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Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Deputy Clerk - Sims-Douglas, Linda

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHASIDY DECKER and ROBERT CALACAL, Plaintiffs, vs. CITY OF MERIDIAN, IDAHO; MERIDIAN CITY COUNCIL; MAYOR ROBERT SIMISON, in his official capacity; CODE ENFORCEMENT OFFICER ANTHONY NEGRETE, in his official capacity, Defendants.	Case No. CV01-22-11962 MEMORANDUM DECISION AND ORDER

Plaintiff Robert Calacal lives in California but owns a home in Meridian. In return for rent payments, he lets Plaintiff Chasidy Decker live in her mobile tiny home on his property. This arrangement violates two Meridian city ordinances. One prohibits living in vehicles—including mobile tiny homes—outside an approved recreational vehicle ("RV") park. The other disallows both mobile homes as secondary dwellings and secondary dwellings on non-owner-occupied properties like Calacal's. In this action, Plaintiffs challenge the constitutionality of these ordinances and Defendants' allegedly selective enforcement practices. Defendants move for dismissal, while Plaintiffs move for a preliminary injunction allowing their arrangement to continue for now. Both motions were argued and taken under advisement on October 27, 2022. For the reasons that follow, the motion to dismiss succeeds in part but the motion for a preliminary injunction fails.

I.

BACKGROUND

On May 18, 2022, Decker, who was relocating from Nevada to Meridian, began living in her mobile tiny home in the grassy side yard of 1926 Leisure Lane. (Decker Decl.[1] ¶¶ 4–5, 7.) Calacal, who lives in California, had just bought the home there as a place for his son to live. (Calacal Decl. ¶¶ 2–3.) She had responded to a Craigslist advertisement in which Calacal offered to lease the property's RV hookups for a modest fee, hoping to generate income to defray the costs of servicing the mortgage. (Calacal Decl. ¶¶ 3–4; Decker Decl. ¶¶ 6, 12.)

This arrangement served their needs, but it met immediate opposition. The day after Decker parked her mobile tiny home on Calacal's property, a neighbor phoned the Meridian Police Department to report its arrival, wondering if living there in a vehicle was unlawful. (Negrete Decl. Ex. A; 2d Alban Decl. Ex. 65 at 19:6–12, 40:13–41:1.) In response, Defendant Anthony Negrete, who works for Defendant City of Meridian as a Code Enforcement Officer, promptly began an investigation.[2] (Negrete Decl. ¶ 1 & Ex. A.) That very day, Officer Negrete visited Calacal's property, where he encountered Decker and told her that the Meridian City Code prohibits living there in a mobile tiny home. (*Id.*; Decker Decl. ¶ 13.) He

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[1] Citations to the Decker declaration refer to the one filed on September 12, 2022.

[2] Officer Negrete also investigated the neighbor's simultaneous report about another mobile tiny home on a neighboring property, 1928 North Leisure Lane, but he determined that no one was living in that vehicle. (1st Alban Decl. Ex. 56; 2d Alban Decl. Ex. 64 at 61:22–63:23.)

gave her ten days to either move her mobile tiny home or stop living in it. (*Id.* ¶ 14.) And he gave Calacal, if Calacal permitted Decker to merely store her mobile tiny home on his property, ten days to place it either on an approved surface or behind a six-foot privacy fence. (Calacal Decl. ¶ 5.)

Plaintiffs were surprised to learn that their arrangement was unlawful, as RVs and trailers are ubiquitous in the neighborhood, some they saw parked in side yards without privacy fences and some they suspected of being used as residences. (Decker Decl. ¶ 15; *see also* Calacal Decl. ¶ 3.) Disinclined to simply accept Officer Negrete's verdict on the arrangement's impropriety, Decker didn't do as Officer Negrete instructed. Instead, she enlisted an activist to contact Defendant Meridian City Council on her behalf, leading to a city attorney confirming to her that living in her mobile tiny home on Calacal's property is indeed unlawful, though living in it in an RV park would be lawful. (Decker Decl. ¶ 17.) So, Decker called RV parks, but they all told her they were full and had long waiting lists, plus some told her they don't allow mobile tiny homes anyway. (*Id.* ¶ 18.) Then the activist put her in touch with the *Idaho Statesman*, which ran stories sympathetic to her plight on June 8 and 9, after she gave an interview and a tour of her mobile tiny home to one of its reporters. (*Id.* ¶ 20; Alban Decl. Ex. 54.)

On the morning of June 9—the day Decker's story appeared on the front page of the *Statesman*'s print edition—Officer Negrete ran records checks on the cars parked on Calacal's property. (Alban Decl. Ex. 54; Negrete Decl. Ex. A.) Some had expired registrations. (Negrete Decl. Ex. A.) A few days later, on June 14, Officer

Negrete issued to Decker and Calacal documents entitled "Notice of Criminal Violation of Uniform Development Code and Order to Abate," threatening to commence misdemeanor prosecutions if they didn't do as the notices demanded. (Decker Decl. ¶ 21; Calacal Decl. ¶ 6; Negrete Decl. Ex. A.) Decker received two notices. (Decker Decl. Exs. 3–4; Negrete Decl. Ex. A.) One said that living in her mobile tiny home on Calacal's property violated section 11-3A-20 of the Meridian City Code: a prohibition on living in vehicles or trailers—including mobile tiny homes—outside an approved RV park. (Decker Decl. Ex. 3; Negrete Decl. Ex. A.) Decker was given until August 1 to cease doing so. (Decker Decl. Ex. 3; Negrete Decl. Ex. A.) The other notice said that having vehicles with expired registrations parked in the side yard was an ordinance violation unless they were concealed behind a solid, six-foot-tall fence. (Decker Decl. Ex. 4; Negrete Decl. Ex. A.) She had until June 27 to remove the offending vehicles from the side yard or conceal them behind a compliant fence. (Decker Decl. Ex. 4; Negrete Decl. Ex. A.) Calacal received one notice, concerning the same alleged violations, plus an additional parking violation. (Calacal Decl. Ex. 51; Negrete Decl. Ex. A.) Plaintiffs say that Officer Negrete had never before mentioned any parking violations, though he disputes as much. (Decker Decl. ¶¶ 21, 24; 2d Alban Decl. Ex. 64 at 104:15–25, 107:14–23.) Plaintiffs also say that similar parking violations are readily observable elsewhere in the neighborhood. (Decker Decl. ¶ 24; Calacal Decl. ¶ 7.)

Decker moved out of her mobile tiny home by the August 1 deadline Officer Negrete had set in the violation notices, but she left it on Calacal's property and

began living with friends temporarily. (Decker Decl. ¶ 25.) Early in the morning on August 2, though, she visited her mobile tiny home to pick up household items and walk her dog. (*Id.* ¶ 26.) She encountered Officer Negrete there, and she says he angrily confronted her about the *Statesman* article, complaining about the way she had described the events. (*Id.* ¶ 28.) Decker also says he warned her that "officers will be driving up and down this little private drive at all hours of the day and night to ensure no one is living here." (*Id.* ¶ 37.)

Decker, for her part, asked Officer Negrete why she was being singled her out for enforcement, when so many of her neighbors also appeared to be living in RVs. (*Id.* ¶ 32.) She says he gave two main responses. (*Id.* ¶¶ 33–34.) One is that Calacal, having just bought the property, wasn't "grandfathered in" to the right to let people live in vehicles or trailers there, though the previous owner could've done exactly that. (*Id.* ¶ 34.) The other is that "even if [Decker] didn't have a tiny home on wheels, [she] still couldn't live on [Calacal's] property in any other accessory dwelling unit because [Calacal] didn't live on the property." (*Id.* ¶ 33.) This response is an evident reference to a provision of section 11-4-3-12 of the Meridian City Code, an ordinance regulating secondary dwellings on single-family residential properties like Calacal's, which is zoned R-4, (*e.g.*, *id.* Ex. 3), meaning it is in a medium-low density residential district, where single-family dwellings are permitted, Meridian City Code § 11-2A-2, -5. Section 11-4-3-12 allows one secondary dwelling "subordinate to a single-family dwelling" on such properties, but "[m]anufactured and mobile homes, and recreation vehicles" may not serve as

secondary dwellings and secondary dwellings may not built on non-owner-occupied properties. Meridian City Code § 11-4-3-12.A, -.B, -.H.

As a result of these events, Plaintiffs filed suit against the City of Meridian, the Meridian City Council, Officer Negrete, and Defendant Robert Simison, who is Meridian's mayor, on August 15, 2022. Plaintiffs assert five claims, all arising under the Idaho Constitution: Count 1, a facial challenge to section 11-3A-20 as a violation of the right to substantive due process guaranteed by article I, section 13; Counts 2 and 3, as-applied substantive due process challenges by Decker and Calacal, respectively, to that same ordinance; Count 4, a claim that Defendants enforce section 11-3A-20 selectively—against new residents but not longtime residents—denying Plaintiffs equal protection of the laws in violation of article I, section 2; and Count 5, a claim that Defendants retaliated against Decker for speaking to the *Statesman*, violating her right to freedom of speech under article I, section 9. (Compl. ¶¶ 112–82.) Declaratory and injunctive relief, as well as nominal damages, are sought on all five claims. (*Id.* Prayer for Relief ¶¶ 1–11.)

Defendants move to dismiss all these claims. Their motion papers don't identify the rule under which the motion is made, but it appears to seek dismissal for failure to state a claim under I.R.C.P. 12(b)(6). Defendants have agreed it should be so construed. Meanwhile, Plaintiffs move for a preliminary injunction allowing Decker to resume living in her mobile tiny home on Calacal's property. (Pls.' Mem. Supp. Prelim. Inj. 1.) These motions, as already noted, were argued and taken under advisement on October 27. They are ready for decision.

II.

LEGAL STANDARDS

A. Defendants' motion to dismiss

A claim is subject to dismissal if it isn't adequately supported by the pleaded factual allegations. *See* I.R.C.P. 12(b)(6). When dismissal is sought on that basis, the trial court accepts as true the well-pleaded factual allegations—those that aren't "purely conclusory"—and decides whether they state a legally viable claim. *Orrock v. Appleton*, 147 Idaho 613, 618, 213 P.3d 398, 403 (2009). If so, dismissal isn't appropriate. If not, dismissal is appropriate, but leave to amend should be granted unless it is clear that the shortcomings can't be cured. *E.g.*, *Mai v. United States*, 952 F.3d 1106, 1112 (9th Cir. 2020). Outright dismissal is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts . . . that would entitle the plaintiff to relief." *Clark v. Jones Gledhill Fuhrman Gourley, P.A.*, 163 Idaho 215, 220, 409 P.3d 795, 800 (2017) (brackets omitted) (quoting *Colafranceschi v. Briley*, 159 Idaho 31, 34, 355 P.3d 1261, 1264 (2015)). Documents attached to a pleading may be considered in deciding the motion. *E.g.*, *Bennett v. Bank of E. Or.*, 167 Idaho 481, 485–86, 472 P.3d 1125, 1129–30 (2020) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

B. Plaintiffs' motion for a preliminary injunction

The trial court determines in its discretion whether to issue a preliminary injunction, *e.g.*, *Gordon v. U.S. Bank Nat'l Ass'n*, 166 Idaho 105, 115, 455 P.3d 374, 384 (2019), but that discretion "must be exercised with great restraint" because a preliminary injunction is "an extraordinary remedy," *Planned Parenthood Great*

Nw. v. State, 2022 WL 3335696, at *4 (Idaho Aug. 12, 2022). Though I.R.C.P. 65(e) suggests otherwise, the movants must make two showings: that they have "a *substantial* likelihood of success on the merits," and that "irreparable harm will flow" without a preliminary injunction. *E.g.*, *Planned Parenthood*, 2022 WL 3335696, at *6. The first showing cannot be made where "complex issues of law or fact exist which are not free from doubt."[3] *Id.* (quoting *Harris v. Cassia Cnty.*, 106 Idaho 513, 518, 681 P.2d 988, 993 (1984)). The second requires impending harm that "cannot be adequately compensated for monetarily." *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 51, 685 P.2d 276, 280 (1984); *see also Injury*, *Black's Law Dictionary* (11th ed. 2019) (defining "irreparable injury" as "[a]n injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction."); 42 Am. Jur. 2d *Injunctions* § 36, Westlaw (updated Nov. 2022) ("[A]n injury is ordinarily understood to be irreparable if refusing injunctive relief would be a denial of justice because redress cannot be had through money damages, in light of the nature of the act, the circumstances of the person injured, or the financial condition of the person committing the act.").

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[3] As a matter of plain English, whether an outcome has a "substantial likelihood" of happening and whether its happening is "free from doubt" are greatly different. The "free from doubt" gloss on the "substantial likelihood" standard is unhelpful and should be retired. If applied rigorously, it is unduly difficult to satisfy, as it seems to require the movant to show that eventual victory on the merits is not merely substantially likely but assured.

III.

ANALYSIS

A. Defendants' motion to dismiss

Defendants contend that Plaintiffs' complaint fails to state any claim upon which relief can be granted. Defendants make arguments particular to each of Plaintiffs' five claims. They also make three arguments that address all five claims: the claims are moot, nominal damages aren't an available remedy, and the Meridian City Council is a redundant defendant. (*See* Defs.' Mem. Supp. Mot. Dismiss 6–8, 16.) Mootness is a justiciability doctrine. *E.g.*, *Frantz v. Osborn*, 167 Idaho 176, 180, 468 P.3d 306, 310 (2020). Because justiciability issues must be decided before reaching the merits, *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25*, 165 Idaho 690, 698, 451 P.3d 25, 33 (2019), the Court begins with Defendants' mootness argument. The Court then addresses the other two broadly applicable arguments before turning to Defendants' claim-specific arguments. When all is said and done, Count 1 is dismissed in its entirety, but Counts 2 through 5 survive except against the Meridian City Council, which is indeed a redundant defendant.

1. Plaintiffs' claims are not moot.

The core assertion of Plaintiffs' complaint, as drafted, is that section 11-3A-20 of the Meridian City Code is unconstitutional—on its face, as applied to Plaintiffs, or as a result of Defendants' allegedly selective enforcement practices. The complaint mentions that ordinance dozens of times. No other ordinance receives a mention. Defendants say that other, unchallenged ordinances—most notably, section 11-4-3-12, which regulates secondary dwellings—also prohibit Decker's

living in her mobile tiny home on Calacal's property. They argue that Plaintiffs' claims are moot because a ruling invalidating only section 11-3A-20 wouldn't allow her to resume living in her mobile tiny home on Calacal's property. (Defs.' Mem. Supp. Mot. to Dismiss 6–8; Defs.' Reply Supp. Mot. Dismiss 3–9.)

A claim is moot "when a favorable judicial decision would not result in any relief." *Houpt v. Wells Fargo Bank*, 160 Idaho 181, 189, 370 P.3d 384, 392 (2016) (quoting *Fenn v. Noah*, 142 Idaho 775, 779, 133 P.3d 1240, 1244 (2006)). Defendants are right that section 11-4-3-12 also bars Plaintiffs' arrangement; it prohibits using mobile homes as secondary dwellings on single-family residential properties like Calacal's.[4] *See* Meridian City Code § 11-4-3-12-A, -H. Plaintiffs' constitutional challenges to section 11-3A-20 indeed are moot if not coupled with challenges to section 11-4-3-12. Convincing the Court to enjoin Defendants from enforcing section 11-3A-20 would get Plaintiffs nowhere as a practical matter because Defendants could still enforce section 11-4-3-12 against them.

Plaintiffs' best response to Defendants' mootness argument is to invite the Court to construe their complaint under I.R.C.P. 8(e) as a challenge not only to section 11-3A-20 but also to any other Meridian ordinance that prohibits their arrangement. (Pls.' Mem. Opp'n Defs.' Mot. Dismiss 8 n. 6.) Plaintiffs reiterated that invitation during the hearing, making clear that they want their complaint

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[4] Calacal's property is zoned R-4, (*e.g.*, Decker Decl. Ex. 3), meaning it is in a medium-low density residential district, Meridian City Code § 11-2A-5, and may be the site of one single-family dwelling and one secondary dwelling, Meridian City Code §§ 11-2A-2, 11-4-3-12, 11-4-3-13.

construed to challenge section 11-4-3-12's constitutionality to the extent it prohibits using mobile tiny homes as secondary dwellings. The Court accepts that invitation. Granting Plaintiffs the broad construction they propose is a proper application of both Rule 8(e)'s principle that "[p]leadings must be construed so as to do justice," I.R.C.P. 8(e), and the overarching principle that the Idaho Rules of Civil Procedure "should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding," I.R.C.P. 1(b). *See* 5 A. Benjamin Spencer, *Federal Practice and Procedure* § 1286 (4th ed.), Westlaw (database updated Apr. 2022) (stating that Rule 8(e) "is in keeping with and serves to reinforce the general mandate in Federal Rule of Civil Procedure 1 that the federal rules should be construed to secure the just, speedy, and inexpensive determination of every action").

Plaintiffs framed their complaint as a challenge to section 11-3A-20 because it is the only ordinance Officer Negrete noted as a bar to Plaintiffs' arrangement in the notices of violation he issued to them before they filed suit. (Decker Decl. Ex. 3; Calacal Decl. Ex. 51; Negrete Decl. Ex. A.) Plaintiffs can't be expected to have anticipated the need to challenge other ordinances and shouldn't be set back in seeking Decker's return to living in her mobile tiny home on Calacal's property by having received notices of violation that include only a partial accounting of the reasons her living there violates the Meridian City Code. Further, Defendants aren't prejudiced if Plaintiffs' complaint is construed to challenge section 11-4-3-12 as well as section 11-3A-20. And that construction saves both sides the time and

expense of litigating the motion to amend the complaint that, otherwise, Plaintiffs inevitably would file.

No claim will be dismissed on mootness grounds. Having resolved the justiciability concern, the Court moves on to the merits.

2. A Rule 12(b)(6) motion isn't a proper vehicle for adjudicating the availability of nominal damages.

On each of their five claims, Plaintiffs seek an award of nominal damages along with declaratory and injunctive relief. (Compl. Prayer for Relief ¶¶ 1–11.) Defendants argue that all five claims should be dismissed to the extent they seek nominal damages because nominal damages aren't an available remedy. (Defs.' Mem. Supp. Mot. to Dismiss 6.) Plaintiffs contend that nominal damages are an available remedy. (Pls.' Mem. Opp'n Defs.' Mot. Dismiss 23–24.) This disagreement over remedies isn't properly decided in this context.

Plaintiffs' complaint is a pleading, *see* I.R.C.P. 7(a)(1), so it must satisfy the pleading requirements of I.R.C.P. 8(a). Rule 8(a) has three subsections, the first requiring jurisdictional allegations, the second requiring allegations that make out a claim, and the third requiring the pleader to specify the relief sought:

> (1) a short and plain statement of the grounds for the court's jurisdiction . . . ;
>
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
>
> (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

I.R.C.P. 8(a).

Rule 12(b)(6), of course, allows motions to dismiss for "failure to state a claim upon which relief can be granted." I.R.C.P. 12(b)(6). A proper Rule 12(b)(6) motion impugns the pleader's compliance with only Rule 8(a)(2)'s requirement for a short and plain statement of the claim showing that the pleader is entitled to relief:

> [T]he purpose of a motion under Federal Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief. . . . Thus, the provision must be read in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim for relief in federal court and calls for "a short and plain statement of the claim showing that the pleader is entitled to relief." Only when the plaintiff's complaint fails to meet this pleading standard . . . is it subject to dismissal under Rule 12(b)(6).

5B Arthur R. Miller et al., *Federal Practice & Procedure* § 1356 (3d ed.), Westlaw (database updated Apr. 2022) (footnotes omitted) (emphasis added). In other words, "[t]he sufficiency of a pleading is tested by the Rule 8(a)(2) statement of the claim for relief and the demand for judgment is not considered part of the claim for that purpose, as numerous cases have held." 5 A. Benjamin Spencer, *supra* § 1255.

Defendants' argument that nominal damages aren't an available remedy doesn't impugn Plaintiffs' Rule 8(a)(2) statement of their claim; instead, it impugns the breadth of their Rule 8(a)(3) demand for relief. That simply isn't a Rule 12(b)(6) concern. *See, e.g.*, *Dingxi Longhai Dairy, Ltd. v. Becwood Tech. Grp. L.L.C.*, 635 F.3d 1106, 1108 (8th Cir. 2011); *Bontkowski v. Smith*, 305 F.3d 757, 762 (7th Cir. 2002) ("And even if the district court was right that Bontkowski is seeking relief to which he's not entitled, this would not justify dismissal of the suit."); *Reininger v. Oklahoma*, 292 F. Supp. 3d 1254, 1256 (W.D. Okla. 2017) ("Typically, a Rule 12(b) motion tests the sufficiency of a claim and not a prayer for relief."); *Kruse v. Repp*, No. 4:19-cv-00106-SMR-SBJ, 2020 WL 1317479, at *34 (S.D. Iowa 2020) ("Nor is it a

proper use of a motion under Rule 12(b)(6) to challenge the pleading of a prayer for relief."). Indeed, even if nominal damages aren't an available remedy, all five claims would survive Defendants' motion because all five seek other relief. Consequently, this is no occasion to determine the availability of nominal damages.

3. The Meridian City Council is a redundant defendant.

Each of Plaintiffs' five claims is brought against all four defendants: the City of Meridian, the Meridian City Council, and Mayor Simison and Officer Negrete in their official capacities. (Compl. 1; *id.* ¶¶ 112–82.) Defendants argue that all five claims should be dismissed as to the Meridian City Council because it is a redundant defendant. (Defs.' Mem. Supp. Mot. to Dismiss 16.) The Court agrees.

As a municipal corporation, the City of Meridian is a "bod[y] corporate and politic" that "may sue and be sued" and "acquire, hold, . . . and convey property, real and personal." I.C. § 50-301. The Meridian City Council, though, is simply where the City of Meridian's "legislative authority" is vested. I.C. § 50-701. If Plaintiffs recover nominal damages, the only judgment debtor will be the City of Meridian, which, unlike the Meridian City Council, may acquire, hold, and convey property.[5] And if Plaintiffs obtain an injunction, it won't be entered against the Meridian City Council, alleged only to have enacted the challenged ordinances, (Compl. ¶ 24), not to have taken part in enforcing them. Injunctions arising from a law's

[5] The individual defendants, Officer Negrete and Mayor Simison, sued only in their official capacities, won't owe any damages award. *See, e.g.*, *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). ("[A] plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.").

unconstitutionality are properly entered against those who would take part in enforcing them, not those who took part in enacting them. *See* 42 Am. Jur. 2d *Injunctions* § 150, Westlaw (database updated Nov. 2022) ("Generally, a court may not restrain by injunction the exercise of legislative power by municipal corporations; the restraining power of a court should be directed against the enforcement rather than the passage of ordinances."). Leaving aside the requested declaratory relief, which would be fully effective if entered only against the City of Meridian, this is the only relief sought in Plaintiffs' complaint, (*see* Compl. Prayer for Relief ¶¶ 1–13), and it is not in any practical sense available against the Meridian City Council.[6]

Redundant defendants—those whose inclusion "provides no opportunity for further relief" than would be available in their absence—may be dismissed in the interest of efficiency and judicial economy. *Utah Gospel Mission v. Salt Lake City Corp.,* 316 F. Supp. 2d 1201, 1246 (D. Utah 2004); *see also Doe v. Douglas Cnty. Sch. Dist. RE-1*, 775 F. Supp. 1414, 1416 (D. Colo. 1991); *Martin v. Red Lion Police Dep't*, 146 F. App'x 558, 562 n.3 (3d Cir. 2005) (affirming dismissal of redundant claim against city department when city also was sued). The Court takes that step here. As already noted, the Idaho Rules of Civil Procedure "should be construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding." I.R.C.P. 1(b). Those aims are furthered by eliminating

[6] The same may also be true as to Mayor Simison. Plaintiffs haven't made any concrete allegation that he took part in enforcing the ordinances at issue.

redundant defendants. Rule 12(b)(6) allows dismissal for failure to state a claim upon which relief can be granted. With Rule 1(b) firmly in mind, the Court construes Rule 12(b)(6) to allow the dismissal of redundant defendants. A claim against a redundant defendant is not one "upon which relief can be granted" because the redundant defendant's joinder doesn't expand the relief available to the plaintiff. That's the case as to Plaintiffs' claims against the Meridian City Council, so it is dismissed as a redundant defendant.[7] And because Plaintiffs have identified no reason to think the redundancy problem can be fixed by some battery of new allegations, the dismissal is without leave to amend.

4. Plaintiffs' facial substantive due process challenge to the ordinances at issue is not viable, but they state potentially viable as-applied substantive due process claims.

Counts 1, 2, and 3 of Plaintiffs' complaint are substantive due process claims arising under article I, section 13 of the Idaho Constitution. (Compl. ¶¶ 112-44.) Count 1 is a facial challenge to section 11-3A-20 insofar as it prohibits living in mobile tiny homes outside an approved RV park. (*Id.* ¶¶ 112–21.) Count 2 is Decker's as-applied challenge to that ordinance, and Count 3 is Calacal's as-applied challenge. (*Id.* ¶¶ 122–44.) As discussed in section III.A.1, these claims are deemed

[7] The rules also empower trial courts to "strike from a pleading . . . any redundant . . . matter." I.R.C.P. 12(f). Some courts invoke Rule 12(f) to end claims against redundant defendants. *E.g.*, *Good v. Cnty. of Los Angeles*, 2016 WL 9450072, at *1 (C.D. Cal. Jan. 29, 2016). But the "overwhelming approach" seems to be to dismiss them under Rule 12(b)(6). *Price v. Dist. of Columbia*, 545 F. Supp. 2d 89, 93 (D.D.C. 2008). In the alternative to the Rule 12(b)(6) dismissal, the Court strikes the references in Plaintiffs' complaint to the Meridian City Council as a defendant. The Court does so on its own motion, as the rule allows. *See* I.R.C.P. 12(f)(1).

to challenge Meridian's secondary-dwelling ordinance, section 11-4-3-12, as well. As a matter of substantive due process, "state action which deprives a person of life, liberty, or property must have a rational basis." *Guzman v. Piercy*, 155 Idaho 928, 940, 318 P.3d 918, 930 (2014) (brackets omitted) (quoting *Halvorson v. N. Latah Cnty. Highway Dist.,* 151 Idaho 196, 207, 254 P.3d 497, 508 (2011)). A law isn't infirm on substantive due process grounds if it "bear[s] a reasonable relationship to a permissible legislative objective," and "legislative acts are presumed valid and only overcome by clearly showing arbitrariness and irrationality." *Id.* (quoting *In re Jerome Cnty. Bd. of Comm'rs*, 153 Idaho 298, 315, 281 P.3d 1076, 1093 (2012)). Defendants argue that all three substantive due process claims fail under *City of Lewiston v. Knieriem*, in which the Idaho Supreme Court held that cities constitutionally may, through zoning ordinances, limit where mobile homes are placed because mobile homes possess "special characteristics which warrant their special regulation" and generally "may be confined to mobile home parks" or "excluded from residential districts." 107 Idaho 80, 83, 685 P.2d 821, 824 (1984) (quoting *State ex rel. Wilkerson v. Murray,* 471 S.W.2d 460, 462 (Mo. 1971)). (Mem. Supp. Defs.' Mot. Dismiss 9–11.) The Court agrees only as to Count 1.

i. Count 1, the facial challenge

"In a facial challenge, 'the party must demonstrate that the law is unconstitutional *in all of its applications*. In other words, the challenger must establish that no set of circumstances exists under which the law would be valid.'" *In re Doe*, ___ Idaho, ___, ___, 517 P.3d 830, 838 (2022) (emphasis added) (internal

quotation marks omitted) (quoting *American Falls Reservoir Dist. No. 2. v. Idaho Dep't of Water Resources*, 143 Idaho 862, 870–71, 154 P.3d 433, 441–42 (2007)). By arguing that sections 11-3A-20 and 11-4-3-12 are unconstitutional in all of their applications to mobile tiny homes, Plaintiffs essentially ask this Court to disavow *Knieriem*. There, the City of Lewiston was found to have a legitimate governmental interest in protecting property values, preserving its comprehensive development plan, and ensuring the general safety and welfare of its residents—aims advanced by disallowing the "indiscriminate placement of mobile homes." 107 Idaho at 83–84, 685 P.2d at 824–25. Meridian's similar zoning ordinances are intended to serve similar objectives. *See* Meridian City Code §§ 11-1-2-B, -H. The Court cannot pay heed to *Knieriem* yet indulge Plaintiffs in claiming that Meridian's similar ordinances are facially unconstitutional.

Further, although Plaintiffs deny as much, to accept their argument that section 11-3A-20 is unconstitutional in all of its applications would be to conclude that the Idaho Constitution requires the City of Meridian to permit people to live in mobile tiny homes everywhere in Meridian; otherwise, section 11-3A-20's prohibition on living in mobile tiny homes outside approved RV parks wouldn't be unconstitutional in all of its applications. But Plaintiffs don't allege—and couldn't reasonably allege—that there are no non-RV park properties in Meridian where it is rational for the City of Meridian to prohibit living in a mobile tiny home.

Regardless, Plaintiffs' effort to distinguish *Knieriem* depends on the assertion that there are no vacancies in any RV park in Meridian, whereas space for mobile

homes in Lewiston wasn't so scarce. This is the stuff of an as-applied challenge, not a facial challenge. The presence or absence of vacancies in RV parks is a condition that is temporary by nature and might change from day to day, week to week, month to month, or year to year. If the ordinances are unconstitutional because space for mobile homes is scarce now, it follows that they would be constitutional whenever space is meaningfully less scarce, in which case they wouldn't be unconstitutional in all of their applications.

For all these reasons, Count 1 fails to state a claim. It is dismissed without leave to amend because Plaintiffs have no way of overcoming *Knieriem* or otherwise proving the ordinances unconstitutional in all of their applications.

ii. Counts 2 and 3, the as-applied challenges

Plaintiffs' as-applied challenges are a different matter. To prevail, they must show not that the ordinances are unconstitutional in all of their applications but instead that the ordinances "operated to violate [Plaintiffs'] rights under the specific circumstances of the case." *Doe*, ___ Idaho at ___, 517 P.3d at 838. In Count 2, Decker claims that the ordinances are unconstitutional as applied to her because, by prohibiting her from living in her mobile tiny home, they have "forc[ed] her into homelessness" without rationally promoting a legitimate governmental interest. (Compl. ¶¶ 122–35.) And in Count 3, Calacal claims that the ordinances are unconstitutional as applied to him because they limit his use of his own property without rationally promoting a legitimate governmental interest. (*Id*. ¶¶ 136–44.)

Plaintiffs may face an uphill battle, but these claims are adequately pleaded. Plaintiffs allege that Decker has been rendered homeless, despite owning a mobile tiny home, because she may live in it only in an approved RV park, but all RV parks in Meridian are full and have lengthy waiting lists. (Compl. ¶¶ 5-6.) So, that ordinance "effectively ban[s] living in tiny homes on wheels" in Meridian, and this de facto ban is particularly problematic in this era of housing shortages and rising rents, during which people need more low-cost housing options. (*Id.* ¶ 5.) As a general rule, "most municipal efforts to [t]otally exclude mobile homes from a community have been found unconstitutional as an unreasonable exercise of police power." *Duckworth v. City of Bonney Lake*, 586 P.2d 860, 866 (Wash. 1978) (citing R. Anderson, 2 *American Law of Zoning*, § 1401, 558-62 (2d ed. 1976)); *see also* A.G. Barnett, *Use of Trailer or Similar Structure for Residential Purposes*, 96 A.L.R. 232 (originally published in 1964). That said, ordinances that merely restrict mobile homes to authorized parks are frequently upheld by courts. *See* Jay M. Zitter, *Validity of Zoning or Building Regulations Restricting Mobile Homes or Trailers to Established Mobile Home or Trailer Parks,* 17 A.L.R. 106 (4th ed.) (originally published in 1982).

Importantly, in cases dealing with restrictions on the placement of mobile homes, courts consider the available amount of residential space to be highly relevant to the constitutional analysis. The *Knieriem* court considered it decisive that half of Lewiston remained zoned for mobile homes and, though only one lot was available for sale, multiple parks had space to rent. *Knieriem*, 107 Idaho at 84–85,

685 P.2d at 825–26; *see also McKie v. Cnty. of Ventura*, 113 Cal. Rptr. 143 (Ct. App. 1974) (rejecting constitutional challenge to mobile home ordinance when there was no evidence that plaintiffs were unable to obtain space at RV park or that land was unavailable to establish new RV park). To have a chance of ultimately prevailing, Plaintiffs likely will need to come forward with convincing data on the amount of land area zoned for RV parks, the number and size of operating RV parks, the length of the waiting lists, and related information, but they may press ahead with their as-applied challenges.

5. Plaintiffs state a potentially viable equal-protection claim.

In Count 4 of their complaint, Plaintiffs claim that Defendants violated their right under article I, section 2 of the Idaho Constitution to equal protection of the laws by enforcing section 11-3A-20 against people seen as out-of-staters but not against people seen as locals. (Compl. ¶¶ 145–67.) Defendants argue that Count 4 isn't viable because selective-enforcement claims lie only if the plaintiffs belong to a protected class. (Defs.' Mem. Supp. Mot. to Dismiss 11–13.) That simply isn't true, as enforcing a law selectively "may amount to [an equal-protection] violation under either the Idaho or United States Constitutions . . . if the challenger shows a deliberate plan of discrimination based upon some improper motive like race, sex, religion, or some other *arbitrary classification*." *Anderson v. Spalding*, 137 Idaho 509, 514, 50 P.3d 1004, 1009 (2002) (emphasis added). In fact, Idaho law recognizes "class of one" equal-protection claims, brought by individuals singled out for different treatment based on a classification that has no rational basis. *Id*. (citing

Vill. of Willowbrook v. Olech, 528 U.S. 562 (2000)); *see also City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 136 P.3d 310 (2006).

To survive Defendants' motion to dismiss, Plaintiffs merely must allege that they were treated differently than others similarly situated and that the different treatment was based on a classification not rationally related to a legitimate government interest. *See Anderson*, 137 Idaho at 514, 50 P.3d at 1009. They have done so. Plaintiffs allege that, on or near Leisure Lane, others live in RVs, trailers, or other mobile living quarters or use their yards to store vehicles with expired registrations, all without Defendants taking enforcement action, yet Plaintiffs received notices of violation for these same things and Decker was forced to move out of her mobile tiny home. (*E.g.*, Compl. ¶¶ 9, 49, 148–50, 163.) Plaintiffs allege that they were singled out for enforcement action because they had recently arrived from out-of-state, while longtime residents were treated as having non-conforming use rights. (*See id.* ¶¶ 10, 151.) In fact, according to Plaintiffs, Officer Negrete specifically told Decker that she was being treated differently because "other residents ha[d] lived there a long time, while she and [Calacal] just moved there from out-of-state." (*Id.* ¶ 151.) Because non-conforming use rights run with the land, *see, e.g.*, *O'Connor v. City of Moscow,* 69 Idaho 37, 202 P.2d 401 (1949) (finding zoning ordinance arbitrary and unreasonable when it terminated nonconforming business use upon change in ownership), enforcing ordinances based on ownership tenure seemingly would be irrational.

Count 4 is adequately pleaded, so it survives Defendants' motion to dismiss. Plaintiffs' motion for a preliminary injunction has, however, resulted in the compilation of a factual record that engenders skepticism about whether they are capable of proving Count 4. The supporting evidence at this point isn't compelling, as explained in section III.B.2.

6. Decker states a potentially viable retaliation claim.

In Count 5 of Plaintiffs' complaint, Decker claims that Defendants retaliated against her in violation of article I, section 9 of the Idaho Constitution for speaking to the *Statesman* about being told she couldn't live in her mobile tiny home on Calacal's property. (Compl. ¶¶ 168-82.) According to Plaintiffs, shortly after the *Statesman* published an article on Decker's plight, Officer Negrete issued to both her and Calacal notices threatening them with criminal prosecution for parking violations he hadn't mentioned during previous interactions. (*Id*. ¶¶ 13, 173.) Plaintiffs also allege that Officer Negrete "angrily confronted" Decker about the *Statesman* article and threatened to have code enforcement officers patrolling her street "at all hours of the day and night." (*Id*. ¶ 14.)

Article I, section 9 of the Idaho Constitution "provides for protection of freedoms substantially similar to those of the First Amendment to the U.S. Constitution." *State v. Hammersley*, 134 Idaho 816, 819, 10 P.3d 1285, 1288 (2000), *overruled on other grounds by State v. Poe*, 139 Idaho 885, 88 P.3d 704 (2004). Accordingly, rulings on what it takes to prove a First Amendment retaliation case are instructive in this context. To state a viable First Amendment retaliation claim, the plaintiff must allege "that (1) he was engaged in a

constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (quoting *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016)).

The allegations in Plaintiffs' complaint make out these three elements. First, Plaintiffs allege that Decker "engaged in constitutionally protected speech when she participated in the *Idaho Statesman* piece." (Compl. ¶ 172.) It is well established that private citizens have a right to speak out and criticize government actions. *See, e.g., Hartman v. Moore*, 547 U.S. 250, 256 (2006). Second, Plaintiffs allege that Officer Negrete's issuance of notices threatening criminal prosecution for alleged violations unrelated to the subject matter of the *Statesman* article, along with his threat to have their street patrolled at all hours, would chill the speech of a reasonable person. (Compl. ¶ 174.) Third, and finally, Plaintiffs allege that Decker's protected speech was a "substantial or motivating factor" in Officer Negrete's decision to issue the notices of violation. A person's "intent . . . may be alleged generally," I.R.C.P. 9(b), so that allegation is sufficient. Regardless, Plaintiffs allege that the notices of violation followed hard on the heels of the *Statesman* article, about which Officer Negrete complained in threatening to have Calacal's property patrolled at all hours. (Compl. ¶¶ 12–15.) "Because direct evidence of retaliatory intent rarely can be pleaded in a complaint, allegation of a chronology of events from which retaliation can be inferred is sufficient to survive

dismissal." *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012). Plaintiffs allege a chronology from which an inference of retaliation can be drawn.

Defendants' counterargument is essentially that Decker's particular retaliation claim includes a fourth element: the absence of probable cause to accuse her and Calacal of the violations alleged in the notices. (Defs.' Mem. Supp. Mot. to Dismiss 13–15.) This argument is based on *Nieves v. Bartlett*, in which the United States Supreme Court held that, in retaliatory-arrest cases, the plaintiff must plead and prove the absence of probable cause due to the "causal complexities" that arise during police encounters. 139 S. Ct. 1715, 1723 (2019). As the Court there explained, "the causal inquiry is complex because protected speech is often a wholly legitimate consideration for officers . . . [who] must make split second judgments when deciding whether to arrest." *Id*. at 1723–24. *Nieves* extended the rule of *Hartman v. Moore*, which requires retaliatory-prosecution plaintiffs to plead and prove the absence of probable cause. 547 U.S. 250, 255–56 (2006).

This is neither a retaliatory-arrest case nor a retaliatory-prosecution case. Decker was neither arrested nor prosecuted. She was just formally notified of the charges she could face if she didn't take corrective action. The Court is unconvinced that the probable-cause requirement of *Nieves* and *Hartman* applies in this different context, though the Court leaves that question undecided for now. The Court does so because even if the probable-cause requirement applies in this context, it gives way when a plaintiff pleads and proves that she was treated differently than similarly situated individuals. *Nieves*, 139 S. Ct. at 1727 ("[W]e

conclude that the no-probable-cause requirement should not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been."). Decker so alleges. (Compl. ¶ 13.)

For these reasons, Defendants' motion to dismiss Count 5 is denied.

B. Plaintiffs' motion for a preliminary injunction

Plaintiffs seek a preliminary injunction that would "allow [Decker] to resume living in her mobile tiny home on [Calacal's] residential property during this litigation." (Mem. Supp. Pls.' Mot. Prelim. Inj. 1; *see also id.* at 6, 15.) But an injunction, by its very nature, orders a party to do—or not to do—something. *See, e.g.*, 11A Mary K. Kane, *Federal Practice and Procedure* § 2948.2 (3d ed.), Westlaw (database updated Apr. 2022) (discussing mandatory and prohibitory injunctions). What that something is, and who is ordered to do or not to do it, must be specified. Plaintiffs' proposed language fails to specify who is ordered to do, or not to do, what. In substance, though, what Plaintiffs ask is that, between now and the entry of judgment, Defendants be ordered not to enforce ordinances that prohibit Decker from living in her mobile tiny home on Calacal's property. The Court considers Plaintiffs' motion on that understanding of the relief sought.

A preliminary injunction, as already noted, is a remedy whose availability depends, first, on a showing that the movants have a substantial likelihood of success on a claim and, second, that they will suffer irreparable harm without the preliminary injunction. *E.g.*, *Planned Parenthood*, 2022 WL 3335696, at *6. Four claims have survived Defendants' motion to dismiss: Counts 2 through 5 of

Plaintiffs' complaint. Each must be considered as a possible platform for awarding the proposed preliminary injunction. But the injunctive relief Plaintiffs seek in connection with Count 5, Decker's retaliation claim, is of a different sort. (*See* Compl. ¶¶ 168–82 & Prayer for Relief ¶¶ 1–13.) Count 5 has nothing to do with the proposed preliminary injunction. Also not a viable platform for awarding the proposed preliminary injunction is Count 3, Calacal's as-applied substantive due process challenge to the ordinances at issue; Plaintiffs argue not that he, but only that Decker, would suffer irreparable harm if Defendants aren't enjoined from enforcing those ordinances during the course of this litigation. (*See* Mem. Supp. Pls.' Mot. Prelim. Inj. 15; Reply Supp. Pls.' Mot. Prelim. Inj. 15.) That leaves Counts 2 and 4—Decker's as-applied substantive due process challenge to the ordinances and Plaintiffs' equal-protection challenge to their allegedly selective enforcement—as possible platforms for awarding the proposed preliminary injunction. The Court next considers those claims in detail.

1. Decker hasn't shown a substantial likelihood of succeeding on her as-applied substantive due process claim.

Section 11-3A-20 of the Meridian City Code, again, prohibits using mobile tiny homes (and other vehicles or trailers) as residences or living quarters anywhere in the City of Meridian outside an approved RV park. Count 2 of Plaintiffs' complaint is a claim that section 11-3A-20 violates Decker's right to substantive due process under article I, section 13 of the Idaho Constitution insofar as it has been or can be applied to prevent her from living in her mobile tiny home on Calacal's property. (Compl. ¶¶ 122–35.) Further, although section 11-4-3-12 of the Meridian

City Code is unmentioned in Plaintiffs' complaint, the Court has accepted their invitation to construe their complaint to also challenge that ordinance to the extent it can be applied to the same end.

Sections 11-3A-20 and 11-4-3-12 both prohibit Decker from living in her tiny mobile home on Calacal's property. But these ordinances aren't just the same prohibition, repeated. Section 11-3A-20 is a blanket prohibition on living in trailers or vehicles, including mobile tiny homes, outside an approved RV park. By contrast, section 11-4-3-12 regulates secondary dwellings on residential properties. A secondary dwelling is a "habitable dwelling unit established in conjunction with and subordinate to a single-family dwelling unit constructed on a foundation and connected to municipal services," including a "tiny house." Meridian City Code § 11-1A-1. Consonant with the requirement for construction on a foundation, "[m]anufactured and mobile homes, and recreation vehicles" may not be used as secondary dwellings, Meridian City Code § 11-4-3-12.H, disqualifying Decker's mobile tiny home. Her as-applied claim won't succeed unless she can show that both ordinances are unconstitutional as applied to her. If either is constitutional as applied, the other's unconstitutionality wouldn't be grounds for forcing Defendants to allow her to resume living in her mobile tiny home on Calacal's property.[8]

There is no need now to further consider the as-applied constitutionality of section 11-3A-20 because Decker hasn't shown a substantial likelihood of proving

[8] The invalidity of any portion of title 11 of the Meridian City Code does not affect the remainder's validity. Meridian City Code § 11-1-9.

section 11-4-3-12 unconstitutional as applied to her.[9] Calacal's property is zoned R-4, (*e.g.*, Decker Decl. Ex. 3), meaning it is in a medium-low density residential district, Meridian City Code § 11-2A-5, and may be the site of one single-family dwelling and one secondary dwelling. Meridian City Code §§ 11-2A-2, 11-4-3-12, 11-4-3-13. Under section 11-4-3-12, secondary dwellings must satisfy an array of standards, including an "Owner Occupancy" standard:

> *Owner Occupancy.* To create and maintain a secondary dwelling unit, the property owner shall reside on the property for more than six (6) months in any twelve (12) month period. The applicant for a secondary dwelling unit shall demonstrate that either the single-family dwelling or the secondary unit is occupied by the owner of the property. Owner occupancy is demonstrated by title records, vehicle registration, voter registration or other similar means. Secondary dwelling units shall not be subdivided or otherwise segregated in ownership from the single-family dwelling unit.

Meridian City Code § 11-4-3-12-B. Plaintiffs' arrangement violates this "Owner Occupancy" standard in two ways. First, Calacal owns the property but doesn't live there or intend to live there; he lives in California and bought the property as a place for his son to live. (Calacal Decl. ¶¶ 2–3.) So, Plaintiffs haven't shown that Calacal's property has been or will be owner-occupied for more than six of every twelve months, as the "Owner Occupancy" standard requires. Decker admits that Officer Negrete told her that her arrangement with Calacal was impermissible for this very reason. (Decker Decl. ¶ 33.) Second, while the property and the primary dwelling—the home—constructed on it belong to Calacal, (Calacal Decl. ¶ 2), the

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[9] Nor, for that same reason, is there a need in the context of Count 2 to consider Decker's showing on the issue of irreparable harm.

mobile tiny home belongs to Decker, (Decker Decl. ¶ 4). Split ownership violates the "Owner Occupancy" standard; the primary dwelling and the secondary dwelling must have the same owner.

During the hearing, Plaintiffs' counsel confirmed that Plaintiffs don't challenge section 11-4-3-12 in its entirety. In other words, they don't contend it is simply unconstitutional for the City of Meridian to regulate secondary dwellings on single-family residential properties. Instead, they challenge section 11-4-3-12 insofar as it prohibits Decker's mobile tiny home from qualifying as a secondary dwelling simply because it is mobile rather than an immobile structure constructed on a foundation. So, the Court deems Plaintiffs to have challenged any standard for secondary dwellings in section 11-4-3-12 that mobile tiny homes, by nature, cannot satisfy. But Plaintiffs don't challenge the standards in section 11-4-3-12 that mobile tiny homes can satisfy as well as an immobile structure can. They identify no grounds on which to hold that their arrangement is constitutionally exempt from section 11-4-3-12's mobility-neutral standards for secondary dwellings.

If Plaintiffs had built on Calacal's property an immobile secondary dwelling for Decker to live in while Calacal lives not on the property, but in California, their arrangement would violate section 11-4-3-12's "Owner Occupancy" standard. And if Plaintiffs had built on Calacal's property an immobile secondary dwelling for Decker to own while Calacal owns the primary dwelling located there, their arrangement would violate the "Owner Occupancy" standard in a second way. Plaintiffs don't argue that mobile tiny homes must, as a matter of constitutional

law, be treated more favorably than immobile structures in the regulation of secondary dwellings. If all the facts of this case were the same but Decker's tiny home were immobile and constructed on a foundation, section 11-4-3-12 still would prohibit her from owning and living in it on Calacal's non-owner-occupied property. So, even assuming for argument's sake that it is unconstitutional for the City of Meridian, through section 11-4-3-12, to prohibit using mobile tiny homes as secondary dwellings, Decker hasn't shown a substantial likelihood of succeeding on the merits of her claim that, under all the circumstances, section 11-4-3-12 is unconstitutional as applied to her. She has shown no constitutional impediment to the enforcement of section 11-4-3-12's "Owner Occupancy" standard, which her arrangement with Calacal violates. As a result, she isn't entitled to the proposed preliminary injunction in connection with Count 2.

2. Plaintiffs haven't shown a substantial likelihood of succeeding on their equal-protection claim.

In Count 4 of their complaint, Plaintiffs claim that Defendants have enforced section 11-3A-20 selectively—against them but not others similarly situated—in violation of their right to equal protection under article I, section 2 of the Idaho Constitution. (Compl. ¶¶ 145–67.) The gist of the claim is that Defendants use a legally untenable "grandfathered rights" theory as an excuse to ignore violations by people they see as locals, while taking enforcement action against Plaintiffs, whom they see as out-of-staters. (*Id.* ¶ 157.) Plaintiffs argue that the alleged distinction between locals and out-of-staters is an "arbitrary classification" actionable as an equal-protection violation. *See Anderson*, 137 Idaho at 514, 50 P.3d at 1009. This

claim, as already discussed, is pleaded well enough to avoid dismissal, but Plaintiffs lack convincing evidence of selective enforcement based on an arbitrary classification between locals and out-of-staters.

A neighbor's complaint drew Defendants' attention to Decker's mobile tiny home, as well as to one parked on a nearby property, 1928 North Leisure Lane. (Negrete Decl. Ex. A; 1st Alban Decl. Ex. 56; 2d Alban Decl. Ex. 64 at 61:22–63:6.) Defendants investigated and determined that Decker's mobile tiny home was being used as a residence, but the other one wasn't so it wasn't considered a violation of section 11-3A-20. (Negrete Decl. Ex. A; 2d Alban Decl. Ex. 64 at 63:7–23.) Defendants say this is their enforcement model; they have only enough manpower to respond to citizen complaints, not to patrol city streets in search of violations. (Negrete Decl. ¶¶ 2, 5; 2d Alban Decl. Ex. 64 at 64:10–68:1.) This is the only such complaint the parties have brought to the Court's attention. The two mobile tiny homes it put at issue were treated differently based on a determination that they were being used differently, not because out-of-staters were involved with one mobile tiny home and locals were involved with the other. There is no evidence that any citizen complaint about a mobile tiny home (or other mobile living quarters) resulted in no enforcement action because a local owned or lived in it.

Instead, Plaintiffs rely heavily on photographs indicative, they say, that thirteen RVs or trailers parked near Calacal's property are being lived in. (Decker Decl. Exs. 5–8, 10–50.) While it is possible that some or all of those RVs or trailers indeed are being lived in, Plaintiffs' photographs, without more, don't show as

much. Further, the photographs have no meaningful tendency to show that Defendants are engaged in selective enforcement by giving locals a pass to violate section 11-3A-20 but taking enforcement action against out-of-staters. The photographs don't demonstrate that Defendants were on notice that anyone, much less people they would consider to be locals, live in those RVs or trailers. And Plaintiffs' evidence that Officer Negrete made statements suggesting that "grandfathered rights" play a role in enforcement decisions is a poor substitute for proof of a single instance in which they actually did.

Finally, even if Plaintiffs had convincing evidence that Defendants have a practice of selectively enforcing section 11-3A-20 based on a differentiation between locals and out-of-staters, section 11-4-3-12 would again cause them trouble. Its "Owner Occupancy" standard requires consideration of where Calacal lives. *See* Meridian City Code § 11-4-3-12.B. Because Calacal is not a local in the sense that he doesn't live on his property, Decker may not live there in any secondary dwelling, neither her mobile tiny home nor an immobile structure. *See id.* Again, she admits Officer Negrete told her exactly that. (Decker Decl. ¶ 33.) Plaintiffs haven't shown that section 11-4-3-12's differing treatment of non-resident owners and resident owners, though it may amount to a classification for equal-protection purposes, is an arbitrary one actionable as an equal-protection violation.

For all these reasons, the Court concludes that Plaintiffs haven't shown a substantial likelihood of succeeding on the merits of Count 4. As a result, it also isn't a viable platform for issuing the proposed preliminary injunction, irrespective

of the caliber of their showing on the issue of irreparable harm. Plaintiffs' motion for a preliminary injunction must be denied.

Accordingly,

IT IS ORDERED that Defendants' motion to dismiss is granted in part and denied in part. All of Plaintiffs' claims against the Meridian City Council are dismissed, and Count 1 of Plaintiffs' complaint is dismissed in its entirety. These dismissals are without leave to amend. The motion is otherwise denied.

IT IS FURTHER ORDERED that the case caption in future filings shall not list the Meridian City Council as a defendant.

IT IS FURTHER ORDERED that Plaintiffs' motion for a preliminary injunction is denied.

Jason D. Scott 11/7/2022 11:12:30 AM

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on November 7, 2022, I served a copy of this document as follows:

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