil enforcement proceeding that is closely related to a criminal statute and it invokes an important enforcement policy, the first *Younger* element is met.

b. The South Dakota State Court affirmed there are ongoing state proceedings.

The State filed its civil enforcement proceeding on December 22, 2025. It did so under the special commencement statutes found in SDCL § 37-24-16 and SDCL § 37-24-23, where a motion for injunction may be filed in state court and served via certified mail. Exhibit B, page 6, lines 19-22. After Mayday filed this federal action in response, the State obtained a valid address for Mayday for personal service of process. However, due to the pending federal proceeding and this Court's ensuing restraining order, no further action was taken regarding service of process in the state court case. Exhibit B, page 14, lines 11-19. After this Court denied Mayday's request

for a preliminary injunction and found it did not have jurisdiction, the State personally served Mayday with a summons and complaint on February 18, 2026. Exhibit B, page 3, lines 7-13.

A hearing was held in the state court case on February 20, 2026. Citing personal service of the summons and complaint, the state court concluded that an action had been properly commenced and that it had jurisdiction to continue with the proceeding. Exhibit B, page 15, lines 17-22. The court ordered a trial to be set for July of 2026. Despite having held that an action had not commenced until personal service was effectuated, the state court did not hold that a new proceeding had begun with the service of the summons and complaint. Accordingly, the court kept the matter on the same court filing docket that had been created when the state filed its initial motion under SDCL § 37-24-23. Exhibit B, page 15, lines 17-22.

Initially, the fact that the state court concluded that an action had not yet commenced until personal service of the summons and complaint is not germane to this Court's decision for abstention purposes. This is because the proceeding was pending when the Court made its decision to abstain. Case law in the Second Circuit "clearly indicates that the *Younger* abstention issue is evaluated at the time of filing, and it is not continuously re-evaluated throughout the pendency of a proceeding." *Gristina*, 131 F.4th at 87. At the time of filing, as it is now, the proceeding in state court was ongoing.

Even if this Court were to consider the events that occurred after its decision to abstain, there is a fundamental difference between the commencement of an action, which is what the state court determined, and the life cycle of a proceeding. A proceeding "is more comprehensive than the word "action[.]" Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 3-4 (2d ed. 1899); *see also Black's Law Dictionary*, 459 (12th ed. 2024). A proceeding "may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and judgment." *Id.* As a result, a

proceeding includes the commencement of an action, but it also includes all appearances, motions, and the taking of appeal, among other activities. *Id.* The Second Circuit recognized this expanded concept of a proceeding in the context of *Younger* when it held that "[a] civil proceeding is pending if further state appellate remedies are available at the time of filing the federal complaint." *Gristina*, 131 F.4th at 86. Here, in the state case, the court kept the entire proceeding on the same court filing docket it created when the state filed its initial motion on December 22, 2025. As a result, the state court proceeding has been continuously ongoing since December 22, 2025.

Finally, *Younger* mandates abstention because this Court has not proceeded to a hearing on the merits. The United States Supreme Court has provided "that where state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975). There is no logical reason why this basic tenet should not equally apply to the commencement of a civil enforcement proceeding. This Court's proceedings thus far have been a telephonic hearing that resulted in an emergency temporary restraining order and oral argument regarding *Younger* abstention that culminated in it denying a motion for preliminary injunction and finding it did not have jurisdiction. Exhibit A, page 4, lines 15-24. Indeed, this Court acknowledged at its last hearing that it has not yet advanced to considering evidence or arguments regarding Mayday's motion for preliminary injunction. Exhibit A, page 14, lines 19-22. Because there have not yet been proceedings of substance on the merits of Mayday's complaint, the Court must abstain even if the state case was subsequently commenced.

2. An important State interest is implicated.

"[C]ourts have repeatedly held that state actions to enforce consumer-protection statutes and laws against deceptive business practices are sufficiently important for *Younger* purposes." *In re Standard & Poor's Rating Agency Litig*., 23 F. Supp. 3d 378, 410 (S.D.N.Y. 2014) (citing *Cedar Rapids Cellular Tel., L.P. v. Miller*, 280 F.3d 874, 880 (8th Cir.2002); *Williams v. State of Washington*, 554 F.2d 369, 370 (9th Cir.1977); *Merck Sharp & Dohme Corp. v. Conway*, 909 F.Supp.2d 781, 785 (E.D.Ky.2012); *MyInfoGuard*, 2012 WL 5469913, at *8; *Marathon Petroleum Co. v. Stumbo*, 528 F.Supp.2d 639, 645 (E.D.Ky.2007); *Arbitron Inc. v. Cuomo*, No. 08 Civ. 8497(DLC), 2008 WL 4735227, at *5–6 (S.D.N.Y. Oct. 27, 2008); *Williams v. Lubin*, 516 F.Supp.2d 535, 539–40 (D.Md.2007); *Goleta Nat. Bank v. Lingerfelt*, 211 F.Supp.2d 711, 716 (E.D.N.C.2002); *Bologna v. Allstate Ins. Co*., 138 F.Supp.2d 310, 327 (E.D.N.Y.2001); *State Farm Mut. Auto. Ins. Co. v. Metcalf*, 902 F. Supp. 1216, 1218 (D. Haw.1995); and *Bays v. Edgar*, No. 87 C5045, 1988 WL 13639, at *3 (N.D. Ill. Feb. 17, 1988)). "Additionally, in other contexts, the Supreme Court itself has recognized that States have an important interest in protecting the public from deceptive business practices." *Id.* (citing *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 460, 98 S. Ct. 1912, 56 L. Ed. 2d 444 (1978) ("general interest in protecting consumers and regulating commercial transactions" in stating that "the state interests implicated in this case are particularly strong"); *ARC Am. Corp.*, 490 U.S. at 101, 109 S. Ct. 1661 ("the long history of state common-law and statutory remedies against ... unfair business practices" makes "plain that this is an area traditionally regulated by the States"); *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651, 105 S. Ct. 2265, 85 L. Ed. 2d 652 (1985) ("the State's interest in preventing deception of consumers")). Here, the State of South Dakota undeniably has an important interest in enforcing its consumer protection statutes and the second element of the *Younger* test is met.

3. Mayday has an adequate opportunity to litigate its claims in state court.

The ongoing state civil enforcement proceeding affords Mayday an adequate opportunity to litigate its arguments concerning its First Amendment rights. "The notion of 'comity' includes 'a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.'" *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982) (quoting *Younger*, 401 U.S. at 44, 91 S. Ct. at 750). "Minimal respect for the state processes, of course, precludes any *presumption* that the state courts will not safeguard federal constitutional rights." *Id.*

"So long as a plaintiff is not barred on procedural or technical grounds from raising alleged constitutional infirmities, it cannot be said that state court review of constitutional claims is inadequate for *Younger* purposes." *Hansel v. Town Ct. for Town of Springfield, N.Y.*, 56 F.3d 391, 394 (2d Cir. 1995). And "the burden on this point rests on the federal plaintiff to show 'that state procedural law barred presentation of [its] claims.'" *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987) (quoting *Moore v. Sims*, 442 U.S. 415, 428, 99 S. Ct. 2371, 2379, 60 L. Ed. 2d 994 (1979)). Mayday has not, and cannot, show any barrier to adjudication of its First Amendment arguments in the state court. Accordingly, the third element of the *Younger* test is met, and this Court must abstain.

B. An exception to the *Younger* doctrine has not been shown.

There are two "tightly defined exceptions to the *Younger* abstention doctrine: the bad faith exception and the extraordinary circumstances exception." *Schorr v. Dopico*, 205 F. Supp. 3d 359, 363–64 (S.D.N.Y. 2016), *aff'd*, 686 F. App'x 34 (2d Cir. 2017) (quoting *Jackson Hewitt, Inc. v. Kirkland*, 455 Fed. Appx. 16, 18 (2d Cir. 2012)). "To establish the bad faith exception to *Younger*, a plaintiff must show that the party bringing the state action 'has no reasonable

expectation of obtaining a favorable outcome,' but rather brought the proceeding due to a 'retaliatory, harassing, or other illegitimate motive.' *Id.* For extraordinary circumstances, a plaintiff must show "(1) that there be no state remedy available to meaningfully, timely, and adequately remedy the alleged constitutional violation; and (2) that a finding be made that the litigant will suffer 'great and immediate' harm if the federal court does not intervene." *Corren v. Sorrell*, 151 F. Supp. 3d 479, 488 (D. Vt. 2015).

At the outset, the extraordinary circumstances exception is clearly inapplicable. Mayday has an adequate state court remedy for any alleged constitutional violation it may bring at the trial set for July 14 and 15, 2026.

As to the bad faith exception, a plaintiff must "show subjective bad faith on the part of the defendants." *Schorr*, 686 F. App'x at 37; *see also Schlagler v. Phillips*, 166 F.3d 439, 442 (2d Cir. 1999). Subjective bad faith may be demonstrated by a showing "that the prosecution is in retaliation for past speech or shows a pattern of prosecution to inhibit speech beyond the acts being prosecuted[.]" *Schlagler*, 166 F.3d at 443. Subjective bad faith may also be demonstrated by a showing of continued or future prosecution under a statute that had previously been declared unconstitutional. *Id.* This is because such a showing would demonstrate that defendants had "no reasonable expectation of obtaining a favorable outcome." *Schorr*, 686 F. App'x at 37.

In the instant matter, Mayday has failed to make such a showing of bad faith. Mayday has not shown animus or past dealings with the State—because there are none. The Governor requested the Attorney General to conduct an investigation into Mayday, which is his statutory right under SDCL Chapter 1-11. An investigation was conducted, and it was determined that Mayday Health violated South Dakota's consumer protection laws. *See* Doc 1, Exhibit D, Affidavit of Klemann. The Attorney General engaged in a measured response by sending a

cease-and-desist letter to Mayday. *See* Doc. 1, Exhibit D, Affidavit of Klemann. Mayday refused to comply with the letter, so the Attorney General commenced a civil enforcement proceeding. *See* Doc. 1, Exhibit D, Affidavit of Klemann. Much like the case in *Schlagler*, these actions do not constitute "anything other than a straightforward enforcement of the laws of [the State.]" *Schlagler*, 166 F.3d at 443.

Regarding free speech specifically, federal injunctive relief against valid, pending state civil enforcement proceedings is appropriate only when they are brought without a reasonable expectation of success. *Perez v. Ledsma,* 401 U.S. 82, 84 (1971). The "chilling effect" of state enforcement actions does "not by itself justify federal intervention" in state proceedings. *Younger,* 401 U.S. at 50. "[T]he existence of a 'chilling effect,' even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action." *Id.* at 51. Interference in state proceedings is not justified when "a statute does not directly abridge free speech, but – while regulating a subject within the State's power – tends to have the incidental effect of inhibiting First Amendment rights." *Id.*. Just as "the chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the state from carrying out the important and necessary task of enforcing these laws," the incidental "'chilling effect' of [a state enforcement action] does not automatically render [it] unconstitutional." *Id.* at 52. If it did, any First Amendment impact would be automatic bad faith and *Younger* would be "swallowed up by its exception." *Hicks,* 422 U.S. at 352. As this Court noted "federal courts have to trust their state court analogs, and I trust that the South Dakota Court will get it right." Exhibit A, pages 13-14, lines 24-25, 1. There is no bad faith exception to *Younger* abstention here, and this Court must dismiss for lack of jurisdiction.

CONCLUSION

This case meets all three requirements for *Younger* abstention, and neither of the tightly defined exceptions to abstention apply. As a result, the Court correctly determined that it must abstain, and dismissal is required for lack of jurisdiction.

Dated this 2nd day of March 2026.

MARTY J. JACKLEY
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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Defendant hereby certifies that this Memorandum of Law was prepared using the Microsoft Word Version 2010 word-processing program and contains 3,104 words in compliance with the Individual Rules of Practice in Civil Cases of the Honorable Katherine Polk Failla.

/s/Amanda Miiller
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of New York by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Amanda Miiller
By: Amanda Miiller
pro hac vice
Deputy Attorney General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAYDAY HEALTH,	:	Docket No.: 26-cv-00078
Plaintiff,	:	
v.	:	
MARTY J. JACKLEY,	:	New York, New York
	:	February 11, 2026
Defendant.	:	

PROCEEDINGS BEFORE
THE HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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THE DEPUTY CLERK: Your Honor, this is in the matter of Mayday Health vs. Jackley.

Counsel, please state your name for the record, beginning with plaintiff.

MR. SIEFF: Good afternoon, Your Honor. This is Adam Sieff of Davis Wright Tremaine for plaintiff. I am joined on the line with Counsel Chelsea Kelly and Ambika Kumar.

THE COURT: Good afternoon. This is Judge Failla. And I'm just confirming, Mr. Sieff, that you and your team are able to hear me.

MR. SIEFF: Confirmed, Your Honor. We can hear you.

THE COURT: Much appreciated, thank you.

And then representing Mr. Jackley this afternoon, which includes Mr. Jackley.

MR. JACKLEY: Good afternoon, Your Honor and Counsel. South Dakota Attorney General Marty Jackley, Civil Chief Amanda Miller, and Solicitor General Paul Swedlund.

THE COURT: Thank you all very much. Happy to have you all participating in this conference this afternoon.

What I am going to do now is to read into the record my oral decision. And I decided to give

an oral decision because I wanted to get information to you as quickly as possible. So I'll give you an opportunity to mute yourselves because there isn't oral argument, and I'll begin momentarily. Thank you.

Let me begin also by thanking you for your written submissions and for your oral presentations on January 16th and 29th of this year. I've considered all of those. I've considered as well, the post-hearing submission from Mr. Jackley. And I will now issue my oral decision on plaintiff's motion for a preliminary injunction.

As just a bit of procedural review, this Court heard a telephonic oral argument on plaintiff's motion for a temporary restraining order on January 16th of 2026. It issued an oral decision later that day granting the motion. And my oral decision was by my standards, long for an oral decision, it was nine pages. And I am incorporating here its discussion about the background section, the applicable law for a temporary restraining order, and its analysis of personal jurisdiction under New York's long-arm statute, which is founded Civil Practice Law and Rule Section 302(a).

And so I won't be repeating those

discussions here, but I will simply add to the injunctive relief discussion what the parties already know to be the standard, which is that a party seeking a preliminary injunction must show a likelihood of success on the merits, the possibility of irreparable harm if preliminary injunction is not granted, a balance of hardships tipping in the moving party's favor and the public's interest being served, or at least not disserved by relief. One case for that proposition is *Salinger v. Colting*, 607 F.3d 68, a Second Circuit decision from 2010. Where a state or federal government is a party, then factors three and four often merge. One case for that is *Nken vs. Holder,* 556 U.S. 418 from 2009.

So those things that I've just mentioned are what I'm not reconsidering. But what I have reconsidered is my Younger abstention analysis, and that is in light of the parties' submissions and my own research. In particular, and for the reasons that I'm about to describe, I do believe that the law requires me to abstain from exercising federal jurisdiction in this case, and as a result, I am denying plaintiff's motion for a preliminary injunction.

So I am focusing my discussion this

afternoon on Younger abstention law. I know that the parties are aware of Younger abstentions, so I'll discuss it in rather brief terms. It was summarized by the Second Circuit in the case of *Diamond "D" Construction Corporation vs. McGowan*, 282 F.3rd 191, in 2002. But rather than read all of these cites into the record, I'm just going to excerpt a couple of quotes that I think are important.

The Circuit found that *Younger v. Harris*, 401 U.S. 37, from 1971, generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings. Although the Younger abstention doctrine was born in the context of state criminal proceedings, it now applies with equal force to state administrative proceedings. This doctrine of federal abstention rests foursquare on the notion that in the ordinary course, a state proceeding provides an adequate forum for the vindication of federal constitutional rights. Therefore, giving the respect to our coequal sovereigns, the principles of our federalism demand we generally prohibit federal courts from intervening in such matters. That is the end of my

quotation from that case.

Younger abstention is mandatory when, number one, there is an ongoing state proceeding; number two, an important state interest is involved; and number three, the plaintiff has an adequate opportunity for judicial review of his constitutional claims during or after the proceeding. Cases for that proposition include *Spargo v. New York State Commission on Judicial Conduct*, 351 F3d 65, a Second Circuit decision from 2003. When Younger applies, abstention is mandatory and its application deprives the federal court of jurisdiction in the matter. And that is found in cases including *Colorado Water Conservation District versus United States*, 424 U.S. 800 from 1976.

There are two exceptions recognized for Younger abstention. They're commonly referred to as the bad faith and extraordinary circumstances exceptions. In connection with the TRO hearing, plaintiffs suggested that the bad faith exception applied and as cited support the Second Circuit's decision in *Cullen vs. Flagler,* 18 F.3rd 96 from 1994 and Judge Gershon's decision in *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F. Supp. 2d 184, an Eastern District decision

from 1999.

After the TRO hearing and in connection with the preliminary injunction hearing, I did a deeper dive into Second Circuit case law in this area, which made it clear that the bad faith exception and the inquiry into it was more nuanced than it originally appeared. The *Cullen* case that I mentioned was one of the first in the Circuit to articulate the exception.

And here again, rather than putting citations into the record, I'm going to excerpt a few quotes from the decision. "Intervention would still be warranted upon a showing of bad faith, harassment or any other exceptional circumstance that would call for equitable relief. Generally, for such a showing to be made, the party bringing the state action must have no reasonable expectation of obtaining a favorable outcome. But a refusal to abstain is also justified where a prosecution or proceeding has been brought to retaliate for or to deter constitutionally protected conduct, or where a prosecution or proceeding is otherwise brought in bad faith or for the purpose to harass."

In that case, the Second Circuit found that based on a past history of personal conflict between

the plaintiff and the local school board, the strictly ad hominem manner in which the school board had disciplined him, they found that the school board disciplinary proceedings were retaliatory in nature and calculated to chill First Amendment expressive activity.

But later Second Circuit cases made clear that the bad faith exception also has a subjective component to it. One of those cases is *Schlagler v. Phillips*, 166 F.3rd 439, from 1999. The plaintiff in that case had posted pro-skinhead stickers in a Cafe in Monroe, New York and was charged with aggravated harassment under the New York penal law. While the criminal case was pending, he brought a Section 1983 action challenging the statute on First Amendment grounds. The district court rejected the state's Younger argument, concluding that although there was no evidence of any prosecutorial animus towards Schlagler, the statute itself was facially unconstitutional and therefore any prosecution under it could only be brought in bad faith. The Second Circuit reversed, reasoning that because the prosecution was not retaliatory or otherwise illegitimate in its motivation and in fact was nothing more than a straightforward enforcement of

the laws of New York, I found the case did not fall within the bad faith exception. In particular, the Court in *Schlagler* found that the district court's focus on the First Amendment and the issues related to the First Amendment, and I'm now going to quote, "Undercuts the rationale set forth in Younger, which was also a First Amendment challenge to a state criminal prosecution. Younger narrowly limited exceptions to cases involving retaliatory or bad faith efforts to regulate speech. If the district court's interpretation of the *Cullen* exception were followed to its logical conclusion, the exception would swallow the Younger rule."

Later on, the Court found that if the facts show that the prosecution is in retaliation for past speech or shows a pattern of prosecution to inhibit speech beyond the acts being prosecuted, the exception should apply and abstention may be improper. It wasn't found there, and therefore, the Court ruled as it did.

Later on in 2002, the Second Circuit tried to harmonize its case law on the bad faith exception. And that was in the *Diamond "D" Construction Corporation* case I mentioned a few moments ago. And that case detailed the history of

the exception in Second Circuit and Supreme Court case law. But it concluded, and again here I'm excerpting without giving the cites, "Our most recent cases concerning the bad faith exception have further emphasized that the subjective motivation of the state authority in bringing the proceeding is critical to, if not determinative of, this inquiry. A state proceeding that is legitimate in its purposes but unconstitutional in its execution, even when the violations of constitutional rights are egregious, will not warrant the application of the bad faith exception. Later on, the Court finds that we give states the first opportunity, but not the only or last, to correct those errors of a federal constitutional dimension that infect its proceeding."

And then still later, the Court says, "Federal interference with state proceedings, because it necessarily presumes that the state court review will be inadequate, affronts the dignity of the state sovereign. However, as we recognized in *Cullen*, a state has no interest in continuing actions brought with malevolent intent. Thus, it is only when the state proceeding is brought with no legitimate purpose that the state interest in

correcting its own mistakes dissipates and along with it, the compelling need for federal deference." That's the end of that quote.

This court has reviewed all of these Second Circuit decisions on the bad faith exception issued after *Diamond "D"* -- actually, all of ones really issued after *Cullen*. And I will tell you that there are some instances in which there are short-hands to that are used that I think arguably conflate the requirements of the exception.

As one example of that, in the case of *Wilson v. Emond*, 373 F.App'x98 in 2010, a Second Circuit decision from 2010, the Court referred to the bad faith exception as covering cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction. And the Court there didn't really get into the subjective element, although I suppose the reference to bad faith may have made it implicit. And so there are some other cases that really don't speak at length about the subjective element, and they include *Weiss v. New York*, 2024 Westlaw 283-7623, *Daniel vs. Doe 1 through Doe 10*, 2024 Westlaw 213-1446, *Lowell v. Vermont Department of Children and Families* 835 F. App'x 637, and then

Glatzer v. Barone 394 F. App'x 763.

But there are other Second Circuit decisions that have confirmed the continuing importance of the subjective component of the bad faith inquiry. They include the Second Circuit's 2020 decision as distinguished from its 2019 decision in *Trump vs. Vance* 977 F.3rd 198, *Miller vs. Sutton* 697 F. App'x 27 from 2017, *Schorr v. DoPico* 686 F. App'x 34 also from 2017, *Jackson Hewitt Tax Services Incorporated vs. Kirkland*, 455 F. App'x 16 Second Circuit decision from 2012.

And I'll note as well that in the case of *Kern vs. Clark*, 331 F.3d 9, a Second Circuit decision from 2003, they actually remanded to the district court for a hearing on the subjective element of the bad faith exception. And the quote of import there is, "In the present case, the factfinder could infer bad faith or improper motive if it credited the evidence that Kern claims demonstrates that the defendants aggressively prosecuted him in a string of weak cases brought on behalf of Kern's political enemies."

So turning now to my analysis, with that case law out of the way, as suggested by my TRO decision and my questioning two weeks ago, I find

that the pending civil enforcement action under SDCL Section 37-24-23 meets all three of the Younger criteria, and that for me the remaining question was whether the bad faith exception applies. I find that it does not.

Focusing first on the subjective analysis, the Court cannot find on the record before it subjective bad faith on the part of Mr. Jackley. The South Dakota Attorney General's Office received numerous complaints, formal and informal, regarding Mayday's gas station placards. Mr. Jackley was requested by the Governor of South Dakota to look into the matter. And to be clear, I don't find that to be an indication of pretext or bad faith, and I don't think it is analogous to what happened in Judge Gershon's decision. Mr. Jackley then sent a cease and desist letter to Mayday. I understand him to have considered proceeding under South Dakota Criminal Statutes concerning solicitation and facilitation, but to have instead chosen the less drastic option of a civil enforcement action under South Dakota's deceptive trade practices statute. Mr. Jackley also cited the example of, all caps, JEN as an abortion rights organization whose conduct he believes balances First Amendment rights of free

expression with South Dakota laws restricting abortion access. On the objective front, I cannot say that Mr. Jackley has no reasonable expectation of obtaining a favorable outcome in the civil enforcement action.

Now, as I will elaborate in just a moment, I do believe that the proper way to view Mayday's website and the materials on it is noncommercial speech subject to protection under the First Amendment. But I understand that Mr. Jackley holds a different view and believes that abortion pill providers who cannot sell their products in South Dakota are using Mayday as an end run around the restrictive statutes of that state such that the speech is commercial and potentially within the ambit of the statute that I cited earlier, and I think he should be permitted to pursue those arguments in South Dakota court.

In light of the findings I've just made, I am constrained to find that Younger abstention applies and that I lack jurisdiction to consider plaintiff's motion for a preliminary injunction. Now, as suggested by my introductory comments to the bad faith exception, federal courts have to trust their state court analogs, and I trust that the

South Dakota court will get it right.

Let me just note on that point that I've done my best here -- I suppose that goes without saying. I've done my best to interpret Second Circuit law on the Younger abstention doctrine and its bad faith exception. If I've gone too far, if I've misunderstood the law or where it is today, I invite the Second Circuit to clarify my jurisdictional obligations to clarify the bad faith exception and, as appropriate, to reverse me. And I say that not because I'm here tempting fate, but because unless there be any doubt about this, I absolutely agree that this case is the mirror image of the factual situation presented in the Second Circuit's late 2025 decision in *National Institute of Family and Life Advocates v. James*, 160 F.4 360. I think that the Second Circuit's analysis applies equally here and that absent Younger abstention, this Court would be granting plaintiff's motion for injunctive relief. My read -- what the materials I have before me suggest that Mayday's website contains, under what I will call the NIFLA case, noncommercial speech. It is speech that is based on moral beliefs with no economic motivation. The plaintiff does not charge the patrons of the website

or the service providers for referrals and the fact that the website solicits donations does not transform its contents into commercial speech, as made clear by cases including *Connecticut Bar Association vs. United States*, 620 F.3d 81, a Second Circuit decision from 2010. That in turn focused on the Supreme Court's 1988 case in *Riley v. National Federation for the Blind*. The *NIFLA* case as well made clear that if its holding were different than it was, it could potentially inappropriately limit a reproductive rights group in a state with abortion restrictions that provides information about out of state organizations that will help women obtain the procedure for free. I also do not believe that the website solicits or abets acts that are illegal under South Dakota law. And here I'll just cite to the parties *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, and the section that I was focusing on is found at pages 253 to 254.

And so as a result, I mean, I suspect -- or let me say it this way, if I had jurisdiction, which I don't believe I do, I think the South Dakota statute would be subject to strict scrutiny analysis and we would see whether it was narrowly tailored to serve a compelling state interest under NIFLA, the

answer would probably be no. Indeed, if in fact a court were to find that the statute was noncommercial speech, not sure the statute cited to me under South Dakota law would be applied at all. But as it happens, I have to decide this issue on jurisdictional grounds and given that I am deciding the matter the way I am, I'm denying the motion. I think the next steps for the parties would be -- and I will issue an order to show cause to explain in writing why I should not dismiss this matter for lack of jurisdiction. I'm going to ask the parties to file simultaneous letter briefs on or before March 2nd, 2026. I'm going to direct the clerk of court to terminate the motions that are currently pending at docket entries 14 and 20. I will issue a bottom line order later today that includes the order to show cause language but also gives a written document in case either side wishes to take an appeal. And given the disposition of the motion and my issuance of an order to show cause, I am staying Mr. Jackley's obligation to answer, move, or otherwise respond until after the order to show cause is resolved.

Mr. Sieff, is there anything that is unclear about the decision that I've just issued?

MR. SIEFF: No, Your Honor. I think that that was an extremely helpful explanation of your reasoning, and we appreciate all aspects of the order, and we understand the next steps with respect to responding to the order to show cause.

THE COURT: I appreciate that. Thank you. And let me say this, Mr. Sieff, something I hadn't considered, and I'll say this for both sides, is I suppose if either side were to file an appeal from this decision, you'd have to let me know your view as to whether I had jurisdiction to do anything on the order to show cause. But if you'll excuse my grandmother's old expression, we'll burn that bridge when we get to it.

Mr. Jackley, is there anything that is unclear about my decision?

MR. JACKLEY: Your Honor, I want to be completely respectful of what the Court has said and noting the March 2, 2026 order to show cause filing date. We have a state court hearing scheduled for February 20th. Is it the Court's ruling that that can proceed, or do I need to seek a continuance?

THE COURT: Very fair, sir. Right now, I have denied the plaintiff's application for injunctive relief. I don't even think I have

jurisdiction with this to proceed with the case that is before me. I don't have the power to stop you or to stop the state court from proceeding.

MR. JACKLEY: Thank you, Your Honor.

THE COURT: Of course, sir. Now, if anybody were to tell me otherwise -- if the Second Circuit disagrees, they'd let me know. But no one's told me that yet, and I think the clock is ticking. So I very much appreciate your inquiry so that I could clarify my decision to the extent it was unclear.

MR. JACKLEY: Thank you, Your Honor.

THE COURT: All right. I thank you all very much. I know you've been working very hard on very short time frames. I really do appreciate your efforts. I will let you go because I know you have other things to do. You have my thanks. We're adjourned.

C E R T I F I C A T E

I, Marissa Lewandowski, certify that the foregoing transcript of proceedings in the case of Mayday Health v. Jackley, Docket #1:26-cv-00078-KPF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Marissa Lewandowski

Marissa Lewandowski

Date: February 12, 2026

STATE OF SOUTH DAKOTA) SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

MAYDAY MEDICINES, INC., d/b/a MAYDAY HEALTH, and ALLOVER, LLC, d/b/a MOMENTARA,

Defendants.

32CIV25-339

TRANSCRIPT OF MOTIONS HEARING

BEFORE: THE HONORABLE MARGO NORTHRUP, Circuit Court Judge of the Sixth Judicial Circuit, on the 20th day of February, 2026.

APPEARANCES:

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MS. AMANDA MIILLER
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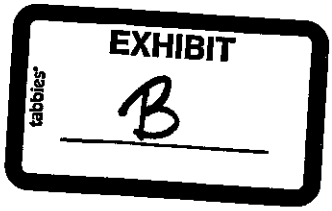

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(The following was transcribed from digital recording.)

THE COURT: All right. Let's go ahead and go on the record. This is the time and place scheduled for a hearing in the State of South Dakota v. Mayday Medicines, Incorporated, doing business as Mayday Health and Allover, LLC, doing business as Momentara.

Why don't we start with the attorneys noting their appearance for the record and we can start on behalf of the State.

MR. DEMPSEY: Your Honor, Jake Dempsey representing the State. I'm here with Attorney General Marty Jackley and Assistant Attorney General Mandy Miiller.

THE COURT: All right. Thank you.

MR. LEACH: Your Honor, Jim Leach specially appearing for Mayday.

THE COURT: All right. Thank you. All right. Well, the purpose of the hearing today was to address some of the Court's jurisdictional concerns but I got notice that the State on Wednesday have served a Summons and Complaint on Mayday and so I'm just wondering what the purpose of the hearing is today at this point. Do you still contest what -- the jurisdiction issues existing?

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MR. LEACH: Absolutely, Your Honor. To explain, when we filed our motion, you know, we had what we had and we think it's clear there is no jurisdiction. I'm prepared to argue that. I will argue that unless we're going to have some kind of stipulation.

Now, apparently, the Summons and Complaint -- a Summons and Complaint was served on February 18th. I say apparently because I don't actually know what happened. I just received a bunch of papers yesterday afternoon. If that's the case, then they have at least attempted to start a completely new action, not this action.

This action was never properly commenced for the reasons that I'll explain if we get into the merits and without it being properly commenced, the Court's only option is to dismiss. If they have in fact commenced a new action, then that will proceed as any new action proceeds but I certainly am not here to appear in any capacity with respect to the possible new action.

THE COURT: All right. And so your position is that the Summons -- by filing the Summons and Complaint, they haven't cured the jurisdictional issues that existed when they started the file; is

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that correct?

MR. LEACH: That's right. I don't think they're curable. I think what it may have done is to commence an action for the first time because we know there's no action before there's a Summons issued and properly served, and I don't even know right now if the Summons was properly served or not. That's something that certainly we will be looking at but right now I have no idea.

THE COURT: All right. Thank you.

What is the State's position?

MR. DEMPSEY: Your Honor, this action was properly commenced in the first place. As I've laid out in my briefing -- well, first of all, this Court has personal jurisdiction. The Defendant hasn't really contested it regarding the -- (inaudible) -- of contact so presumably they agreed. But there's been purposeful availment to our advertising market and so the Court has personal jurisdiction. That argument is laid out in the pre-hearing brief on jurisdiction procedure.

Regarding the present argument, this is a special civil enforcement action under 37-24-23. I laid out in my reply brief there are many cases, including the Matter of Carver case where the Supreme

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Court recognized as recently as 2024 that an action can be commenced without a Summons and Complaint when the statute allows for it and that creates the proceeding. 37-24-23 is just such an action --

THE COURT: Mr. Dempsey, then how do you explain State v. Western Capital Corporation, 290 N.W.2d 467, which is a 1990 case? I don't believe either of the parties cited it but it says that, and I'll quote, "The Supreme Court has recognized that cases brought under 37-24-6 are criminal in nature and when the State brings an action for an injunction pursuant to SDCL 37-24-23, it is a civil proceeding." It seems to me that that's directly on point, that this case is a regular civil proceeding. I don't see the words special enforcement action anywhere in the code so explain to me how this is distinguishable from your position.

MR. DEMPSEY: So under the consumer protection statute, a case can be brought either criminally or civilly.

THE COURT: Correct, and that's what this case stands for.

MR. DEMPSEY: The civil action is found in 23 -- 37-24-23 and the plain language of that statute says that it's commenced upon the giving of

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appropriate notice. 15-6-81(a) says that actions can be commenced in ways other than the standard Summons and Complaint, including but not limited to Appendix A of that statute. And then we have In the Matter of Carver, we have In Re: K --

THE COURT: Which is an abuse and neglect matter; correct?

MR. DEMPSEY: Yes, but those are cases, civil proceedings that are commenced without a Summons and Complaint and the court held that they're able to do that because those are not -- it's in the statute that there's a special way to commence it.

So here we have upon giving of appropriate notice in 37-24-16 and 37-24-16 lays out what appropriate notice is. It explicitly excludes a Complaint in sub 3 as if a Complaint were filed or other filing that started a civil proceeding so that explicitly conflicts with that statute. That means that under the Carver case, under the D.K. case we're under a special statutory method of commencement and that's found in 37-24-16 and 37-24-23. The State has complied with those.

THE COURT: Let's assume that the Court disagrees. And has the Summons and Complaint that was filed this week cured those defects?

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MR. DEMPSEY: Yes, absolutely. The State's position is that the issues are rendered moot. The Summons and Complaint wasn't necessary but we have a public health emergency going on. We want to get to the merits on the injunction so that we can put a stop to that.

THE COURT: All right. And so what is your suggestion on a path forward?

MR. DEMPSEY: We continue, that if the Court finds that this was a valid action, that there's also been a Summons and Complaint that would have cured any potential defect, had it existed, there's no reason to say that there's a new action. We could just stay in this file and file it on this record.

THE COURT: Okay. Thank you.

Would you like to respond, Mr. Leach?

MR. LEACH: Sure. Just to clear out one point that my colleague just made, we haven't agreed to anything. He said that, well, we haven't objected to in personam jurisdiction. We just haven't addressed that at this point because there's been no reason to because transparently there was no action commenced.

As to the merits, I think everybody here learned that -- a long time ago that an action is commenced by proper service of a Summons. Here there

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was no Summons until February 18th, and there was no proper service until at least February 18th and, as I said, I don't know if there was proper service then or not. That's one thing we'll be looking at.

The State's entire theory rested on this statute 37-24-23 and I'm prepared to walk through that. I brought an extra hard copy for you and the State if you'd like one.

THE COURT: I have a copy, thank you.

MR. LEACH: Okay. So it says the Attorney General may bring an action. Sounds good. We all know what an action is and we all know that an action is commenced by filing and serving in the proper manner a Summons -- in the name of the State to restrain by temporary or permanent injunction. That's just fine. That's rule 65. Rule 65 has its own procedures and we know that's part of the Rules of Civil Procedure and starts with a Compliant and Summons.

And then it says upon the giving of appropriate notice to that person -- appropriate notice, of course, being a fundamental element of due process -- and it then says what the notice shall state. It shall state generally the relief sought, be served in accordance with 37-24-16, and at least three days

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before any hearing in the action.

So I go from there to look at 37-24-16 and what it says under subsection 3 is, as to any person other than a natural person -- that's Mayday. Mayday obviously is a corporation. It's not a natural person -- in the manner provided in the Rules of Civil Procedure as if a Complaint or other pleading which institutes a civil proceeding -- civil proceeding has been filed.

Well, okay, so let's look at those Rules of Civil Procedure. Takes us straight to 15-6-4(d) which says the Summons shall be served by delivering a copy thereof and subparagraph 1, if the action is against a business entity, on the president, partner or other head of the entity, officer, director or registered agent thereof. Well, the State finally did that, allegedly, on February 18th but never before then.

There's no proper service of the notice pursuant to 37-24-16, the notice coming from 37-24-23, if you work through those statutes and it makes sense what they're doing because you got to have personal service of a Summons to commence an action and bring the Defendant into court and jurisdiction. Fundamental components of due process.

The case Black v. Circuit Court of the Eighth

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Judicial Circuit I think is the one most on point. And you're correct; I did not cite the case you mentioned. I didn't find that case. But in Black we've got a statute that says that when there's a nuisance, the State's Attorney or citizen may maintain an action to enjoin it. And it says three days' notice in writing shall be given the Defendant of the hearing in the application, exactly like the statute we have here.

And so the State's Attorney decides to use this. He files his motion. He gives three days' notice in writing. The Defendants appear and they say well, Your Honor, there's no jurisdiction because there's no Summons and the Circuit Court disagrees, enters relief. The state court -- I'm sorry -- the Supreme Court grants the Writ of Certiorari because there's no Summons.

Final paragraph, when the legislature stated the State's Attorney may maintain an action in equity, it meant a civil action. Civil actions shall be commenced by the service of a Summons. Because there was no Summons, no jurisdiction. Circuit Court reversed, annulled and vacated.

The State's attempt to distinguish this case, their sole attempt as I read it is that Black was an

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action in equity, whereas the statute here does not say it's in equity. But the fact that that was an action in equity makes no difference. It was a civil action. A civil action, you need a Summons, you need proper service.

In addition, if it makes any difference, this is an equitable action. It's not an action at law. It's not an action for damages. It's an action in equity seeking an injunction so this is indeed an action in equity so Black, I believe, is indistinguishable.

So bottom line, we have no Summons until February 18th. We have no service until perhaps at earliest, February 18th, and the Court's only option is to dismiss.

As far as the new Summons that was issued and allegedly served and the new Complaint that was issued, we have the same rights we would have and we do have with any other Summons and Complaint. We have rights to challenge service. We have rights to bring appropriate motions. And we haven't had time to even begin to consider what we're going to do so that's why it doesn't cure anything because we haven't had our due process to address that Summons and Complaint in the same manner in which we addressed the original

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attempt to commence a proceeding back when this was filed in late December.

I do want to just address sort of the emotional hook that the State offered you at the end there where it says, well, we've got a public health emergency. Well, I have a thought on both fact and the law with respect to that. My thought with respect to the fact is it's been two and a half months since those notices went out. We haven't seen any actual evidence of any harm to anybody so the public health emergency I think is not supported by the record when we get the emotion out of it.

And then finally, as far as the alleged emergency and its effect on due process, I'm reminded of what Sir Thomas More wrote -- I'm sorry -- what was written in the play that Sir Thomas More was a character and Sir Thomas More says at the end, he says, Well, when the last wall was down and the devil turned around on you, who would you look to then for help?

And so all we're asking is that the law be enforced as it is as we all recognize that -- as I think we all recognize that it is and that we not -- we not disregard the law solely for the purpose of achieving an end that the State considers appropriate.

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Thank you.

THE COURT: All right. Thank you.

Mr. Dempsey, anything in response?

MR. DEMPSEY: Yes, I do have several comments in response, Your Honor.

So regarding the Black case, the action in equity language in the statute is very important to the Court. They said that this should have been commenced with a Summons and Complaint because it's an action in equity and then they likened that to meaning -- they said this means that it falls under the general civil procedure statutes. So it's entirely inapplicable because the court is saying because it's an action in equity, it is part of the general process. Here we have a special statutory process.

And earlier I referenced a case I called D.K. It's actually N.K., In the Matter of N.K., just to correct and clarify. That case is an abuse and neglect that started with a Petition; however, the case is about a revocable trust. It started with a Petition. There is a Devitt v. Hayes case that we know that small claims cases aren't started with a Summons and Complaint.

To accept the Defendant's argument would be to

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ignore the language of the statute, the plain language of 37-24-23 and 16, and to ignore the reasoning in all of these cases that when statute permits it, a process that is due is the commencement of an action under that statute.

Finally, in making its plain language argument defense counsel ignores that it says upon the giving of appropriate notice, the action is commenced upon giving appropriate notice. I did not hear him note that.

And finally, the -- (inaudible) -- that the Complaint had been filed language in 16 explicitly contradicts that the Complaint -- and I would note there's been a lot of discussion about we didn't do anything until the 18th. Well, there was a federal lawsuit filed that there was a restraining order entered against the Attorney General and so the reason nothing was done until the 18th is because we were operating under that order.

THE COURT: Do you have any case law that says that enforcement actions that are brought by the Attorney General don't follow the Rules of Civil Procedure?

MR. DEMPSEY: I could not find a case that said that specifically.

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THE COURT: Okay. Thank you.

All right. Well, it's clear to me that the action wasn't started until February 18th, purportedly. I think that we still have or the defense still has all rights that they would have had at that point. I think any -- I didn't have jurisdiction until that it was served and obviously will determine --

MR. LEACH: Your Honor?

THE COURT: That's okay. Louder?

MR. LEACH: I'm apologizing. My hearing is not what is used to be --

THE COURT: That's okay.

MR. LEACH: -- even with my hearing aids. I had you at the beginning but then I lost you for a moment. Thank you.

THE COURT: All right. My ruling is that this action wasn't commenced, purportedly, until February 18th of this year. That is the date that the Court has jurisdiction and so I don't think we need to start a new file number, a new action.

I think you've cured my concerns and so the next question is timing and scheduling. Do we want to schedule a trial on the permanent injunction or do the parties wish to have a hearing on preliminary and

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permanent separately or is it too soon to make that decision?

MR. LEACH: Well, Your Honor, I would like for a chance to address this with the State early next week, Monday, because there are a bunch of attorneys other than me who are handling everything other than jurisdiction. They're handling all the substantive issues and they've been good to work with and I think if we can have a chance to address this with the State, that's going to be the best way to proceed.

What I know is that I'm not competent or qualified to tell you today how we want to proceed because all those issues are at their head, not my head.

THE COURT: Mr. Dempsey, any response to that?

MR. JACKLEY: May I respond to that, Your Honor?

THE COURT: Go ahead, Mr. Jackley.

MR. JACKLEY: This is a pretty straightforward process. It's a straightforward preliminary permanent injunction case. The State is asking for a trial.

THE COURT: All right. So what I would like you to do is reach out to Ms. Lewis. We'll get a trial date on the calendar.

I did already advise, I guess by e-mail, my

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understanding is that when Mayday filed their brief it also talked about the substantive matters. I want a response from the State prior to any trial in response to that and then allow Mayday to reply so there is going to have to be some time frame so that I can get the appropriate briefing I need to be ready for the trial. I don't think that's going to be next week or the week after. It might be a little bit but I want to make sure you keep that in mind. I want to be prepared when it's time to hear this. Anything else?

MR. LEACH: I don't think so, Your Honor. Thank you.

THE COURT: All right. Thank you. We'll be in recess.

(Proceedings concluded.)

STATE OF SOUTH DAKOTA)
SS CERTIFICATE
COUNTY OF HUGHES)

I, Mona G. Weiger, court reporter, do hereby certify that the Transcript of Hearing contained on the foregoing pages was reduced to stenographic writing by me from digital recording and thereafter transcribed to the best of my ability, and that the foregoing is a full, true and complete transcript of my shorthand notes of the recorded proceedings had at the time and place set forth above.

Dated this 27th day of February, 2026.

/s/ Mona G. Weiger
Mona G. Weiger
Court Reporter