

**STATE OF MINNESOTA**  
**COUNTY OF DAKOTA**

**DISTRICT COURT**  
**FIRST JUDICIAL DISTRICT**

John David Emerson,

Plaintiff,

vs.

Timothy Leslie,  
Dakota County Sheriff,

Defendant.

Court File No.: \_\_\_\_\_

Case Type: OTHER CIVIL

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Plaintiff John David Emerson, for his Complaint against Defendant Timothy Leslie, in his official capacity as Dakota County Sheriff (the “Sheriff”), states and alleges as follows:

**INTRODUCTION**

1. This is an action for declaratory and injunctive relief arising out of Plaintiff John David Emerson’s challenge to the Sheriff’s enforcement of a statute that was ruled unconstitutional over a decade ago.

2. In 2005, the Minnesota legislature enacted Minn. Stat. § 299C.105 (the “DNA-collection statute”), a statute that required law enforcement to take DNA samples from persons who have not been—and may never be—convicted of any crime. The Minnesota Court of Appeals struck down the statute as unconstitutional shortly after it went into effect, concluding that it violated the Fourth Amendment to the United States Constitution and Article 1, Section 10 of the Minnesota Constitution. *In re Welfare of C.T.L.*, 722 N.W.2d 484 (Minn. Ct. App. 2006).

3. In 2015, the Sheriff decided that the court of appeals was wrong, and announced that he would resume enforcement of the DNA-collection statute. He pointed to *Maryland v. King*, 569 U.S. \_\_\_, 133 S. Ct. 1958 (2013), as justification. In *King*, the United States Supreme Court upheld a Maryland statute that authorized the collection of DNA from certain arrestees as reasonable under the Fourth Amendment.

4. *King* does not justify the Dakota County Sheriff's unilateral decision to revive an unconstitutional statute. *King* did not address Minnesota's DNA-collection statute and did not overrule the court of appeals' decision in *C.T.L.* Nor does *King* in any way affect the court of appeals' decision that the statute violates the Minnesota Constitution. Accordingly, no valid law in Minnesota authorizes the Sheriff's policy of taking pre-conviction DNA samples.

5. Even if the Sheriff's conduct were authorized, the collection of pre-conviction DNA samples violates Article 1, Section 10 of the Minnesota Constitution. Article 1, Section 10 provides greater protections against unreasonable searches and seizures than the Fourth Amendment does. Minnesota courts do not hesitate to enforce those greater protections if there is a principled basis for departing from the Fourth Amendment baseline.

6. A principled basis exists here. *King* departs from Fourth Amendment precedent, reduces the protections afforded by the Fourth Amendment, and does not adequately protect Minnesotans' basic rights and liberties. Emerson thus asks this Court for a declaration that enforcement of the DNA-collection statute is unlawful and unconstitutional. He also seeks a temporary injunction preventing the Dakota County

Sheriff from relying on the statute while this action is pending, and a permanent injunction at the conclusion of this litigation.

### **PARTIES**

7. Plaintiff John David Emerson resides in Rosemount, Minnesota.

8. Defendant Timothy Leslie is the Dakota County Sheriff. The DNA-collection statute vests in the Sheriff and the other law enforcement officers of Dakota County whom he supervises the responsibility for the collection of DNA samples. He is sued in his official capacity.

### **VENUE**

9. Venue is proper in this district under Minn. Stat. § 542.09 because Defendant Timothy Leslie, in his official capacity as Dakota County Sheriff, is found in this district.

### **FACTS**

#### **A. The DNA-Collection Statute**

10. In 2005, the Minnesota Legislature passed a law that mandates the compulsory and warrantless collection of DNA samples from persons who have not been convicted of any crime.

11. The statute requires sheriffs and other law enforcement personnel to take DNA samples from “persons who have appeared in court and have had a judicial probable cause determination on a charge of committing” certain felony offenses. Minn. Stat. § 299C.105, subd. 1(a)(1). The offenses include second degree assault under Minn. Stat. § 609.222. Minn. Stat. § 299C.105, subd. 1(a)(1)(iii).

12. The statute also requires taking DNA samples from juveniles who have similarly appeared in court and have had a judicial probable cause determination on a charge of committing one or more of the enumerated offenses. Minn. Stat. § 299C.105, subd. 1(a)(3).

13. The statute does not require probable cause that the DNA sample will yield evidence of a crime. Nor does the statute require any showing that the DNA sample will be used in the prosecution of the crime for which the individual has been arrested.

**B. The Sheriff Resumes Collection of Pre-Conviction DNA Samples**

14. In 2006, shortly after the law went into effect, the Minnesota Court of Appeals held that the DNA-collection statute violated both the Fourth Amendment to the United States Constitution and Article 1, Section 10 of the Minnesota Constitution. *C.T.L.*, 722 N.W.2d 484.

15. In 2015, the Sheriff announced that he would resume enforcement of the DNA-collection statute based on *King*, 569 U.S. \_\_\_, 133 S. Ct. 1958. Relying on the Dakota County Attorney's legal analysis, the Sheriff contended that *King* "overrides the decision of the Minnesota Court of Appeals," and that the inoperative provisions of Minn. Stat. § 299C.105 "once again became valid law" because the statute "was never repealed."

16. On information and belief, on August 3, 2015, the Sheriff implemented a booking procedure to enforce the DNA-collection statute. Under the procedure, the Sheriff and his agents collect DNA samples from defendants after they make their first appearance in court and a judicial probable cause determination has been made.

**C. The District Court Enjoins the Sheriff from Taking a Pre-Conviction DNA Sample from Emerson**

17. On January 14, 2016, Dakota County charged John David Emerson by complaint with one count of second degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2016). The district court found probable cause for the charge. Emerson was arrested.

18. On January 15, 2016, Emerson made his first appearance in court. At his first appearance, Emerson's defense counsel moved to preclude the Sheriff from taking a pre-conviction DNA sample. The district court granted the motion, and issued an oral order restraining the Dakota County Sheriff from taking a pre-conviction DNA sample from Emerson.

19. On January 21, 2016, in accordance with the oral order, the district court issued written findings of facts, order, and supporting memorandum. Among other things, the district court concluded that the collection of pre-conviction DNA samples under Minn. Stat. § 299C.105 violated Article 1, Section 10 of the Minnesota Constitution.

**D. The Dakota County Sheriff Appeals the District Court's Order**

20. On February 19, 2016, the Sheriff petitioned the Minnesota Court of Appeals for a writ of prohibition that would restrain the district court from enforcing its order against the Sheriff. The court of appeals denied the petition.

21. On January 17, 2017, the Minnesota Supreme Court reversed the court of appeals, and granted the Sheriff's petition for the writ of prohibition. The Minnesota

Supreme Court held that the district court had subject matter jurisdiction to hear and decide Emerson's motion, "but it exceeded its lawful authority when it used the wrong procedure to address Emerson's constitutional challenge to the DNA-collection statute." *In re Leslie v. Emerson*, 889 N.W.2d 13, 17 (Minn. 2017). The court held that a civil action was the proper way to challenge the Sheriff's enforcement of the DNA-collection statute.

22. Accordingly, the Minnesota Supreme Court granted the requested prohibition, but did so "without prejudice to either party's right to seek appropriate judicial relief in a separate civil proceeding." *Id.* at 17.

**E. The Sheriff Once Again Reinstates its Policy of Collecting Pre-Conviction DNA Samples**

23. On January 19, 2017—two days after the writ of prohibition issued—the Sheriff announced that his office had "reinstated its procedure to collect DNA from those individuals who meet the criteria in Minnesota Statutes Section 299C.105." According to the Sheriff, Dakota County was "the first and only Sheriff's Office in Minnesota to once again begin the collection of DNA samples."

24. As of the date of this Complaint, the Sheriff has not taken a pre-conviction DNA sample from Emerson under the authority of Minn. Stat. § 299C.105. The second degree assault charge against Emerson remains pending. He has not been convicted of second degree assault.

25. Emerson is scheduled to appear in court for trial on July 17, 2017. On information and belief, at or before his next court appearance, the Sheriff will take or cause to be taken a DNA sample from Emerson pursuant to the DNA-collection statute.

26. The Sheriff cannot take Emerson's pre-conviction DNA sample because no valid law in Minnesota authorizes the Sheriff's policy. And, even if the Sheriff's policy were authorized, the compulsory and warrantless extraction of a pre-conviction DNA sample from Emerson violates Article 1, Section 10 of the Minnesota Constitution.

27. If not enjoined by this Court, the Sheriff will violate Emerson's constitutional rights by enforcing the DNA-collection statute. Such enforcement will impose irreparable injury on Emerson, and he has no plain, speedy, and adequate remedy at law.

**CLAIM 1:**  
**REQUEST FOR DECLARATORY JUDGMENT (MINN. STAT. § 555.01)**

28. Emerson incorporates the preceding paragraphs by reference.

29. Article 1, Section 10 of the Minnesota Constitution provides, in relevant part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated."

30. Pursuant to Minn. Stat. § 299C.105, the Sheriff has instituted a policy that mandates the collection of DNA samples from persons who have been charged with, but not convicted of, certain offenses.

31. Pursuant to that policy, the Sheriff will take or cause to be taken a DNA sample from Emerson at or before his next court appearance on July 17.

32. The compulsory and warrantless extraction of a pre-conviction DNA sample from Emerson is unlawful and unconstitutional because there is no valid law in Minnesota authorizing the Sheriff's policy. The DNA-collection statute was declared unconstitutional by the Minnesota Court of Appeals in 2006. No valid law authorizes the Sheriff's collection of a pre-conviction DNA sample from Emerson without a warrant.

33. Even if the Sheriff's conduct were authorized by valid law, the compulsory and warrantless extraction of a pre-conviction DNA sample from Emerson pursuant to Minn. Stat. § 299C.105 is an unreasonable search and seizure under Article 1, Section 10 of the Minnesota Constitution.

34. An actual and substantial controversy exists between Emerson and the Sheriff as to their respective legal rights and duties. Emerson contends that the Sheriff's enforcement of the DNA-collection statute is unlawful and unconstitutional. The Sheriff contends the opposite.

35. This Court should resolve this controversy and afford Emerson relief from uncertainty and insecurity with respect to his rights by declaring that the compulsory and warrantless extraction of pre-conviction DNA samples pursuant to Minn. Stat. § 299C.105 is unlawful and unconstitutional.

**CLAIM 2:**  
**REQUEST FOR TEMPORARY INJUNCTION<sup>1</sup>**

36. Emerson incorporates the preceding paragraphs by reference.

37. Emerson has shown a likelihood of success on the merits.

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<sup>1</sup> Emerson is filing a motion for a temporary injunction and memorandum in support of the same simultaneously with this Complaint.



38. Emerson will be irreparably harmed if enforcement of the DNA-collection statute by the Sheriff is not enjoined during the pendency of this lawsuit because his constitutional rights will be violated. The Sheriff will suffer no comparable harm.

39. A temporary injunction will maintain the status quo of the parties' relationship.

40. A temporary injunction will advance the public interest.

41. Granting injunctive relief will not create any administrative burden on the Court.

42. Emerson is therefore entitled to a temporary injunction that enjoins the Dakota County Sheriff from collecting a pre-conviction DNA sample from him until the merits of this case are decided and all appeals are exhausted.

**CLAIM 3:**  
**REQUEST FOR PERMANENT INJUNCTION**

43. Plaintiff incorporates by reference the preceding paragraphs.

44. The compulsory and warrantless extraction of a pre-conviction DNA sample from Emerson is unlawful and unconstitutional because there is no valid law in Minnesota authorizing the Sheriff's policy.

45. The compulsory and warrantless extraction of pre-conviction DNA samples pursuant to Minn. Stat. § 299C.105 is an unreasonable search and seizure under Article 1, Section 10 of the Minnesota Constitution.

46. Emerson thus seeks the entry of a permanent injunction that enjoins the Sheriff from collecting a pre-conviction DNA sample from him.

**PRAYER FOR RELIEF**

**WHEREFORE**, Emerson respectfully requests that this Court:

47. issue a judgment declaring that: (i) the Sheriff's compulsory and warrantless extraction of pre-conviction DNA samples is unlawful and unconstitutional because there is no valid law in Minnesota authorizing the Sheriff's policy; or, alternatively, (ii) issue a judgment declaring that Minn. Stat. § 299C.105 violates Article 1, Section 10 of the Minnesota Constitution;

48. grant a temporary injunction under Minn. R. Civ. P. 65.02 that enjoins the Sheriff from collecting a pre-conviction DNA sample from Emerson until the merits of this case are decided and all appeals are exhausted;

49. permanently enjoin the Sheriff from collecting a pre-conviction DNA sample from Emerson;

50. award Emerson the costs of bringing this suit under Minn. Stat. § 555.10;  
and

51. award all other relief that the Court deems just and equitable.

Dated: April 28, 2017

**FAEGRE BAKER DANIELS LLP**

/s/ Peter J. Farrell

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**ACKNOWLEDGMENT REQUIRED BY  
MINN. STAT. § 549.211, SUBD. 1**

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

Dated: April 28, 2017

**FAEGRE BAKER DANIELS LLP**

/s/ Peter J. Farrell

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