

STATE OF MINNESOTA  
COURT OF APPEALS

**FILED**

March 15, 2019

OFFICE OF  
APPELLATE COURTS

Court File No. A19-0347

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Public Record Media,

Plaintiff/Appellant,

v.

Minnesota Department of Employment  
and Economic Development,

and,

Greater MSP.

Defendants/Respondents.

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**REQUEST OF  
THE ASSOCIATED PRESS, GANNETT CO., INC., GRAY TELEVISION  
GROUP, INC., THE MINNESOTA CHAPTER OF THE SOCIETY OF  
PROFESSIONAL JOURNALISTS, THE MINNESOTA COALITION ON  
GOVERNMENT INFORMATION, MINNESOTA PUBLIC RADIO, THE ST.  
PAUL PIONEER PRESS, AND TEGNA INC.  
TO PARTICIPATE AS AMICUS CURIAE**

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TO: THE COURT OF APPEALS OF THE STATE OF MINNESOTA:

Pursuant to Rule 129, The Associated Press, Gannett Co., Inc., Gray Television Group, Inc., the Minnesota Chapter of the Society of Professional Journalists, the Minnesota Coalition on Government Information, Minnesota Public Radio, the *St. Paul Pioneer Press*, and TEGNA Inc. seek leave to participate as *amicus curiae* in support of Plaintiff/Appellant Public Record Media in the above-captioned matter.

## **STATEMENT OF APPLICANTS' INTEREST**

The Associated Press (“AP”) is an independent, not-for-profit news cooperative headquartered in New York City. It has teams in more than 100 countries that tell the world’s stories, from breaking news to investigative reporting. More than 15,000 news outlets and a range of businesses worldwide connect with their audiences using the AP’s multi-format content. The AP has been in existence for 170 years and has won 52 Pulitzer Prizes, including 31 for photography, since the award was established in 1917.

Gannett Co., Inc. (“Gannett”) is an innovative, digitally focused media company committed to strengthening communities across its network. With an unmatched local-to-national reach, Gannett touches the lives of more than 125 million people monthly with its Pulitzer-Prize winning content. Gannett brands include USA TODAY and more than 100 local media brands, including the *St. Cloud Times*.

Gray Television Group, Inc. (“Gray Television”) owns and/or operates television stations and leading digital properties in over 90 television markets including the first or second highest rated television station in 85 markets. Gray Television’s stations broadcast almost 400 separate programming streams, including nearly 150 affiliates of the CBS/NBC/ABC/FOX networks. In Minnesota, Gray Television owns and operates KEYC-TV in Mankato. The broadcast signals for Gray Television’s stations in Fargo, North Dakota (KVLV-TV and KXJB-LD); Sioux Falls, South Dakota (KSFY-TV); and Eau Claire, Wisconsin (WEAU-TV) also reach television audiences in the State of Minnesota.

The Minnesota Chapter of the Society of Professional Journalists (“MNSPJ”) is the state chapter of the Society of Professional Journalists, the oldest, largest, and broadest-based organization of journalists in the United States. It was founded as Sigma Delta Chi in 1909. MNSPJ was founded in 1956 and its current membership totals about 130. Since its founding, MNSPJ has received various honors, including outstanding large chapter of the year (more than 75 members), and recognition for its work in freedom of information, campus relations, member communication and programming.

The Minnesota Coalition on Government Information (“MNCOGI”) is a nonprofit organization that provides public education on government transparency, government information policy, and related issues. Among its foundational principles are the principles that “[d]emocratic government is possible only if individuals have access to the government information they need in order to hold their government accountable” and that “[g]overnment information, regardless of physical form, must always, to the greatest extent possible, be available to the public.” To assure the vitality of these principles, MNCOGI promotes public knowledge of laws and principles regarding open access to government information and collaborates with other organizations to enhance participation in the affairs of government, including by critiquing legislation and evaluating government’s compliance with state law and principles of open access.

Minnesota Public Radio (“MPR”) is one of the nation’s premier public radio stations and operates a 46-station radio network serving nearly all of Minnesota and parts of surrounding states. Reaching one million listeners each week, MPR and its three regional services—MPR News, Classical MPR, and The Current—produce programming for radio,

digital, and live audiences. Since its origins as a single classical music station in 1967 at KSJR in Collegeville, Minn., MPR has earned nearly 1,000 broadcasting and journalism awards, including seven George Foster Peabody Awards (dubbed the “Oscar of broadcasting”), six Robert F. Kennedy Journalism Awards, a prestigious Alfred I. duPont-Columbia University Gold Baton Award and a Grammy Award. Its mission is to enrich the mind and nourish the spirit, thereby enhancing the lives and expanding the perspectives of its audiences, and assisting them in strengthening their communities.

The *St. Paul Pioneer Press* is a longstanding general-interest news organization based in St. Paul that traces its history to the *Minnesota Pioneer*, Minnesota’s first daily newspaper. Its daily print edition primarily serves St. Paul and the east metro area, and its continuous online and daily digital-replica editions have wide readership in Minnesota, Wisconsin, and elsewhere.

TEGNA Inc. (“TEGNA”) is a best-in-class operator with 49 television stations (including those serviced by TEGNA) and two radio stations in 41 markets from coast to coast. It reaches one-third of all television households nationwide. Each month, TEGNA reaches 50 million adults on-air and 35 million across our digital platforms. TEGNA owns and operates KARE 11, a national award winning leader in local news and information that serves the Minneapolis-St. Paul metropolitan area, as well as greater Minnesota on television, online and on mobile platforms. KARE 11 has roots dating back to 1925 and to date has been honored 16 times with the National Edward R. Murrow award for journalism excellence from the Radio Television Digital News Association.

Applicants’ interest in this case is both public and private.

## **WHY A BRIEF FROM APPLICANTS IS DESIRABLE**

Applicants are members of the news media and/or organizations that support the news media's use of the Minnesota Government Data Practices Act ("MGDPA") to investigate and report upon matters of significant public interest and concern.

Applicants take no position on the factual question of whether the Department of Employment and Economic Development ("DEED") "viewed" or had "access" to the proposal to Amazon that is at the heart of this dispute.

However, Applicants believe the district court was wrong in concluding that this question was "immaterial" to whether the proposal is subject to disclosure under the MGDPA. *See* Jan. 3, 2019, Order at 15 ¶ 23. They also believe the district court was wrong in concluding that "the MGDPA does not cover data that a government entity merely accessed or viewed," *id.*, and that there is some legally cognizable difference between the terms "accessed" and "viewed" and the words used in Minn. Stat. § 13.02, subd. 7—*i.e.*, "collected, created, received, maintained or disseminated." Applicants believe that if DEED was able to "view" or "access" the proposal, then it necessarily "received" the proposal, rendering it government data.

We live in a digital age of cloud computing in which government entities use remote servers to store, manage, and process data, rendering it unnecessary for them to ever possess a physical copy of the data or even to host it on their own servers or computers. The district court's misguided approach drastically constricts the scope of data that is presumptively public under the MGDPA and thereby suggests a way for government entities to circumvent

the clear policy objectives of the MGDPA, to the great detriment of both the press and the public at large.

Applicants seek to assist the Court by filing an *amicus* brief that explains why “accessing” and “viewing” data is tantamount to “receiving” it and why the proposal—if accessed and/or viewed by DEED—is government data subject to the MGDPA’s presumption of openness.

### **CONCLUSION**

WHEREFORE, The Associated Press, Gannett Co., Inc., Gray Television Group, Inc., the Minnesota Chapter of the Society of Professional Journalists, the Minnesota Coalition on Government Information, Minnesota Public Radio, the *St. Paul Pioneer Press*, and TEGNA Inc. respectfully request leave to participate as *amicus curiae* in support of Plaintiff/Appellant.

Dated: March 15, 2019

Respectfully submitted,

s/ Leita Walker

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