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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 BACKPAGE.COM, LLC et al.,

11 Plaintiffs,

12 v.

13 ROB MCKENNA, Attorney General for  
Washington State et al.,

14 Defendants.

CASE NO. C12-954 RSM

ORDER GRANTING DEFENDANT  
HAUGE'S MOTIONS TO DISMISS

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16 **I. INTRODUCTION**

17 This matter comes before the Court upon Defendant Russell D. Hauge's Motions to  
Dismiss (Dkt. ## 24, 37). For the reasons set forth below, Defendant's motions are GRANTED.

18 **II. BACKGROUND**

19 Plaintiffs challenged the constitutionality of Senate Bill 6251 prior to its scheduled  
20 enforcement date (Dkt. #1). The Complaint named as Defendants Washington State Attorney  
21 General Rob McKenna and 39 of the state's prosecuting attorneys. On July 27, 2012, the Court  
22 granted the Motion for Preliminary Injunction to enjoin enforcement of SB 6251 (Dkt. #69).  
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1 Senate Bill 6251 makes it a felony to knowingly publish, disseminate, or display, or to  
2 “directly or indirectly” cause content to be published, disseminated or displayed if it contains a  
3 “depiction of a minor” and any “explicit or implicit offer” of sex for “something of value.”  
4 Under the proposed law it is not a defense that the defendant did not know the age of the person  
5 depicted and the defendant may not rely on representation by, or the apparent age of, the person  
6 depicted. Though scheduled to go into effect on June 7, 2012, the Court ordered a temporary  
7 restraining order on June 5, 2012, which remained in effect until the Court issued its order  
8 granting a preliminary injunction. SB 6251 has never been enforced against Plaintiffs.

9 Plaintiffs First Amended Complaint sets forth three causes of action under 42 U.S.C. §  
10 1983: (1) Violation of Communications Decency Act; (2) Violation of the First and Fourteenth  
11 Amendments of the Constitution; and (3) Violation of the Commerce Clause of the Constitution  
12 (Dkt. #28, ¶ 1). Defendant Kitsap County Prosecuting Attorney Russell D. Hauge moved for  
13 dismissal of the 42 U.S.C. § 1983 claims against him pursuant to Fed. R. Civ. P. 12(b)(6).  
14 Defendant Hauge challenges only the § 1983 claims against him; he does not dispute Plaintiffs’  
15 right to challenge, pre-enforcement, the constitutionality of SB 6251, nor does he seek dismissal  
16 of Plaintiffs’ declaratory judgment action.

### 17 **III. DISCUSSION**

#### 18 **A. Standard of Review**

19 In considering a Rule 12(b)(6) motion to dismiss, the Court must determine whether the  
20 plaintiff has alleged sufficient facts to state a claim for relief which is “plausible on its face.”  
21 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
22 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff has pled “factual content that  
23 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
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1 | alleged.” *Id.* (citing *Twombly*, 550 U.S. 556). In making this assessment, the Court accepts all  
2 | facts alleged in the complaint as true, and makes all inferences in the light most favorable to the  
3 | non-moving party. *Baker v. Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009)  
4 | (internal citations omitted). The Court is not, however, bound to accept the plaintiff’s legal  
5 | conclusions. *Iqbal*, 129 S. Ct. at 1949-50. While detailed factual allegations are not necessary,  
6 | the plaintiff must provide more than “labels and conclusions” or a “formulaic recitation of the  
7 | elements of a cause of action.” *Twombly*, 550 U.S. at 555.

8 | **B. 42 U.S.C. § 1983**

9 | “Section 1983 provides a tort remedy against ‘[e]very person who, under color of [state  
10 | law] subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of  
11 | any rights, privileges, or immunities secured by the Constitution and laws.’” *Lacey v. Maricopa*  
12 | *Cnty.*, 2012 WL 3711591 \*6 (9th Cir. August 29, 2012) (quoting 42 U.S.C. §1983). Therefore,  
13 | to state a viable claim under § 1983, a plaintiff must allege the violation of a right secured by the  
14 | Constitution or laws of the United States, and show that the violation was committed by a person  
15 | acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 | The Court granted a temporary restraining order, followed by a preliminary injunction to  
17 | enjoin any application of SB 6251 prior to the date on which the bill was to be enforced. As the  
18 | bill has never been enforced, Plaintiffs cannot, as of yet, have suffered any violation of a  
19 | constitutionally protected right. Plaintiffs may endure a violation of some protected right if SB  
20 | 6251 is enforced against them at some future date. But Plaintiffs fail to direct the Court to any  
21 | precedent that stands for the proposition that a § 1983 claim is viable in the absence of an actual  
22 | violation of a protected right. Plaintiffs allege no facts from which the Court can conclude that  
23 | Defendant Hauge prosecuted Plaintiffs under the SB 6251 or that he caused a deprivation of a  
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1 | protected right while acting under color of state law. Accordingly, Plaintiffs' § 1983 claims  
2 | against Defendant Hauge must be dismissed.

3 | **IV. CONCLUSION**

4 | Having reviewed the relevant motions, responses, and replies thereto, and the remainder  
5 | of the record, the Court hereby finds and ORDERS:

6 | (1) Defendant's Motions to Dismiss (Dkt. ## 24, 37) are GRANTED, as set out above.

7 | (2) The Clerk is directed to forward a copy of this Order to plaintiffs and to all counsel  
8 | of record.

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10 | Dated September 18, 2012.

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14 | RICARDO S. MARTINEZ  
15 | UNITED STATES DISTRICT JUDGE