

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Arnold Baker, et al. on behalf of themselves and
others similarly situated,

62-CV-20-5143
ORDER

Petitioners,

v.

Minnesota Department of Corrections, Paul
Schnell, Commissioner, in his official capacity,
Minnesota Department of Health, Commissioner
Jan Malcolm, in her official capacity, and
Governor Tim Walz, in his official capacity,

Respondents.

THE ABOVE-CAPTIONED MATTER came before the undersigned on July 2, 2021, on Respondents' motion to dismiss and Petitioners' motion for a temporary injunction. Dan Shulman, appeared on behalf of the Petitioners, along with Teresa Nelson, Ian Bratlie, Isabella Salomão Nascimento, Clare Diegel, and Cathryn Middlebrook. Cicely Miltich appeared on behalf of the Respondents along with Stephen Forrest. All appearances were made remotely via Zoom due to the ongoing COVID-19 pandemic.

Based on all the files, records, and proceedings herein:

IT IS HEREBY ORDERED that

1. The Respondents' motion to dismiss for failure to state a claim is granted.
2. The Petitioners' motion for a temporary injunction is denied.
3. The attached memorandum is incorporated herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: September 27, 2021

Sara R. Grewing
Judge of District Court

BACKGROUND

Petitioners, on behalf of themselves and a purported class of all inmates within the custody or control of the Minnesota Department of Corrections (“DOC”), filed a petition for a writ of mandamus on October 22, 2020. Index #1. The petition challenged the adequacy of the DOC’s response to COVID-19. Petitioners sought a writ of mandamus ordering the DOC to perform its “official duty to protect Petitioners from COVID-19.” *Id.* ¶¶ 126, 128-29. On October 23, Petitioners also filed a motion for class certification. Index #23.

On December 10, 2020, Petitioners filed their first Amended and Supplemental Petition. Petitioners challenged the adequacy of various aspects of DOC’s response to the COVID-19 pandemic and sought relief in the form of a writ of mandamus ordering DOC to perform its “official duty to protect Petitioners from COVID-19.” Index #44 ¶¶ 136, 138-39. Petitioners also sought a writ of mandamus ordering DOC to “use its best efforts to obtain a sufficient quantity of vaccine” to vaccinate all staff having contact with prisoners, all prisoners who had not yet contracted COVID-19, and new prisoners entering DOC’s correctional facilities. *Id.* ¶¶ 151-52.

The Court issued its first order in this case on December 10, 2020, in an alternative writ of mandamus and order to show cause ordering DOC to appear and show cause why it should not be ordered to keep Petitioners safe from COVID-19. Order at 10. In response to the Court’s order to show cause, DOC filed sworn declaration testimony and exhibits setting forth the steps it had taken to respond to the global COVID-19 pandemic. *See generally* Index #58-Index #82.

On February 10, 2021, Petitioners moved for leave to file a second amended petition to add new parties and new claims related to vaccine priorities for inmates. Index #104. After hearings on Petitioners’ motion for class certification, the order to show cause, and Petitioners’ motion to amend, the Court issued an order on March 31, 2021 (“Order”) granting Petitioners’ motion for

class certification, denying Petitioners' request for a writ of mandamus related to DOC's response to COVID-19, and granting Petitioners' motion to amend to add new parties and new claims for injunctive and declaratory relief related to vaccines.

Petitioners filed their Second Amended and Supplemental Petition ("Petition") on April 1, 2021, naming as Respondents DOC, DOC Commissioner Paul Schnell, Governor Tim Walz, MDH, and the Minnesota Department of Health ("MDH") Commissioner Jan Malcolm. The Petition alleges that Respondents failed to "arrange to vaccinate prisoners on a priority equivalent to the priority of comparable civilians, such as seniors, persons in congregate care settings, and persons susceptible to COVID-19 because of pre-existing conditions." Pet. ¶¶ 120, 124, 140-41. Specifically, the Petition alleges that Petitioners were "not included in Phase 1a vaccination" and that "Minnesota has not yet completed Phase 1a." *Id.* ¶ 53.

Petitioners now seek a declaration that "prioritizing those living in congregate care facilities and those working in prisons for COVID-19 vaccinations, but denying the same priority to those living in correction settings" constitutes cruel and unusual punishment under the Minnesota Constitution. *Id.* ¶ 155. Petitioners also seek a declaration that this same prioritization denies them equal protection and due process under the Minnesota Constitution. *Id.* ¶ 160. Petitioners ask the Court to enjoin Respondents from "continuing to fail and refuse to vaccinate Petitioners and the class against COVID-19." *Id.* ¶¶ 157, 162.

FACTS

The Court incorporates the facts found in its orders of December 11, 2020, and March 31, 2021. Particularly relevant to these underlying motions is the process through which Respondents determined the statewide vaccination schedule for COVID-19. The MDH formed a COVID-19 Vaccine Allocation Advisory Group in September 2020. Miltich Decl., Ex. 1. The MDH Advisory

Group consisted of experts who reviewed guidance from the United States Centers for Disease Control and Prevention’s Advisory Committee on Immunization Practices (“ACIP”) about who should get the limited supply of vaccines first. *Id.* The vaccine delivery process began in December 2020 with Phase 1a of the state’s vaccine priority list. *Id.* During that time, the DOC offered vaccines to its inmates who were living in the equivalent of long-term care facilities, consistent with statewide eligibility in 1a. *Id.* Ex. 4 at 3. Beginning in January 2021, Respondents began issuing recommendations for the allocation of vaccines in Phases 1b and 1c. *Id.*, Ex. 5. Phase 1b was initially determined to be those age 75 years and older as well as non-health care frontline essential workers. *Id.* The ACIP revised those recommendations in January, issuing guidance that vaccine eligibility be expanded in Phase 1b to include everyone 65 years of age and older as well as educators. *Id.*, Ex. 6. The DOC offered vaccines to its residents on the same schedule as the statewide priority list.

The MDH Advisory Group, in turn, made recommendations based on the ACIP’s guidance, and MDH and the Governor announced the populations that would be included in Phase 1b and 1c priorities for Minnesota on March 2, 2021. *Id.*, Ex. 7. Phase 1b included people aged 65 and older, people with certain underlying medical conditions, and certain essential workers. *Id.*, Ex. 3 at 3. Phase 1b was further sub-prioritized. Tier 1 included individuals ages 65 and older as well as essential workers in child-care and school settings. *Id.* Tier 2 included individuals with certain serious medical conditions and essential workers at food processing facilities. *Id.* Tier 3 included individuals with other medical conditions, various essential workers, and “[a]ll staff that work in correctional settings including state prisons, jails, and juvenile justice facilities” as well as “[i]nmates in prisons, jails, and juvenile justice facilities.” *Id.*, Ex. 3 at 3, 5. Tier 4 included all individuals between the ages of 50 and 64, as well as younger people with certain health conditions.

By April 9, the DOC had offered vaccinations to all of the inmates who wanted them. Amsterdam Decl. ¶ 8. The vaccination process remains ongoing. Inmates are asked within 24 hours of admission if they are fully or partially vaccinated and if they wish to be vaccinated. *Id.* at ¶ 10. The DOC has also held at least 16 vaccine events at MCF-St. Cloud and 17 at MCF-Shakopee for individuals who had previously refused the vaccine. *Id.* Individuals who had previously refused the vaccine can also reach out to health services to get vaccinated at any time. *Id.*

The DOC also continues to encourage vaccine-hesitant individuals to get their shots. In December 2020, the DOC posted a publication in its facilities entitled “All of Our Tools.” Amsterdam Second Decl. at 12 (a). Among other things, the publication encouraged offenders to be vaccinated as one of the tools necessary to get “back to normal” sooner. *Id.* Also in December, the DOC launched a “Who’s With Me?” campaign that displays photos of inmates from a diversity of backgrounds who were pledging to get the vaccine. *Id.* At least eleven additional fact sheets and publications followed over the next few months. *Id.* The DOC also issued co-pay and coffee incentives to encourage vaccination, and Dr. Amsterdam, the DOC’s medical director, posted an eight-minute video to the TV network at DOC facilities, which walked incarcerated individuals through the benefits of vaccination. An additional video followed from Dr. Verna Price, Brother Shane Michael Price from the Power of People Leadership Institute, accompanied by Kelly Robinson, a Registered Nurse and member of “Black Nurses Rock,” directed specifically at inmates who were skeptical of vaccination. Amsterdam Third Decl. at 6. The video dispels some misinformation about vaccination and encourages offenders to be vaccinated. *Id.*¹ The DOC’s executive team, including the Commissioner, has also met one-on-one with individuals hesitant about vaccination. *Id.*

¹ The Court viewed the video from Dr. and Brother Price and Ms. Robinson in its entirety. The presenters struck this Court as thoughtful, deeply compassionate, and culturally competent. *See* MN DOC Communications, *Dr. Verna Price, Brother Shane Price, and RN Kelly Robinson*, YOUTUBE (Apr. 27, 2021), <https://www.youtube.com/watch?v=gFwFDtk1xr8>.

There is some dispute in the record about whether Petitioners truly received the educational information provided by the DOC. Mr. Liban Abdirahman, for example, said he saw something on a bulletin board about the vaccine, and received a fact sheet when he got his shot. Mr. Fitch said he saw something on a bulletin board, and saw a video, with the sound too low. Mr. Bluestone said Commissioner Schnell was at his vaccination event in April, where the Commissioner personally encouraged inmates to get vaccinated. *See* Decls. Ronald Habedank ¶¶ 3–4, Dale Fitch ¶ 9, Liban Abdirahman ¶¶ 5–11, Marshawn Winston ¶ 3, Elijah Milsap ¶¶ 1–4, Ardelle Manthey ¶¶ 2, 5, Gunner Bluestone ¶¶ 17, 21, Nathaniel Moore ¶¶ 3–10, Adrian Riley ¶ 2, and Charles Jackson ¶ 2. Moreover, prisoners do acknowledge receiving “Emergency Use Authorization” (“EUA”) which was an FDA mandated hand-out applicable to the Johnson & Johnson (“J&J”) vaccine. The J&J EUA hand-out was wholly silent about the benefits of vaccination. *Id.*

As of September 9, 2021, 76% of individuals who are committed to the Commissioner of Corrections have been vaccinated. Letter from Cicely Miltich to Ct. (Sept. 15, 2021). In addition, under a new statewide policy that went into effect on September 8, 2021, all DOC employees who work at state facilities must either be fully vaccinated or must be tested for COVID-19 at least weekly. Unvaccinated staff who refuse to undergo a weekly COVID-19 test will not be allowed into the workplace, may be placed on unpaid leave, and may be subject to disciplinary action. *Id.*

The DOC’s vaccination rates are ahead of both the general public and other similarly-situated prison systems. For example, only 67.6% of all eligible Minnesotans have been vaccinated by September 9. *See Vaccine Data*, MINN. COVID-19 RESPONSE (last updated Sept. 22, 2021, 11:00 a.m.), <https://mn.gov/covid19/vaccine/data/index.jsp>. Similarly, 72% of individuals committed to Wisconsin’s Department of Corrections had been vaccinated by September 9. *See COVID-19 (Coronavirus): Persons in Our Care Dashboard*, WIS. DEP’T. OF CORR. (last updated Sept. 22, 2021, 4:00 p.m.), [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19TestingDashboard.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19TestingDashboard.aspx).

As of September 15, 2021, there were 41 active cases of COVID-19 among the 7,207 current inmates, which represents an active infection rate of about one-half of one percent. *See* Miltich Letter to Ct. (Sept. 15, 2021). For the same week, Minnesota’s general population positivity rate was six percent. *See COVID-19 Weekly Report*, MINN. DEP’T. HEALTH (last updated Sept. 23, 2021. 11:00 a.m.), <https://www.health.state.mn.us/diseases/coronavirus/stats/index.html#warchive1>.

ANALYSIS

I. Respondents’ Motion to Dismiss for Lack of Subject Matter Jurisdiction

Upon a challenge to the Court’s subject-matter jurisdiction under Minn. R. Civ. P. 12.02(a), the Court must first examine “whether it has the authority to hear the type of dispute and to grant the type of relief sought.” *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). On a motion to dismiss for lack of subject-matter jurisdiction, the Court can properly consider materials outside the complaint without converting the matter to an action for summary judgment. *See Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 325 n.4 (Minn. 2016).

A motion to dismiss under Minn. R. Civ. P. 12.02(e) “raises the single question of whether the complaint states a claim upon which relief can be granted.” *Martens v. Minn. Mining & Mfg.*, 616 N.W.2d 732, 739 (Minn. 2000). Dismissal is appropriate where it is clear from the face of the complaint that the claim is legally deficient. *Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. App. 1987). The Court must accept as true the facts alleged in the complaint and construes all reasonable inferences in favor of the nonmoving party. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). The Court is “not bound by legal conclusions stated in a complaint.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014).

Respondents argue that this matter is moot, and this Court must dismiss for lack of subject matter jurisdiction, essentially because the vaccination prioritization process has concluded. *See Resp. Br.* (citing *In re Schmidt*, 443 N.W.2d 824, 826 (Minn.1989)) (observing that when we are

unable to grant relief, the issue raised is deemed moot.) “It is a well-established rule in Minnesota that a court only has jurisdiction to issue a declaratory judgment if there is a justiciable controversy.” *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (emphasis added). The mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved. *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984). Rather, it is a “flexible discretionary doctrine.” *Id.* Mootness has been described as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). A matter should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible. *In re Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997).

Petitioners first ask that the Court stay Respondents’ motion to dismiss for lack of subject matter jurisdiction and order a separate evidentiary hearing. In the alternative, Petitioners argue that this matter should be treated as a motion for summary judgment. The Court declines to do so, because the documents setting forth vaccine priorities are embraced by the Petition. *See N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).

The Court is inclined to agree with Respondents that Petitioners’ primary issues are rendered moot by the fact that Minnesota’s vaccine prioritization has concluded, and all Minnesotans who wish to receive a vaccine are eligible.

Exception to Mootness

In addition to the concerns about the pandemic being ongoing, Petitioners argue that this case is not moot because it “implicates issues that are capable of repetition, yet likely to evade review,” and “is ‘functionally justiciable’ and is an important public issue ‘of statewide

significance that should be decided immediately.’” *Kahn* 701 N.W.2d at 821–22. Had the Court not reached its conclusion regarding the Motion to Dismiss for failure to state a claim, it would have found that the matter is of such statewide significance that a mootness exception applies. Because of the reasons cited below, however, that determination has no effect on the Court’s underlying conclusion.

II. Respondents’ Motion to Dismiss for Failure to State a Claim: Equal Protection

The Minnesota Constitution provides that “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Minn. Const. art. I, § 2. Petitioners’ equal protection claim is based on their allegation that Respondents prioritized “those living in congregate care facilities and those working in prisons for COVID-19 vaccination” over “prisoners living in correctional settings.” Pet. ¶ 160. Petitioners further allege that the failure to prioritize them in the vaccine distribution constitutes a denial of their right to equal protection because members of the class are people of color who are over-represented in the prison system.

Upon review of the publicly available documents contemplated by the Petition, the Court cannot rely on Petitioner’s assertion because it does not reflect how the vaccine rollout actually happened in Minnesota. Phase 1a prioritized residents of long-term care facilities, who were “adults who reside in facilities that provide a variety of services, including medical and personal care, to people who are unable to live independently.” Miltich Decl., Ex. 4. Inmates were not excluded from vaccines within this priority group. *Id.* Those who met the criteria of being unable to live independently were offered vaccines in Phase 1a. First Amsterdam Decl. ¶ 4. Similarly, DOC also offered COVID-19 vaccinations to inmates and staff who work as educators within DOC facilities on the basis that they were similarly situated to E-12 school staff who were identified as

frontline essential workers eligible to receive a vaccine as part of Tier 1 of Phase 1b. *Id.* ¶ 6. Then in Tier 3 of 1b, all others working and living in correctional facilities could get vaccinated. *Id.*

Petitioners insist that they have been treated differently and their equal protection rights have been violated. At its core, the threshold question in an equal protection claim is whether the claimant is treated differently from others to whom the claimant is similarly situated in all relevant respects.” *See State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (“[T]he Equal Protection Clause...keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.” “[T]he Equal Protection Clause does not require that the State treat persons who are differently situated as though they were the same.” *State v. Johnson*, 813 N.W.2d 1, 11 (Minn. 2012). “Prisoners are not similarly situated to non-prisoners.” *Murray v. Dosal*, 150 F.3d 814, 818 (8th Cir. 1998); *see also Reed v. Albaaj*, 723 N.W.2d 50, 55 (Minn. App. 2006) (holding that incarcerated servicemembers are not similarly situated to those that are not confined).

The Petition provides no explanation or analysis as to why, for example, all offenders housed in Minnesota’s prisons are similarly situated to individuals residing in long-term care facilities in the community. In keeping with CDC guidelines, Respondents made the determination that those Minnesotans “who are unable to live independently” should be prioritized for the vaccine in December 2020. Miltich Decl., Ex. 4. Similarly, incarcerated individuals who were unable to care for themselves, i.e., feed, dress or bathe themselves, were also vaccinated in December 2020. *See Amsterdam Decl.* ¶ 5.

What Petitioners ask this Court to find is that *all* Minnesotans committed to the Department of Corrections should have been vaccinated in Tier 1b, and failure to do so violates their constitutional rights. The Amended Petition does not allege how Minnesota’s prisons’ vulnerability to COVID-19 was similar to long-term care facilities or others who were prioritized

above the general population of inmates. As such, the Petitioners cannot succeed on their equal protection claim and the Court must grant Respondents' motion.

III. Petitioners' Cruel or Unusual Punishment Claim.

The Amended Petition also alleges that Respondents' failure to place Petitioners in the same vaccination priority as "those living in congregate care facilities and those working in prisons" violates the Cruel or Unusual Punishment Clause of the Minnesota Constitution and constituted "deliberate indifference" to their "health and safety." Pet. at 61-62. As discussed above, Petitioners' characterization of the vaccine priority rollout is not quite correct. But even if Petitioners were excluded from the same vaccination priority as those living in long-term care facilities and health care personnel, they still fail to state a claim on which relief can be granted under Minnesota's Cruel or Unusual Punishment Clause.

Minnesota courts apply the *Farmer* test in determining whether state action is cruel or unusual. *Haavisto v. Perpich*, 520 N.W.2d 727, 734 (Minn. 1994); *Farmer v. Brennan*, 511 U.S. 825, (1994). The *Farmer* test requires Petitioners to show that Respondents "have known of and disregarded an excessive risk to the inmates' health." *Haavisto*, 520 N.W. 2d at 734. "Ignorance is not enough to show deliberate indifference," but rather Petitioners must show that Respondents were "aware of a risk" and disregarded it. *Id.*

Here, the Court cannot conclude based on the Amended Petition that the allegations rise to the level of "deliberate indifference" required by *Farmer*. Further, while the Court is unconvinced that the DOC's "failure to educate" incarcerated Minnesotans is particularly relevant to the Motion to Dismiss, it certainly illustrates that the DOC was not deliberately indifferent. Had the DOC failed to make vaccines available when the incarcerated individuals were eligible, or had they scheduled vaccine events at particularly challenging times, perhaps the Court would be in a

different position. Instead, it appears that the DOC was the opposite of deliberately indifferent – it conducted outreach, shared communication, and sent the Commissioner and members of his executive staff onsite to convince vaccine-hesitant individuals to get the shot. While the Respondents may take issue with *how* the rollout was handled, it has alleged nothing that rises to the level of cruel and unusual punishment. Therefore, Petitioners cannot succeed on this claim as a matter of law and Respondents’ motion to dismiss is granted.

IV. Petitioners’ Due Process Claim.

The Amended Petition further asserts that the vaccination prioritization rollout deprived Petitioners of liberty and life without due process of law because they failed to protect Petitioners from COVID-19. Amend. Pet. at ¶ 66. A substantive due process claim requires Petitioners to establish they have a fundamental right at issue. *See Dean v. City of Winona*, 843 N.W.2d 249, 260 (Minn. App. 2014). Here, Petitioners do not allege that they have a fundamental right to receive the COVID-19 vaccine on the same schedule as that of residents of long-term care facilities and health care personnel. Similarly, to assert a viable procedural due process claim Petitioners must allege “a protected liberty or property interest is implicated” and then the Court can “determine what process is due by applying a balancing test.” *Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314, 319 (Minn. App. 2005). Petitioners have not met this threshold requirement because they do not allege they have a protected liberty or property interest in receiving a COVID-19 vaccination in the same priority as residents of long-term care facilities or health care personnel. Accordingly, Petitioners fail to state a due process claim.

Most importantly, the Court is not faced with a scenario where the DOC has failed to vaccinate incarcerated Minnesotans. Rather, Petitioners allege that they were not vaccinated quickly enough. With a vaccination rate that now outpaces Minnesotans outside of prison, the

Court cannot conclude that the Respondents acted in such a way that violates Petitioners' Constitutional rights.

V. Temporary Injunction

Petitioners further seek a temporary injunction from this Court. The Minnesota Supreme Court has outlined the factors that must be considered for temporary restraining order and temporary injunction requests: (1) the relationship between the parties before the dispute arose; (2) the harm plaintiff may suffer if the temporary restraining order is denied, compared to the harm inflicted on defendant if the temporary restraining order is granted; (3) the likelihood that the party will prevail on the merits; (4) public policy considerations; and (5) administrative burdens imposed on the court if the temporary restraining order issues. *Dahlberg Bros, Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965). *See also Bell v. Olson*, 424 N.W.2d 829, 831 (Minn. App. 1988).

Specifically, the Petitioners seek an injunction that would order Respondents as follows:

- (a) To reoffer COVID-19 vaccination to prisoners who have previously declined it;
- (b) As part of reoffering vaccination, to inform prisoners in writing of the risks and benefits of vaccination in the form of Exhibit A or Exhibit B to the Motion, or a substantial equivalent, and to provide prisoners the opportunity to have their questions answered by a qualified, knowledgeable staff member or health care professional;
- (c) To establish and provide incentives for prisoners to be vaccinated;
- (d) To provide similar services and opportunity for vaccination to all new prisoners;
- (e) To identify and provide continuing, appropriate medical treatment for prisoners who have recovered from COVID-19 but continue to suffer its long-term effect
- (f) To enforce assiduously Center for Disease Control ("CDC") and Minnesota Department of Health ("MDH") guidelines for prevention and protection from COVID-19 for Minnesota Department of Corrections ("DOC") prisoners and staff for the duration of the COVID-19 pandemic; and

- (g) To appoint a qualified monitor from the MDH to certify to the Court in writing on or before the 15th day of each month Respondents' full compliance with the Court's temporary injunction.

Pet. Mot. Temp. Inj. 2-3.

As noted above, the Court is dismissing the Amended Petition for failing to state a claim on which relief can be granted. As such, a *Dahlberg* analysis is unnecessary. Out of an abundance of caution, the Court notes for the reasons cited above that Petitioners are unlikely to succeed on the merits of their claims. Moreover, the relationship between the parties before the dispute arose would not change if the Court were to grant the petition, so that factor is neutral. The Petitioners would only suffer the harm of not having a monitor appointed if the temporary restraining order is denied, so that factor weighs in favor of denying the petition. There are significant public policy benefits in continued judicial involvement so that factor weighs in favor of granting the petition and finally there is substantial administrative burden in judicial monitoring of the Department of Corrections. As such, the temporary restraining order would otherwise also be denied.

The Court further notes that, other than appointing a monitor from the Minnesota Department of Health, the DOC has offered that it is already complying with all of the relief that Petitioners seek. As such, the Court remains hopeful that the Petitioners and Respondents can continue to work together to promote the health and safety of incarcerated Minnesotans statewide.