UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 20-CV-2155 (JRT/LIB)
Civil No. 20-CV-2156 (JRT/LIB)

IN RE: HANSMEIER V. MCLAUGHLIN, ET AL., LITIGATION

PAUL HANSMEIER,

Plaintiff,

MEMORANDUM IN SUPPORT OF CONSOLIDATED MOTION TO DISMISS

DAVID MACLAUGHLIN, BENJAMIN LANGER, ERICA MACDONALD; and LOOKER'S GENTLEMEN'S CLUB, LLC,

Defendants.

AND

PAUL HANSMEIER,

Plaintiff,

DAVID MACLAUGHLIN, BENJAMIN LANGER, ERICA MACDONALD; and JOHN DOE,

Defendants.

Defendants David MacLaughlin, Benjamin Langer, and Erica MacDonald ("Federal Defendants"), by and through their attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Kristen E. Rau, Assistant United States Attorney, submit this memorandum of law in support of their consolidated motion to dismiss the matters

Hansmeier v. MacLaughlin, et al., 20-cv-2155 (D. Minn.) (JRT/LIB), and *Hansmeier v. MacLaughlin, et al.*, 20-cv-2156 (D. Minn.) (JRT/LIB).

INTRODUCTION

Pro se plaintiff Paul Hansmeier, currently incarcerated at the Federal Correctional Institution ("FCI") located in Sandstone, Minnesota, has initiated two lawsuits, alleging that the federal criminal mail fraud, wire fraud, and extortion statutes, 18 U.S.C. §§ 1341, 1343, 1951 (hereafter, "Challenged Statutes"), are unconstitutional as applied to activity he claims he may undertake at an unspecified future time. This Court consolidated the suits upon a finding that they involve a common question of law or fact. Order Consolidating Cases, Dkt. 24, *Hansmeier v. MacLaughlin, et al.*, 20-cv-2155 (D. Minn. Dec. 08, 2020). Hansmeier's complaints in the consolidated cases should be dismissed in their entirety because each of his claims fails pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(6) because he is not entitled to relief under the circumstances he pleads, or for both reasons.

FACTS

A. Background

Hansmeier, an inmate at FCI Sandstone, pleaded guilty in August 2018 to one count of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. § 1349 and one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). In relevant part, Hansmeier, who was a licensed attorney, and another individual "orchestrated an elaborate scheme to fraudulently obtain millions of dollars in copyright lawsuit settlements" that involved obtaining the copyrights to pornographic videos, in some

cases by filming the videos themselves, and uploading them to file-sharing websites. Indictment, *United States v. Paul R. Hansmeier, et al.*, No. 16-cr-334, Dkt. 1, ¶ 1 (D. Minn. Dec. 14, 2016). After users downloaded the videos, Hansmeier and his co-defendant filed specious copyright infringement suits and petitioned courts to initiate discovery in order to send subpoenas to internet service providers to obtain identifying information associated with the IP addresses used to download the files. *Id.* Hansmeier and his co-defendant would then use extortionate letters and phone calls, threatening the users with substantial financial penalties and public embarrassment unless they agreed to pay settlements, all while obscuring their involvement in the scheme from the courts. *Id.*

Hansmeier was convicted, and in articulating its position in advance of his sentencing, the United States detailed Hansmeier's many abuses of legal process, which included lying to judges in order to fraudulently procure subpoenas to further his schemes. Gov.'s Position with Respect to Sentencing, *id.*, Dkt. 127 (D. Minn. Mar. 25, 2019). Hansmeier was sentenced to 168 months of imprisonment on both counts to be served concurrently and was ordered to pay over $1.5 million in restitution. Sentencing Judgment, *id.*, Dkt. 136 (D. Minn. June 17, 2019). Hansmeier's appeal of his criminal conviction remains pending before the Eighth Circuit. *U.S. v. Hansmeier*, No. 16-cr-334 (D. Minn.) (JNE/KMM), *appeal filed*, No. 19-2386 (8th Cir. filed June 28, 2019).

B. Present Lawsuit

Hansmeier has initiated two lawsuits, both of which the Federal Defendants removed to federal district court. The first suit, *Hansmeier v. MacLaughlin, et al.*, No. 20-cv-2155 (D. Minn.) (JRT/LIB) (hereafter, "*Hansmeier I*"), alleges that the federal mail

fraud, wire fraud, and extortion statutes are unconstitutional as applied to him because they prevent him from assisting unidentified individuals with pursuing claims against Looker's Gentlemen's Club LLC, which Hansmeier claims discriminates against people with disabilities. *Hansmeier I*, Compl., Dkt. 1-1 ¶ 1.

The second suit, *Hansmeier v. MacLaughlin, et al.*, No. 20-cv-2156 (D. Minn.) (JRT/LIB) (hereafter, "*Hansmeier II*"), alleges that Hansmeier owns the copyright of a video and that Hansmeier directed an "investigator" to publish that video on a pornographic website. *Hansmeier II*, Compl., Dkt. 24-1, ¶ 5. Hansmeier further alleges in his complaint[1] that on June 29, 2020, the unidentified "John Doe" defendant accessed and copied the video, infringing on Hansmeier's copyright. *Id.* ¶ 6. Hansmeier alleges that he "wishes" to bring claims against John Doe for copyright infringement and violations of the Computer Fraud and Abuse Act ("CFFA") using a strategy he did not employ previously, but that he is "chilled and prohibited from doing so by the credible threat of jeopardy he faces under the federal mail fraud, wire fraud, and extortion statutes." *Id.* ¶¶ 7, 9.

In both suits, Hansmeier alleges that the Challenged Statutes violate the First and Fifth Amendments, as well as separation of powers considerations. *Hansmeier I* also asserts a claim for "Intimidation, Coercion, Threats, [and] Interference," while *Hansmeier II* alleges that the Challenged Statutes violate the Tenth Amendment. *Hansmeier I*, Compl., Dkt. 1-1, ¶¶ 89-92; *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 27-30. In both suits, Hansmeier

[1] Following clarification provided by Hansmeier to the Court and the Federal Defendants in his Motion to Correct filed in *Hansmeier II*, Dkt. 20, the Federal Defendants submitted a filing on December 4, 2020, attaching the correct operative summons and complaint in that case. *Hansmeier II*, Compl., Dkt. 24-1. (Dec. 4, 2020).

seeks a declaratory judgment, injunctive relief to prevent the Federal Defendants from enforcing the Challenges Statutes against him, and attorney's fees and costs. *Hansmeier I*, Compl., Dkt. 1-1, at Prayer for Relief; *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 31-33, Prayer for Relief.

DISCUSSION

A. Legal Standard

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); 12(b)(1). In evaluating a motion filed pursuant to Fed. R. Civ. P. 12(b)(1), the court must "accept[] the well-pleaded allegations in the complaint as true and draw[] all reasonable inferences in favor of the plaintiff." *Varga v. U.S. Bank Nat'l Ass'n*, 764 F.3d 833, 838 (8th Cir. 2014).

A complaint must also be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Although the Court must take all non-conclusory allegations in the complaint as true, to survive a motion to dismiss the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The court may grant a motion to dismiss on the basis of a dispositive issue of law. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court need not resolve all questions of law in a manner that favors the complainant; rather, the court may dismiss a claim founded upon a legal theory that is "close but ultimately unavailing." *Id.* at 327.

Further, the court "shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). The court must dismiss on this basis if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted." *Id.* § 1915A(b)(1); *see also Ricketts v. Maggard*, No. 19-cv-276, 2019 WL 3543859, *2 (D. Minn. Aug. 5, 2019) (WMW/HB) (dismissing pursuant to § 1915A).

B. Hansmeier's Complaints Should be Dismissed

Hansmeier's complaints should be dismissed in their entirety. His constitutional, declaratory judgment, injunctive relief, and ADA claims all warrant dismissal either because they lack subject-matter jurisdiction, they fail to state a claim upon which relief may be granted, or both.

1. Constitutional Claims Fail

Hansmeier asserts as-applied constitutional claims pursuant to the First, Fifth, and Tenth Amendments, as well as pursuant to separation-of-powers considerations. He does not assert any claim in either suit that the Challenged Statutes are facially unconstitutional.

Because Hansmeier proceeds pro se, his complaint must be liberally construed. *Smith v. St. Bernards Reg. Med. Ctr.*, 19 F.3d 1254, 1255 (8th Cir. 1994). That said, pro se plaintiffs are not excused from establishing proper jurisdictional bases for their claims, and it warrants mention that Hansmeier was a practicing lawyer before his law license was suspended. *Hansmeier I*, Compl., Dkt. 1-1, ¶ 39. Hansmeier bears the burden of

establishing that jurisdiction exists. *Fraction v. Douglas Cty. Atty's Office*, 823 Fed. App'x 452, 452 (8th Cir. 2020) (per curiam).

"Both standing and ripeness 'are requirements for Article III subject matter jurisdiction.'" *Secura Ins. v. Childers*, No. 19-cv-797, 2019 WL 5865486, *1 (D. Minn. Nov. 7, 2019) (NEB/TNL) (quoting *Kennedy v. Ferguson*, 679 F.3d. 998, 1001 (8th Cir. 2012)). Absent either, subject-matter jurisdiction is lacking. *Secura*, 2019 WL 5865486, at *1. The concepts of ripeness and standing are closely related. *U.S. v. McAllister*, 225 F.3d 982, 989-90 (8th Cir. 2000). However, while standing and ripeness often overlap, they nonetheless require distinct inquiries: "Whereas ripeness is concerned with when an action may be brought, standing focuses on who may bring a ripe action." *Archdiocese of St. Louis v. Sebelius*, 920 F. Supp. 2d 1018, 1024 (E.D. Mo. 2013) (internal quotation marks omitted).

The ripeness requirement demands that there be a "real, substantial controversy between parties having adverse legal interests." *Secura*, 2019 WL 5865486, at *3 (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). A claim is not ripe for adjudication if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted). The ripeness doctrine prevents federal courts from "entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580 (1985)). "[W]hile the question of the facial validity of a statute may be ripe for adjudication, the question of the constitutionality of the statute as

applied may not be ripe." *Alexander v. Thornburgh*, 713 F. Supp. 1278, 1286 (D. Minn. 1989).

With regard to standing, a plaintiff must demonstrate that he has "suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted). "Allegations of possible future injury do not satisfy the requirements of Article III. A threatened injury must be certainly impending to constitute injury in fact." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (internal quotations omitted). Standing is determined "as of the time the complaint is filed." *Brown v. Medtronic, Inc.*, 619 F. Supp. 2d 646, 649 (D. Minn. 2009) (RHK/AJB) (internal quotation marks omitted).

This court lacks subject-matter jurisdiction to consider Hansmeier's constitutional claims either because they are not ripe, because Hansmeier lacks standing to bring them, or both. Dismissal is warranted. Fed. R. Civ. P. 12(h)(3). In addition, several of Hansmeier's constitutional claims fail to state a claim upon which relief can be granted, and dismissal is additionally warranted pursuant to Fed. R. Civ. P. 12(b)(6).

a. First Amendment Claims Fail

In both suits, Hansmeier claims that the Challenged Statutes are unconstitutional as applied to him because they violate the First Amendment. *Hansmeier I* alleges that the Challenged Statutes violate the First Amendment because they "impermissibly interfere[] with and prohibit[] the speech necessary to petition the courts for relief." *Hansmeier I*, Compl., Dkt. 1-1, ¶ 73. He claims that as applied, the Challenged Statutes "chill" him from

undertaking a "plan" to "aid[] and encourag[e] people with disabilities to petition the courts for relief to address Lookers' ongoing discrimination against people with disabilities." *Id.* ¶¶ 8, 52, 53. He alleges that he is injured because he is "is placed in the position of either refraining" from this plan "or of exposing himself to the risk of prosecution," and that "[r]efraining from conducting his plan constitutes self-censorship and a loss of Hansmeier's First Amendment rights." *Id.* ¶ 55. Similarly, *Hansmeier II* alleges that Hansmeier has been "chilled" from pursuing copyright-enforcement and CFAA claims against the John Doe defendant "by the credible threat of jeopardy he faces" as a result of the Federal Defendants' application of the Challenged Statutes to him. *Hansmeier II*, Compl., Dkt. 24-1, ¶ 7.

To establish injury in fact for a First Amendment challenge, a plaintiff need not have actually been prosecuted or threatened with prosecution. *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011). In this context, a plaintiff can establish standing in two ways: (1) by alleging "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder," *Babbitt*, 442 U.S. at 298, or (2) by alleging self-censorship upon a credible threat of future prosecution. *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794 (8th Cir. 2016). It warrants emphasis that an allegation of self-censorship does not end the inquiry, however. A party's decision to chill his speech in light of the challenged statute must be "objectively reasonable." *Zanders v. Swanson*, 573 F.3d 591, 594 (8th Cir. 2009). A "speculative" risk of prosecution is not a credible threat sufficient to confer standing, however. *Id.* In addition, "non-criminal consequences contemplated

by a challenged statute can also contribute to the objective reasonableness of alleged chill." *Klahr*, 830 F.3d at 795.

Hansmeier fails to plead facts that there is a credible threat of future prosecution or civil enforcement for the "planned" or "anticipated" activities he describes in his complaints. In *Hansmeier I*, though he alleges that he was "threatened" in the past with prosecution based on other unspecified efforts to "aid[] and encourage[e] people with disabilities to enforce their rights under the ADA," nowhere does he allege that he has been threatened with prosecution if he employs the strategy he details in his complaint. *Hansmeier I*, Compl., Dkt. 1-1 ¶ 37(a). Similarly, in *Hansmeier II*, he specifically alleges that his planned conduct differs meaningfully from the conduct for which he was convicted in order to "proactively address many of Defendants' allegations of wrongdoing," *Hansmeier II*, Compl., Dkt. 24-1 ¶ 9. What is more, Hansmeier alleges that his plan, as opposed to his past conduct, "will eliminate any reason for Defendants to claim that Hansmeier is concealing his use of an investigator or his involvement in the claims." *Id.* In other words, Hansmeier proposes a new strategy to pursue copyright and CFAA claims against John Doe than that for which he was prosecuted, and he offers nothing whatsoever to support a conclusion that there exists a credible rather than a hypothetical risk of prosecution in connection with this new strategy. *Babbitt*, 442 U.S. at 298. Hansmeier's *belief* that he could find himself subject to prosecution or civil liability if he pursues these novel strategies is not the same as alleging the *fact* that he is indeed subject to a credible threat of prosecution. *Zanders*, 573 F.3d at 594. "While general factual allegations of injury might suffice to establish standing in some instances, general allegations of *possible*

or *potential* injury do not." *Id.* (emphasis in original). Nor is it at all clear from the complaints that the conduct Hansmeier may potentially engage in is even proscribed by the mail fraud, wire fraud, and extortion statutes. *Republican Party of Minn. v. Klobuchar*, 381 F.3d 785, 792-93 (8th Cir. 2004). Hansmeier lacks standing and the First Amendment claims should be dismissed.

b. Fifth Amendment Claims Fail

In both suits, Hansmeier claims that the Challenged Statutes are unconstitutionally vague in violation of the Fifth Amendment as applied to "planned" and "anticipated" conduct he alleges he may undertake. *Hansmeier I*, Compl., Dkt. 1-1, ¶¶ 78-82; *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 16-20. According to the void-for-vagueness doctrine, a law is unconstitutional as applied if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008); *see also United States v. Ghane*, 673 F.3d 771, 776-78 (8th Cir. 2012).

Here, Hansmeier's Fifth Amendment as-applied claims are not yet ripe. In *Hansmeier I*, he alleges that he "intends" to undertake certain activities, *Hansmeier I*, Compl., Dkt. 1-1, ¶ 68, that he "wishes" to act and "has the goal" of acting, *id.* ¶¶ 7, 52, and that "if carried out," he believes his "plan" would result in injury to him. *Id.* ¶¶ 53-55. Elsewhere in *Hansmeier I*, he describes his activity as "planned conduct." *Id.* ¶¶ 74, 81. He pleads that he "has already begun some of the activities that are part of the plan described above," *id.* ¶ 50, but without more, that is not sufficient to demonstrate the ripeness of these claims. *Neb. Pub. Power Dist. v. MidAm. Energy Co.*, 234 F.3d 1032,

1037-38 (8th Cir. 2000) (noting than issue is ripe for review only where there is "a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract"); *cf. Cent. Serv. & Supply, Inc. v. Caterpillar, Inc.*, No. 12-cv-270, 2013 WL 11327106, *3 (S.D. Iowa Oct. 29, 2013) ("generalized information" not sufficient to render dispute ripe for adjudication).

Similarly, in *Hansmeier II,* he pleads only that he "wishes" to act and that he has certain "anticipated" claims. *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 7, 9, 10. Where a plaintiff fails to allege "beyond conjecture [] what may happen if he chooses" to undertake a course of action, it amounts to "a hypothetical based on contingent future events." *Carlson v. City of Duluth*, 958 F. Supp. 2d 1040, 1056 n.4 (D. Minn. 2013) (MJD/LIB); *see also Doe v. LaFleur*, 179 F.3d 613, 615 n.1 (8th Cir. 1999) (noting that where a "present constitutional challenge" is based upon the "anticipation" of a "future" issue arising, "it is not ripe and any disposition by this court would be purely advisory"); *Secura*, 2019 WL 5865486, at *3 (finding claim unripe "because it is based on continent future events" and dismissing under Fed. R. Civ. Proc. 12(b)(1)); *see also Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1130 (D. Neb. 2012).

Hansmeier also lacks standing to assert his as-applied void-for-vagueness claims for two distinct reasons. First, for a plaintiff to have standing to challenge a statute as vague, the statute "must be unconstitutional as applied to his specific conduct at issue." *Musser v. Mapes*, 718 F.3d 996, 1000 (8th Cir. 2013). But in neither case has Hansmeier alleged facts sufficient to establish standing "because there is nothing to suggest that the conduct in which he allegedly wants to engage . . . involve[s] clearly proscribed conduct."

Muhannad v. Peterson, No. 16-cv-349, 2017 WL 5956892, *3 (D. Neb. Mar. 13, 2017), *aff'd*, 718 Fed. App'x 452 (8th Cir. 2018) (per curiam). Second, Hansmeier has not alleged any adequate injury for purposes of Article III standing. *Zanders*, 573 F.3d at 595 n.3 (finding claims "too conjectural or hypothetical to support the exercise of our jurisdiction"). While Hansmeier incants in both cases that he suffers "ongoing and irreparable harm," nowhere does he specify what actual current harm he is suffering. Such bald allegations of injury, without more, are not enough to avoid dismissal. *Burton v. Cent. Interstate Low-Level Radioactive Waste Compact Comm'n*, 23 F.3d 208, 210 (8th Cir. 1994). Because Hansmeier's Fifth Amendment claims are not ripe and because he lacks standing to bring them, the Court lacks subject-matter jurisdiction over them and dismissal is warranted.

a. "Separation of Powers" Claims Fail

In both suits, Hansmeier claims that as applied to him, the Challenged Statutes unconstitutionally intrude upon Congress' powers to make the law and the judiciary's power to interpret it. *Hansmeier I*, Compl., Dkt. 1-1, ¶ 87; *Hansmeier II*, Compl., Dkt. 24-1, ¶ 25. For the same reasons already discussed, Hansmeier lacks standing to bring these claims. *Cf. Bhatti v. Fed. Housing Fin. Agency*, 332 F. Supp. 3d 1206, 1214 (D. Minn. 2018) (PJS/HB) (noting requirement of injury to support separation-of-powers claim). Further, any argument that the Federal Defendants intrude upon Congress' authority by prosecuting the Challenged Statutes is unavailing. The Eighth Circuit has recognized that the Attorney General, under whom the Federal Defendants operate, "acts within his authority when he delegates intra-agency to accomplish the duties given to him by

Congress." *Reyes-Vasquez v. Ashcroft*, 395 F.3d 903, 906 (8th Cir. 2005); *see also* 28 U.S.C. §§ 510, 541, 542. Congress has specifically authorized the Attorney General, and by extension the U.S. Attorneys and Assistants U.S. Attorneys, to prosecute criminal offenses, including the mail fraud, wire fraud, and extortion statutes. 28 U.S.C. § 547. The separation-of-powers claims fail.

b. Tenth Amendment Claim Fails

In *Hansmeier II*, Hansmeier additionally claims that the Challenged Statutes are unconstitutional as applied to him because they "impermissibly intrude[] on the power of the States to create and administer courts and to decide claims presented to them." *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 27-30. For the same reasons already discussed, this claim is not ripe. Again, Hansmeier alleges only that he "wishes" to bring copyright-infringement and CFAA claims against the John Doe defendant, *id.* ¶ 7, not that he has done so.

Hansmeier also lacks standing to raise this claim. Hansmeier's Tenth Amendment claim in anticipatory; he is not currently a criminal defendant in any action relating to the conduct he "wishes" to undertake, and thus is not "a party to an otherwise justiciable case or controversy" as required to establish standing pursuant to *Bond v. U.S.*, 564 U.S. 211, 225 (2011). *See also Matias v. Jett*, No. 12-cv-63, 2012 WL 983683, *4 (D. Minn. Jan. 13, 2012) (MJD/LIB) (observing that an individual "does have standing to challenge a federal statute on Tenth Amendment grounds, if the defendant himself is directly affected by the statute"), *report and recommendation adopted*, 2012 WL 983758 (D. Minn. Mar. 22, 2012); *Allowitz v. English*, No. 11-cv-3680, 2011 WL 7112655, *4-5 (D. Minn. Dec.

30, 2011) (RHK/TNL) (same), *report and recommendation adopted*, 2012 WL 264216 (D. Minn. Jan. 30, 2012).

Even if Hansmeier's Tenth Amendment claim were ripe, and even if he had standing to assert it, it would nonetheless fail. The Eighth Circuit has clearly held that "the mail fraud statute is a legitimate exercise of Congress's Postal Power." *United States v. Louper-Morris, et al.*, 672 F.3d 539, 563 (8th Cir. 2012). It is similarly well-settled that the wire fraud statute is "within the extensive reach of the Commerce Clause," *id.* (internal quotation marks omitted), and that § 1951 does not violate the Tenth Amendment. *U.S. v. Howe*, 353 F. Supp. 419, 424 (W.D. Mo. 1973) (discussing *Perez v. U.S.*, 402 U.S. 146, 157 (1971) (Stewart, J., dissenting). The Tenth Amendment claim fails.

c. *Heck* Doctrine

Hansmeier's constitutional claims also fail pursuant to the *Heck* doctrine. *Heck v. Humphrey*, 512 U.S. 477 (1994). The *Heck* doctrine provides that a civil damages case cannot proceed if its success would necessarily imply the invalidity of a criminal conviction, unless the prisoner can demonstrate that his conviction or sentence has previously been reversed on direct appeal, expunged by executive order, or otherwise invalidated. *Id.* at 487. Although *Heck* involved a § 1983 claim, actions seeking non-monetary relief, such as Hansmeier's constitutional claims, may not proceed where they would call into question the lawfulness of his detention. *Sheldon v. Hundley*, 83 F.3d 231, 233 (8th Cir. 1996) (indicating that under *Heck*, court disregards form of relief sought and instead looks to essence of plaintiff's claims); *Smith v. Leslie*, No. 18-cv-3478, 2019 WL 2029502, *2 (D. Minn. Feb. 7, 2019) (SRN/SER) (applying *Heck* to claims for injunctive

relief), *report and recommendation adopted*, 2019 WL 1058254 (D. Minn. Mar. 6, 2019); *Barnes v. U.S.*, No. 03-cv-3655, 2003 WL 22901891, *2 (D. Minn. Dec. 8, 2003) (MJD/JGL) (barring declaratory judgment claim under *Heck*). Simply put, the *Heck* doctrine is intended to prevent a collateral attack on a conviction through the vehicle of a civil suit. *Heck*, 512 U.S. at 484-86. A claim barred by the *Heck* doctrine is subject to dismissal pursuant to Rule 12(b)(6). *See, e.g.*, *Cooke v. Peterson*, No. 12-cv-1587, 2012 WL 6061724, *2 (D. Minn. Dec. 6, 2012) (DSD/JJK).

As a threshold matter, Hansmeier does not allege that his conviction has been invalidated. (Nor can he; his appeal of his criminal conviction remains pending before the Eighth Circuit. *United States v. Hansmeier*, No. 16-cr-334 (D. Minn.) (JNE/KMM), *appeal filed*, No. 19-2386 (8th Cir. filed June 28, 2019). Because Hansmeier's conviction stands, and because if Hansmeier were to prevail on his constitutional claims it would necessarily imply the invalidity of his conviction, such causes of action are barred by the *Heck* doctrine. Hansmeier attempts to avoid this result through artful pleading. But despite Hansmeier's efforts to frame his allegations as oriented towards alleged "anticipated" conduct, the relief he seeks is much more sweeping: findings that the Challenged Statutes violate the First, Fifth, and Tenth Amendments, as well as separation-of-powers considerations. *Hansmeier I*, Compl., Dkt. 1-1 at Prayer for Relief, ¶ 1; *Hansmeier II*, Dkt. 24-1 at Prayer for Relief ¶ A. Tellingly, Hansmeier already made such arguments in his criminal case and they were rejected. *See* Def.'s Mem. in Support of Pretrial Mot. to Dismiss, *U.S. v. Hansmeier*, No. 16-cr-334, Dkt. 49 at 5, 58-59 (D. Minn. Apr. 24, 2017) (JNE/KMM) (arguing that mail fraud and wire fraud counts were "constitutionally invalid" and that the theory of mail and

wire fraud advanced by the government in his criminal case violated his First Amendment and Fifth Amendment rights, as well as constitutional separation-of-powers concerns); Order, *id.*, Dkt. 76 (D. Minn. Sept. 8, 2017) (denying motion to dismiss). Hansmeier cannot convincingly argue that the instant suits are unrelated to his criminal conviction; indeed, *Hansmeier II* specifically describes his criminal matter as "at issue in this case." *Hansmeier II*, Dkt. 24-1, ¶ 2. Hansmeier's latest effort is exactly what the *Heck* doctrine proscribes: a collateral attack on a conviction through the vehicle of a civil suit. *Heck*, 512 U.S. at 484-86. For this additional reason, the constitutional claims should be dismissed.

2. Declaratory Judgment Claims Fail

Hansmeier's declaratory judgment claims should also be dismissed in the absence of a jurisdictional basis for such claims. Although liberally construed, *Smith*, 19 F.3d at 1255, a pro se complaint must nonetheless set forth the proper jurisdictional bases for the plaintiff's claims. *See, e.g.*, *Smith ex rel. Van Dalsen v. St. Vincent Infirmary*, 469 Fed. App'x 506, 506-07 (8th Cir. 2012) (per curiam). "In order to pursue a declaratory judgment action in federal court, therefore, the court must have an independent basis of jurisdiction." *AIR-vend, Inc. v. Thorne Indus., Inc.*, 625 F. Supp. 1123, 1125-26 (D. Minn. 1985)

In *Hansmeier I*, Hansmeier pleads that the Court has jurisdiction over his claims "pursuant to the participation clause of the Americans with Disabilities Act and the First and Fifth Amendments to the U.S. Constitution." *Hansmeier I*, Compl., Dkt. 1-1 ¶ 11. To the extent that Hansmeier seeks to rely solely on 28 U.S.C. § 1331 to confer jurisdiction over his declaratory judgment claim, he cannot. As already explained, the court lacks subject-matter jurisdiction over Hansmeier's constitutional claims and those claims are

additionally subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6). As a result, § 1331 on its own is not a sufficient basis for subject-matter jurisdiction to support the declaratory judgment claim. *North Central F.S., Inc. v. Brown*, 951 F. Supp. 1383, 1394-95 (N.D. Iowa 1996). Nor does the ADA confer jurisdiction on this court to issue the declaratory judgment Hansmeier seeks. Hansmeier fails to identify an appropriate basis for subject-matter jurisdiction over his declaratory relief claim in *Hansmeier I*, and dismissal is warranted on this basis.

In *Hansmeier II*, Hansmeier pleads that "[t]his action arises under the U.S. Constitution," and that this Court "may award Hansmeier declaratory and injunctive relief pursuant to the Minnesota Declaratory Judgment Act and this Court's inherent equitable jurisdiction." *Hansmeier II*, Compl., Dkt. 24-1, ¶ 4. For the reasons already stated, § 1331 is not sufficient to confer subject-matter jurisdiction for the declaratory judgment claim. Furthermore, any argument that the Court has subject-matter jurisdiction to issue a declaratory judgment pursuant to its "inherent equitable jurisdiction" is unfounded. And to the extent Hansmeier asks the Court to assert supplemental jurisdiction over a declaratory judgment claim based in state law in the absence of federal claims, the court should decline to do so. The Eighth Circuit has been clear that "Congress unambiguously gave district courts discretion in 28 U.S.C. § 1367(c) to dismiss supplemental state law claims when all federal claims have been dismissed." *Gibson v. Weber*, 433 F.3d 642, 647 (8th Cir. 2006). The court should exercise this discretion here to decline to consider any declaratory judgment claim based in state law. Finally, even if Hansmeier's means to invoke the Declaratory Judgment Act, 28 U.S.C. § 2201, his argument fails. It is well-

settled that § 2201 cannot provide an independent basis for exercising jurisdiction. *E.g.*, *Doe v. Univ. of St. Thomas*, 240 F. Supp. 3d 984, 989 (D. Minn. 2017) (JRT/KMM); *Mohamed v. Melville*, No. 06-cv-1116, 2007 WL 1721964, *3 (D. Minn. June 8, 2007) (JMR/FLN) (noting that the Declaratory Judgment Act "offers a remedy in cases where jurisdiction already exists; it is not an independent basis for jurisdiction.").

Even if the court were to conclude that it has jurisdiction over either declaratory judgment claim pursuant to 5 U.S.C. § 702, to which Hansmeier refers in *Hansmeier II* but not *Hansmeier I*, such a claim would fail for a second reason: he has failed to articulate an actual, live controversy in either case. *See, e.g.*, *Diagnostic Unit Inmate Council v. Films Inc.*, 88 F.3d 651, 653 (8th Cir. 1996) (noting that a declaratory judgment requires a "substantial controversy" with "sufficient immediacy and reality"). By Hansmeier's own admission, he seeks a declaratory judgment to obtain advance ratification of "planned" or "anticipated" activity. *Hansmeier I*, Compl., Dkt. 1-1, ¶ 48; *Hansmeier II*, Compl., Dkt. 24-1, ¶¶ 9, 10. Nowhere does he plead that he will pursue his claims with any immediacy. His declaratory judgment claims boil down to a request for an advisory judgment, and "[t]he Supreme Court has long made clear that the declaratory judgment procedure 'may not be made the medium for securing an advisory opinion in a controversy which has not arisen.'" *Diocese of St. Cloud v. Arrowood Indem. Co.*, No. 17-cv-2002, 2018 WL 296077, *3 (D. Minn. Jan. 4, 2018) (JRT/LIB) (quoting *Coffman v. Breeze Corp.*, 323 U.S. 316, 324 (1945)). For this additional reason, the declaratory judgment claims fail.

Declaratory relief is not warranted for yet another reason. Just as Hansmeier's constitutional claims are *Heck*-barred, so are his declaratory judgment claims. *Barnes v.*

U.S., No. 03-cv-3655, 2003 WL 22901891, *2 (D. Minn. Dec. 8, 2003) (MJD/JGL). In *Hansmeier I*, Hansmeier seeks a sweeping declaration that the Challenged Statutes violate various constitutional rights (as well as the ADA). *Hansmeier I*, Compl., Dkt. 1-1 at Prayer for Relief, ¶ 1. In *Hansmeier II*, Hansmeier alleges that he "is entitled to a declaration that Defendants cannot lawfully enforce the Challenged Statutes against Hansmeier," and requests that the Court declare that with regard to his copyright enforcement claims, "the Challenged Statutes violate the First, Fifth and Tenth Amendments." *Hansmeier II*, Compl., Dkt. 24-1, ¶ 33, Prayer for Relief. Such far-reaching declarations would impermissibly undermine Hansmeier's conviction. For this additional reason, dismissal is warranted under Fed. R. Civ. P. 12(b)(6).

3. Injunctive Relief Claims Fail

Hansmeier's injunction claims should also be dismissed, both because this court lacks jurisdiction to order the requested relief and because Hansmeier's complaints fail to state a claim entitling him to such relief. Hansmeier seeks to enjoin the Federal Defendants from "[e]nforcing or threatening to enforce" the Challenged Statutes against Hansmeier in connection with his "anticipated" copyright claims against John Does and his "planned" conduct relating to ADA enforcement. *Hansmeier I*, Compl., Dkt. 1-1 at Prayer for Relief; *Hansmeier II*, Compl., Dkt. 24-1 at Prayer for Relief.

As he failed to do with respect to his claims for declaratory judgment, Hansmeier does not identify any basis for this Court's jurisdiction over the injunctive claims in *Hansmeier I*, and likely *Hansmeier II*, as well. Furthermore, even if the Court had jurisdiction to order injunctive relief, it is inappropriate here. Hansmeier's complaints are

simply devoid of the sort of facts that must be pleaded to demonstrate entitlement to injunctive relief, namely (1) a likelihood of success on the merits; (2) a substantial threat that Hansmeier will suffer irreparable injury if the injunctions are not granted; (3) that the threatened injury to Hansmeier outweighs any threatened harm the injunctions may cause the Federal Defendants; and (4) that the injunctions are in the public interest. *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). The party seeking injunctive relief bears the burden of proof with regard to each of the factors to be considered. *Doe v. LaDue*, 514 F. Supp. 2d 1131, 1135 (D. Minn. 2007) (DSD/SRN).

Hansmeier cannot show that he has a likelihood of success on the merits. To the contrary, for the reasons already discussed, he is not likely to prevail. Indeed, serious questions regarding a court's jurisdiction weigh *against* entry of injunctive relief because potential impediments to even reaching the merits make a plaintiff's claims less likely to succeed. *Munaf v. Geren*, 553 U.S. 674, 690 (2008). Nor has Hansmeier made any effort to plead how he will suffer "irreparable" injury in the absence of an injunction, or that the threatened injury to him without equitable relief would outweigh harm to the Federal Defendants if the Court grants an injunction. His repeated incantations that the Federal Defendants are causing "ongoing and irreparable harm" are not enough. *Stennes v. Summit Mortg. Corp.*, No. 12-cv-913, 2012 WL 5378092, *5 (D. Minn. July 11, 2012) (SRN/AJB), *report and recommendation adopted*, 2012 WL 5378086 (D. Minn. Oct. 31, 2012), *aff'd*, 513 Fed. App'x 631 (8th Cir. 2013) (per curiam). Finally, though Hansmseier purports to believe that his "planned conduct" serves some public interest, his complaint does not adequately allege that the *injunction* he requests serves the public interest. Indeed, as

already noted, the Federal Defendants are responsible pursuant to the Attorney General's delegated authority for enforcing federal criminal law; the Federal Defendants have an interest in, and the public interest is served by, preserving prosecutorial discretion that would be undermined by an order broadly enjoining them from investigating or prosecuting crimes. The injunction claims should be dismissed.

4. "Intimidation, Coercion, Threats, and Interference" Claim Fails

Hansmeier I also asserts a claim labeled, "Intimidation, Coercion, Threats and Interference." *Hansmeier I*, Compl., Dkt. 1-1, ¶¶ 89-92. Other than making a passing reference to "concurrent jurisdiction over the federal causes of action," *id.* ¶ 11, Hansmeier does not explain how this Court has jurisdiction over this specific claim. He suggests only that the Court has jurisdiction pursuant to the participation clause of the Americans with Disabilities Act. *Id.* ¶ 11. But the provision to which Hansmeier refers provides, in relevant part, that it is unlawful to "coerce, intimidate, threaten, or interfere with any individual . . . on account of his or her having aided or encouraged any other individual in the exercise or enjoyment" of rights protected under the ADA. 42 U.S.C. § 12203(b). It does not confer jurisdiction on this Court to consider Hansmeier's claim against the Federal Defendants, however, and dismissal is warranted pursuant to Fed. R. Civ. P. 12(b)(1).

Even if the Court had jurisdiction to consider this claim, in order to establish a violation of this provision, the plaintiff "must show that when the interference, coercion, or intimidation took place they were exercising or enjoying a right protected by the ADA." *Barnes v. Benham Grp., Inc.*, 22 F. Supp. 2d 1013, 1024 (D. Minn. 1998) (DSD/JMM). Hansmeier's complaint in *Hansmeier I* specifically alleges that he "wishes" to undertake

"planned conduct." *Hansmeier I*, Compl., Dkt. 1-1, ¶¶ 7, 74, 81. He does not allege that he was subjected to interference, coercion, threats, or intimidation for the articulated "planned" activities, but instead for past activities. *Id.* ¶ 42. And while he makes a vague reference to having "already begun some of the activities that are part of the plan described above," *id.* ¶ 50, he notably does not allege that he was subjected to any interference, coercion, threats, or intimidation when he undertook such unidentified "activities." Indeed, of particular note are Hansmeier's allegations that the Federal Defendants "*will* intimidate, coerce, threaten and interfere" with him, not that they have done so in connection with his "planned conduct." *Id.* ¶ 91 (emphasis added); *see also id.* ¶ 92 (alleging that the Federal Defendants "intimidation, coercion, threats, and interference *will* occur") (emphasis added). Dismissal of this claim is thus also warranted pursuant to Fed. R. Civ. P. 12(b)(6).

CONCLUSION

For the foregoing reasons, this Court should grant the Federal Defendants' consolidated motion to dismiss.

Respectfully submitted,

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