FILED
United States Court of Appeals
Tenth Circuit

September 3, 2025

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ANDREW THOMAS SCOTT,

Plaintiff - Appellant,

v.

MICHAEL ALLEN, in his official capacity as the District Attorney for the 4th Judicial District of Colorado; CHARLES DAVID HILLER; MATTHEW PACKARD,

Defendants - Appellees.

No. 24-1349

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:21-CV-02011-NYW-KAS)

Submitted on the briefs:*

Jason C. Kennedy, Esq., Montgomery Little & Soran PC, Greenwood Village, Colorado, for Plaintiff-Appellant.

Bryan E. Schmid and Nathan J. Whitney, Office of the County Attorney of El Paso County, Colorado, Colorado Springs, Colorado, for Defendants-Appellees.

Before **TYMKOVICH**, **BACHARACH**, and **PHILLIPS**, Circuit Judges.

---

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

TYMKOVICH, Circuit Judge.

Andrew Scott is a professional process server who was hired to serve a subpoena from the Colorado Department of Revenue on Colorado State Trooper Charles Hiller. After the attempted service became contentious, Trooper Hiller filed complaints against Scott with the Colorado Office of Private Investigator Licensure and the Process Servers Association of Colorado. In the complaints, Trooper Hiller alleged that Scott intentionally jeopardized his safety by including his personal information in an affidavit of service that was to be filed and available to the public. He claimed the disclosure violated the Colorado law prohibiting disclosure of law enforcement personal information, Colorado Revised Statute § 18-9-313(2.7). Although the Office of Private Investigator Licensure dismissed its complaint, the Association terminated Scott's membership because it believed he violated § 18-9-313(2.7).

After this episode, Scott decided to create a website that will publish allegations of police officer misconduct and otherwise publicize police officers accused of abusing the public trust. As part of his plan, Scott created a company called CopScore, LLC and a website called copscore.org on which he intends to allow people to publish information about officers who engage in "irresponsible or inappropriate conduct." In particular, he wants to publish video clips from the body

camera he wore while serving Trooper Hiller and the affidavit he served with the subpoena.

But he has not published any content on his website. Based on his interaction with Hiller and the Process Server Association, he fears that publication of information about peace officers could lead to his prosecution under § 18-9-313(2.7). The statute makes it unlawful to publish personal information about a "protected person" if the publisher knows or should know that disseminating the information could pose an "imminent and serious threat" to the protected person. COLO. REV. STAT. § 18-9-313(2.7). As a peace officer, Hiller is a protected person, and the affidavit and video contain personal information.

Scott sued his local District Attorney, Michael Allen, seeking a declaration that the statute is facially unconstitutional and unconstitutional as applied to him. The district court granted summary judgment and dismissed his complaint, concluding that he lacked standing to pursue a pre-enforcement challenge to the statute. It found that Scott did not show an injury in fact because he did not show that his conduct was "arguably proscribed" by the statute. In particular, the district court found that Scott conceded his conduct did not fall under the statute when, in his summary judgment briefing, he stated "there is no evidence that Mr. Scott knows or reasonably should know of [an] 'imminent and serious threat' to Trooper Hiller's safety from the publication of the Video and Affidavit of Service." App. 463. It also concluded that it could find no other evidence in the record of an imminent or serious

threat to Hiller resulting from the information. Because there was no evidence for that element of § 18-9-313(2.7), there was no injury in fact.

Scott appeals, and we **REVERSE**. First, we do not read Scott's claim of innocence to concede the lack of injury. "Nothing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014) [*SBA List*]. Second, we find sufficient evidence in the record to suggest that Scott's conduct is arguably prohibited by the statute. The Association terminated Scott's membership because it believed he violated the statute, and the district attorney for Colorado's Fourth Judicial District has refused to disavow any intention to prosecute under the statute. And Hiller himself claims that publishing his personal information would put him at threat from individuals he has interacted with as a peace officer.

Because we read the record to support that Scott's conduct is at least arguably proscribed by the statute and the statute credibly chills his desire to engage in protected speech, he has standing to pursue a pre-enforcement challenge to the statute under the First Amendment. We **REMAND** for further proceedings consistent with this opinion.

I. Background

Andrew Scott is a professional process server and a licensed private investigator in Colorado. He was hired to serve a subpoena from the Colorado Department of Revenue on Colorado State Trooper Charles Hiller. This subpoena

compelled Hiller to attend a virtual hearing. Scott attempted to coordinate with Trooper Hiller to serve the subpoena.

When coordination failed, Scott showed up to Trooper Hiller's house. Hiller's wife answered the door because Hiller refused to do so. She instructed Scott to travel to another location to attempt to serve the affidavit while Hiller was at work. In response, Scott explained to her the process of service by refusal, taped the subpoena to Trooper Hiller's door, and completed an affidavit of service by refusal. Scott captured all of this on video with a body-worn camera.

The affidavit contained Hiller's full name, date of birth, phone number, address, vehicle description, and license plate and his wife's name and date of birth. This information was recorded to corroborate that service was effective and ensure that the proper party was served. Scott emailed the affidavit to Joseph Maher, the attorney who requested service. Because the affidavit would be publicly filed, Scott asked Maher to redact Hiller's personal information before sending the affidavit to the Department of Revenue. Maher agreed.

Trooper Hiller then filed two administrative complaints against Scott: (1) one with the Colorado Department of Regulatory Agencies, Office of Private Investigator Licensure (OPIL), and (2) one with the Process Servers Association of Colorado. The complaints stated that Scott deliberately added Hiller and Hiller's wife's personal information to the affidavit "knowing the 'criminals will see' it." App. 207, 241. OPIL dismissed its complaint, but the Association found that Scott had violated the Association's code of conduct by failing to follow the Association's code of

ethics that requires "any/all applicable civil statutes pertaining to the service and return of service of civil process shall be observed at all times." App. 424. The Association sent Scott a letter of expulsion and attached a copy of Colorado Revised Statute § 18-9-313(2.7).

Colorado Revised Statute § 18-9-313(2.7) makes it illegal to make available on the internet personal information about a protected person or their family if that information could create an imminent and serious threat to the protected person. COLO. REV. STAT. § 18-9-313(2.7). But the statute criminalizes such acts only if the person making the information available knows or should know of the threat. In full, the statute reads:

> It is unlawful for a person to knowingly make available on the internet personal information about a protected person or the protected person's immediate family if the dissemination of personal information poses an imminent and serious threat to the protected person's safety or the safety of the protected person's immediate family and the person making the information available on the internet knows or reasonably should know of the imminent and serious threat.

Id.

Scott wants to defend himself against the allegations in the complaint and the Association's termination of membership; advocate that Trooper Hiller, because he made "vindictive and demonstrably false accusations, is unworthy of the trust confided in him by the people of Colorado," App. 347; and provide the public an opportunity to hold accountable police officers who engage in "irresponsible or inappropriate conduct," *id*. at 354. To these ends, Scott intends two actions: (1) he

wants to publish the affidavit of service and bodycam video on the internet, and (2) he wants to develop copscore.org to help serve process and subpoenas on law enforcement and hold police officers accountable for their conduct. Scott purchased the domain copscore.org and has spent $30,000 developing the website.

But Scott claims he has not consummated his plans because of the threat of prosecution under § 18-9-313(2.7). Because of this threat, he sued Trooper Hiller, Hiller's supervisor, and District Attorney Michael Allen in their individual and official capacities, seeking a declaration that the statute is unconstitutional.

The defendants moved to dismiss, challenging the court's subject matter jurisdiction. The district court dismissed the claims against Hiller and his supervisor in their entirety. But the court declined to dismiss the suit against Allen in his official capacity. At the time, both the magistrate judge's report and recommendation and the district court's order adopting the recommendations found that Scott had standing to seek a pre-enforcement declaration.

After discovery, both parties then filed motions for summary judgment, but the district court did not reach the merits. Instead, it held, *sua sponte*, that Scott lacked standing and dismissed his claims. The district court reasoned that the statute requires there to be an "imminent and serious threat" to Hiller's safety that Scott "knows or reasonably should know of." COLO. REV. STAT. § 18-9-313(2.7). But in his summary judgment briefing, Scott stated that "there is no evidence that Mr. Scott knows or reasonably should know of [an] 'imminent and serious threat' to Trooper Hiller's safety from the publication of the Video and Affidavit of Service." App.

463. The district court took this statement and the lack of record evidence of an imminent and serious threat to Hiller's safety and concluded that Scott had failed to show that his conduct was arguably prohibited by the statute. It found that the serious and imminent threat and the knowledge thereof are both elements of the statute and Scott's statement contradicted his claim that the statute arguably applied to his proposed conduct. Without conduct arguably proscribed by the statute, the district court concluded that Scott failed to show an injury in fact and therefore lacked pre-enforcement standing. App. 497 (citing *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1175 (10th Cir. 2021), *rev'd on other grounds*, 600 U.S. 570 (2023)).

II. Discussion

Scott raises a number of issues on appeal: (1) did the district court err in deciding standing *sua sponte* without briefing and argument from the parties; (2) does Scott have Article III standing; (3) did the district court err by determining Scott's as-applied claim is unripe; (4) is the statute facially unconstitutional; and (5) is the statute unconstitutional as applied.

We address each in turn.

A. Standing

Scott first argues that the district court's standing ruling was erroneous for two reasons: (1) he was not given a chance to prove his standing at the summary judgment stage, and (2) he need not confess that he wishes to violate the law to have standing. We review questions of standing de novo. *303 Creative*, 6 F.4th at 1171–72.

Standing is a prerequisite to a federal court's subject matter jurisdiction. Without a direct and concrete injury, a plaintiff cannot establish jurisdiction to pursue a cause of action. In most cases, a constitutional challenge to most statutes comes after an individual has been directly harmed by government enforcement. A special exception exists, however, that allows *pre-enforcement* challenges to laws that might chill an individual's expression of his First Amendment rights even before government action. Scott claims the threat of prosecution is credible and therefore chills his First Amendment rights.

1. District Court's Standing Inquiry

Scott first claims that the district court denied his day in court by ruling on the Article III standing inquiry without notice to the parties or adequate briefing and argument by the parties. But the district court did not err in *sua sponte* addressing its subject matter jurisdiction. "It is well established that any party, including the court *sua sponte*, can raise the issue of standing for the first time at any stage of the litigation." *New England Health Care Emps. Pension Fund v. Woodruff*, 512 F.3d 1283, 1288 (10th Cir. 2008).

The district court not only *can* address its own standing, it *must*. *United States v. Colo. Supreme Ct.*, 87 F.3d 1161, 1166 (10th Cir. 1996) (citations omitted) ("A federal court does not have jurisdiction over a case if the plaintiff does not have standing, and a court must raise the standing issue *sua sponte*, if necessary, in order to determine if it has jurisdiction." (citation omitted)). Scott is correct that the district court may order supplemental briefing, but it need not do so. *See Schmeling*

v. NORDAM, 97 F.3d 1336, 1338 n.1 (10th Cir. 1996) ("In certain circumstances, we might request additional briefing before deciding a jurisdictional question not squarely raised by the parties, but in this case, we see no need to do so.").

Because both parties moved for summary judgment, there is no reason to believe that the record was inadequate to determine standing.

2. Pre-Enforcement Standing

Article III of the Constitution limits federal court jurisdiction to cases and controversies. *SBA List*, 573 U.S. at 157 (quoting U.S. CONST. art. III, § 2); *Peck v. McCann*, 43 F.4th 1116, 1129 (10th Cir. 2022). To have standing, a plaintiff must show injury in fact, causation, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The district court concluded that Scott's apparent concession that his conduct does not fall under the statute meant he could claim no injury from future intended conduct. The injury in fact requirement is the only element at issue here.

Injury in fact helps ensure that the plaintiff has a personal stake in the outcome. *SBA List*, 573 U.S. at 158. While a sufficient injury "must be 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical,'" *id.* (quoting *Lujan*, 504 U.S. at 560), we have held in certain circumstances that a credible threat of future prosecution is sufficient to prove standing. *Id.*

To prove injury in fact for purposes of pre-enforcement standing, a plaintiff must show "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of

prosecution thereunder." *Id.* at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). Put another way, the plaintiff may show "'a credible threat of future prosecution' plus an 'ongoing injury resulting from the statute's chilling effect on his desire to exercise his First Amendment rights.'" *Peck*, 43 F.4th at 1129 (quoting *Ward v. Utah*, 321 F.3d 1263, 1267 (10th Cir. 2003). To show that a chilling effect is sufficiently concrete and particularized, plaintiffs can produce "(1) evidence that in the past they have engaged in the type of speech affected by the challenged government action; (2) affidavits or testimony stating a present desire, though no specific plans, to engage in such speech; and (3) a plausible claim that they presently have no intention to do so because of a credible threat that the statute will be enforced." *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082,1089 (10th Cir. 2006).[1]

We have further held that "the First Amendment context creates unique interests that lead us to apply the standing requirements somewhat more leniently,

[1] Although the *SBA List* and *Walker* standards vary in terminology, we have cited them together as though they are alternative formulations of the same test. *See, e.g.*, *303 Creative*, 6 F.4th at 1171–72 (citing both *SBA List* and *Walker*), *Peck*, 43 F.4th at 1129–1131 (same), and *Chiles v. Salazar*, 116 F.4th 1178, 1195 (10th Cir. 2024) (citing *Peck* for both standards), *cert. granted*, 145 S. Ct. 1328 (2025). We need not decide today whether *Walker* and *SBA List* are consistent, because *Walker*'s requirement that plaintiffs show past, present, or future desire to engage in "the type of speech affected by the challenged government action," *Walker*, 450 F.3d at 1089, is similar enough to *SBA List*'s requirement that plaintiff's conduct be "arguably proscribed by the statute," *SBA List*, 573 U.S. at 162 (citation modified) (quoting *Babbitt*, 442 U.S. at 298). If and when these formulations clash, we of course are bound by Supreme Court precedent.

facilitating pre-enforcement suits." *Peck*, 43 F.4th at 1129. Still, the burden is on the plaintiff to show standing. *See id.*; *303 Creative*, 6 F.4th at 1171.

Allen argues, and the district court agreed, that Scott did not meet that burden. Allen echoes the district court's argument that the statute requires two elements: (1) an "imminent and serious threat," of harm to a peace officer; and (2) the defendant "knows or reasonably should know of the imminent and serious threat." COLO. REV. STAT. § 18-9-313(2.7). He argues Scott did not provide any evidence that these elements were met. He emphasizes that "*each element must be supported* in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." Aple. Br. at 24–25 (quoting *Loving v. Boren*, 133 F.3d 771, 772 (10th Cir. 1998)). Allen argues that because Scott admitted "there is no evidence that Mr. Scott knows or reasonably should know of [an] 'imminent and serious threat' to Trooper Hiller's safety from the publication of the Video and Affidavit of Service," App. 463, that Scott lacks standing. And Allen asserts there is no evidence of any serious threat to Trooper Hiller at all and this should lead us to find that Scott's conduct is not proscribed by the statute. He concludes that the district court correctly determined that Scott conceded his lack of standing and that there was nothing in the record to save him from his concession.

That is a step too far under our pre-enforcement standing cases. *First*, we do not read Scott's statement of innocence to concede standing. *Second*, both Allen and the district court hold Scott to a higher standard than our precedent requires. *Finally*,

we conclude that the record supports that Scott's conduct is arguably proscribed by the statute and that Allen or other prosecutors might credibly enforce the statute against proscribed conduct.

As an initial matter, we do not read Scott's statement as a concession that he was not injured by the specter of criminal enforcement. In fact, "[n]othing in [the Supreme] Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate that law." *SBA List*, 573 U.S. at 163. Pre-enforcement standing exists precisely so "a plaintiff need not 'first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute.'" *Babbitt*, 442 U.S. at 302 (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

Scott's statement came in his response to Allen's motion for summary judgment. He was not arguing whether he had standing. He was simply arguing that the statute's mens rea requirement went well beyond other statutes criminalizing incitement and so was constitutionally suspect. He used his own situation as an example of the Hobson's choice he faced. We have not read plaintiff's claims of innocence or constitutional overbreadth to doom their entitlement to Article III standing.

SBA List is instructive. There, the Supreme Court examined a pre-enforcement challenge to a statute that prohibited false statements during an election. SBA List wanted to purchase a billboard that claimed Congressman Driehaus voted for taxpayer-funded abortion—a statement it believed to be true. The Sixth Circuit

denied standing precisely because the plaintiff organization did not say it "plans to lie or recklessly disregard the veracity of its speech." 573 U.S. at 163 (citation omitted). The Supreme Court rejected that argument, noting "SBA's insistence that the allegations in its press release were true did not prevent the Commission panel from finding probable cause to believe that SBA had violated the law." *Id.*

Similarly, in *303 Creative*, we took a hard look at pre-enforcement standing. The *303 Creative* plaintiff sought pre-enforcement relief because she feared Colorado's anti-discrimination laws would force her to make wedding websites that contradicted her religious beliefs. Neither party argued the conduct was not arguably prohibited. But we analyzed the issue precisely because "the parties stipulated to the district court that Appellants are 'willing to work with all people regardless of classifications such as race, creed, sexual orientation, and gender.' Thus, it might appear that Appellants have no exposure to liability under [Colorado law]." *303 Creative*, 6 F.4th at 1172 (citation omitted). But we did not read that stipulation to concede standing. Instead, we concluded that although some of the plaintiff's intended conduct may not have been covered by the statute at issue, at least some of it would.

The same is true here. Scott maintains his conduct would be lawful, but that does not mean he concedes that he lacks standing, nor that a prosecutor would see his conduct differently. Our cases require us to determine whether his conduct is arguably proscribed by the statute, exposing him to the risk of criminal liability should he speak.

Second, both Allen and the district court argue that Scott cannot show standing without showing evidence of an imminent or serious threat to Hiller about which Scott knows or should know. Allen argues that caselaw requires that "[p]laintiff must support each element." *Loving*, 133 F.3d at 772. But Allen confuses the elements of the statute with elements of standing. Scott need not prove each element of the statute at this stage. Rather, he must provide "facts related to the standing elements." *Id.*

But we do not require plaintiffs to present facts against their own innocence. *See 303 Creative*, 6 F.4th at 1171–72 ("Article III does not require the plaintiff to risk an actual arrest, prosecution, or other enforcement action." (quotation omitted)). In context here, Scott must provide facts that show his conduct is "arguably proscribed by the statute." *SBA List*, 573 U.S. at 162 (citation modified) (quoting *Babbitt*, 442 U.S. at 298). This is not a high bar in First Amendment cases. Scott need not show that his intended conduct *actually* violates the law, just that it *arguably* does. "Circuit and Supreme Court precedent tells us that this is not supposed to be a difficult bar for plaintiffs to clear in the First Amendment pre-enforcement context." *Peck*, 43 F.4th at 1133; *see also Mangual v. Rotger-Sabat*, 317 F.3d 45, 57 (1st Cir. 2003) ("As to whether a First Amendment plaintiff faces a credible threat of prosecution*, the evidentiary bar that must be met is extremely low*. . . . The Supreme Court has often found standing to challenge criminal statutes on First Amendment grounds even when those statutes have never been enforced." (emphasis added)).

Finally, Scott meets this test. Based on the undisputed facts from the district court's order, at least one professional association believes that Scott violated the statute, and the District Attorney himself refuses to disavow that Scott's intended actions do not fall under the statute. Trooper Hiller's complaints to OPIL and the Association both asserted that Scott "deliberately and intentionally" added personal information to the affidavit "to jeopardize [Hiller's] safety, along with [his] family's safety." App. 489. The Association agreed. The district court found that "[t]he Association explicitly found that Mr. Scott violated 'the Colorado Revised Statute regarding disclosure of law enforcement personal information' and attached a copy of the Statute." *Id.* While Trooper Hiller did not make a criminal complaint against Scott, he "reserve[d] the right" to do so. App. 70.

Similarly, the District Attorney himself does not disavow the possibility of a future prosecution. Allen, in discovery, stated that his office had never threatened prosecution under the statute, App. 83, but acknowledged in his motion to dismiss that he has "not disavowed any possibility of future prosecution." App. 79. When we consider credible threat of prosecution, "non-disavowal of future enforcement remains a relevant factor for courts to consider in determining standing." *303 Creative*, 4 F.4th at 1174.[2]

[2] Cases in which we find no standing often result from a prosecutor either refusing to prosecute or determining that the acts are not proscribed by statute. *See, e.g.*, *Brown v. Buhman*, 822 F.3d 1151, 1171 (10th Cir. 2016) (finding a case moot where the prosecutor "announced an office policy that would prevent prosecution of the Browns and others similarly situated in the future."); *Winsness v. Yocom*, 433

In sum, we must determine whether Scott's conduct is arguably proscribed by the statute and risks a credible threat of prosecution if he engages in the conduct set forth in the complaint.[3] The undisputed facts here show that Scott has already been chilled in pursuing his speech rights by allegations that he violated the statute; no evidence suggests that prosecutors would pass if pressed by peace officers to take action if Scott proceeds as he intends. We are convinced that Scott's proposed conduct is deterred by the statutory prohibition such that it "affect[s] him in a personal and individual manner." *Loving*, 133 F.3d at 773.

B. Ripeness

In a footnote at the end of its order, the district court also suggests that Scott's as-applied claim is unripe: "[b]ecause the Court concludes that Plaintiff lacks the requisite injury in fact to confer Article III standing, the Court will not extensively

---

F.3d 727, 735–36 (10th Cir. 2006) (finding no chilling effect where "District Attorney David Yocom has filed an affidavit stating that '[u]nless and until the constitutional doubts about the Utah statute are eliminated through a constitutional amendment or a new decision of the United States Supreme Court, I have no intention of prosecuting Ken Larsen or anyone else under the statute.'"); *PeTA v. Rasmussen*, 298 F.3d 1198, 1203 (10th Cir. 2002) (no standing to assert claims for prospective relief when defendants admitted that they threatened plaintiff's members with arrest due to misinterpretation of challenged statute); *Faustin v. City of Denver*, 268 F.3d 942, 946 (10th Cir. 2001) (no standing where "City Prosecutor determined that the posting ordinance did not apply" to the plaintiff).

[3] At the motion to dismiss stage, the district court found that Scott's fear of prosecution was credible. It did not disturb that finding at summary judgment. And Allen agrees that "Scott's fear of prosecution is credible, as the District Court found." Aple. Br. at 27.

analyze Defendant's argument, but concurs that any as-applied challenge is not ripe." App. 498.

Allen argues that we have no jurisdiction over this conclusion. Not so. A determination that a claim is not ripe means that the court lacks subject matter jurisdiction. *See Peck*, 43 F.4th at 1133. So a finding of unripeness "ends the litigation on the merits," and is a final decision over which we have jurisdiction. *See Coomer v. Make Your Life Epic LLC*, 98 F.4th 1320, 1323 (10th Cir. 2024); *see also* 28 U.S.C. § 1291.

The district court's finding of unripeness is not well developed but it cites *Peck* for the proposition that standing and ripeness are closely related. *See* App. 498 (quoting *Peck*, 43 F.4th at 1133). So, best we can tell, the district court's ripeness conclusion mirrors its standing conclusion. As we have already explained, we disagree and believe Scott's claims to be ripe.

C. Merits

Finally, Scott asks us to resolve his claims on the merits. Because the district court found that Scott lacked standing, it did not reach the merits. We decline to analyze the issue without the benefit of the district court's analysis. *See Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1238 (10th Cir. 2005) ("Where an issue has been raised, but

not ruled on, proper judicial administration generally favors remand for the district court to examine the issue initially.").

III. Conclusion

For the foregoing reasons, we reverse the district court's judgment and remand for consideration on the merits.