A20-1344

**STATE OF MINNESOTA**
**IN SUPREME COURT**

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Energy Policy Advocates,

*Respondent,*

vs.

Keith Ellison, in his official capacity as Attorney General,
Office of the Attorney General,

*Appellants.*

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# JOINT BRIEF OF AMICI CURIAE LEAGUE OF MINNESOTA CITIES, ASSOCIATION OF MINNESOTA COUNTIES, AND MINNESOTA COUNTY ATTORNEYS ASSOCIATION

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## STATEMENT OF THE ISSUE

Should this Court's recognition of the common-interest doctrine in *Schmitt v. Emery*, 2 N.W.2d 413 (Minn. 1942), be further developed to clarify the doctrine's scope, by confirming three points: (1) the doctrine applies to privileged communication and to work product; (2) the doctrine applies in litigated and non-litigated matters; and (3) the doctrine operates as an exemption from the requirements of the Minnesota Government Data Practices Act?

The court of appeals held that Minnesota has not recognized the common-interest doctrine as an exception to the general rule that the attorney-client privilege is waived if a privileged communication is disclosed to a third party. The court of appeals did not consider *Schmitt*.

## STATEMENT OF AMICI CURIAE'S IDENTITIES

The League of Minnesota Cities has a voluntary membership of 837 out of 854 Minnesota cities.[1] It represents cities' common interests before courts and other governmental bodies and provides a variety of services to its members, including advocacy, information, education, training, policy-development, and risk-management services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

The Association of Minnesota Counties is a voluntary association of all 87 counties in the State of Minnesota organized pursuant to Minn. Stat. § 375.163. The AMC's mission is to provide counties with support so that they may effectively perform the duties and responsibilities delegated to them by law. The AMC works closely with the legislative, administrative, and judicial branches of government on issues involving adoption, enforcement, and modification of laws and policies that affect counties, and it represents the position of counties before state and federal government agencies and the public.

The Minnesota County Attorneys Association is an organization that is dedicated to improving the quality of justice in the State of Minnesota and to providing leadership on legal and public policy issues related to the duties of county attorneys. Its membership includes all 87 counties in the state.

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[1] Amici certify, under Rule 129.03, that this brief was not authored, in whole or in part, by counsel for either party to this appeal, and that no other person or entity, besides the League of Minnesota Cities, has made a monetary contribution to its preparation or submission.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

The court of appeals held that Minnesota has not recognized the common-interest doctrine as an exception to the general rule that the attorney-client privilege is waived if a privileged communication is disclosed to a third party. (Appellants' Add. at Add. 24-26.) Amici respectfully request this Court to reverse this holding and to confirm that this Court recognized the common-interest doctrine in *Schmitt v. Emery*, 2 N.W.2d 413 (Minn. 1942) (doctrine applied for civil joint-defendants), *overruled in part on other grounds by Leer v. Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 308 N.W.2d 305 (Minn. 1981). The court of appeals erred by failing to consider *Schmitt*. *State v. Hannuksela*, 452 N.W.2d 668, 674 n.7 (Minn. 1990) (noting that appellate courts have an independent duty to decide cases in accordance with the relevant law).

In addition, to provide needed certainty for Minnesota clients and attorneys, this Court should further develop *Schmitt* to clarify the common-interest doctrine's scope, by confirming three points: (1) the doctrine applies to privileged communication and to work product; (2) the doctrine applies in litigated and non-litigated matters; and (3) the doctrine operates as an exemption from the requirements of the Minnesota Government Data Practices Act (MGDPA).

These clarifications are needed to ensure that state and federal courts will consistently apply the common-interest doctrine. *See In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (discussing federal application of the common-

interest doctrine, consistent with the Restatement of the Law Governing Lawyers).[2] Such consistency is good law and public policy for several reasons: (1) it will prevent plaintiffs from forum shopping; (2) it will protect the MGDPA from misuse by federal litigants who, under the court of appeals' holding, can make a data request under state law to obtain documents to which they would be denied access under the federal law's application of the common-interest doctrine; (3) it is consistent with *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436 (Minn. 1998), in which this Court held that the attorney-client privilege operates as an exemption from the MGDPA's requirements.

The proper application of the attorney-client privilege and the common-interest doctrine ensures that cities and counties receive the fully informed legal advice that they need to effectively conduct their government operations and to protect and properly manage public resources impacted by liability claims. Finally, several safeguards confirm that the public interest in promoting access to public government data will receive proper consideration when it is balanced with the competing public interests that underlie a public client's exercise of the attorney-client privilege and the common-interest doctrine.

## ARGUMENT

Amici support the Office of the Attorney General's position, seeking to reverse the court of appeals' holding that Minnesota has not recognized the common-interest doctrine. We will not repeat Appellants' arguments, or those of the many other amici that

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[2] *See also John Morrell & Co. v. Local Union 304 A of Un. Food & Com. Workers*, 913 F.2d 544, 555-56 (8th Cir. 1990) (discussing federal application of common-interest doctrine); *Shukh v. Seagate Tech., LLC*, 872 F. Supp.2d 851, 855 (D. Minn. 2012) (discussing same).

likewise seek reversal on this issue. Instead, this brief provides a broader perspective of the issues and public policies at stake, with the goal of informing this Court of facts or matters of law that otherwise "may have escaped consideration."[3] It does so by focusing on two matters: (1) this appeal's statewide significance for cities and counties and for the attorneys who represent them; and (2) why the common-interest doctrine should operate as an exemption from the MGDPA's requirements.

## I. This appeal will have a significant, statewide impact on cities and counties and on the attorneys who represent them.

This appeal will have a significant, statewide impact on the 854 cities and the 87 counties in Minnesota and on the thousands of attorneys (in-house and contract) who represent them. This Court's rule of law will directly impact whether government attorneys can continue to provide their public clients with fully informed legal advice.

### A. The proper application of the attorney-client privilege and the common-interest doctrine ensures that cities and counties receive the fully informed legal advice that they need to effectively perform their government operations and to protect and properly manage public resources impacted by liability claims.

This appeal requires a balancing of public interests. Without question, the MGDPA serves an important public interest by providing access to public government data, thereby promoting transparency in government. But there is another equally important public interest at stake here: promoting effective government operations. This

[3] *State v. Finley*, 64 N.W.2d 769, 773 (Minn. 1954) (discussing an amicus curiae's appropriate role).

Court has previously recognized that the MGDPA must be applied within a context of "effective government operation":

> The purpose of the MGDPA is to reconcile the rights of data subjects to protect personal information from indiscriminate disclosure with the right of the public to know what the government is doing. The Act also attempts to balance these competing rights within a context of effective government operation.

*KSTP-TV v. Ramsey Cnty.*, 806 N.W.2d 785, 788 (Minn. 2011) (quotation omitted). Likewise, the Minnesota Rules instruct government entities to balance public interests when they apply the MGDPA: This chapter [13] is intended to guide entities so that while protection is given to individual privacy, neither necessary openness in government nor the orderly and efficient operation of government is curtailed. Minn. R. 1205.0100, subp. 2.

The proper application of the attorney-client privilege and the common-interest doctrine ensures that cities and counties receive the fully informed legal advice that they need to effectively perform their government operations and to protect and properly manage public resources impacted by liability claims. It ensures that public officials and staff will trust their attorneys, and based on this trust, will communicate candidly with them when seeking legal advice because they won't be afraid that their attorneys will divulge the communication. Such candid communication allows government attorneys in turn to provide more effective legal advice to their public clients. Such competent and fully informed legal advice leads to effective legal strategies that ultimately protect the broader public interest, by safeguarding and prudently managing limited public resources.

In certain contexts, the attorneys who represent cities and counties cannot be fully informed unless they (without waiving their client's attorney-client privilege) can share privileged communication or work product with a third party that shares a common interest with their client. This may occur in several contexts, including: (1) when attorneys are coordinating class actions involving cities and counties as potential or actual plaintiffs; (2) during the critical time when a potential legal claim against a city or county may be transforming into an active lawsuit; and (3) during an appeal in which a city or county entity participates as an amicus.[4]

Legal advice that is fully informed is more effective at achieving a positive outcome for the client. For cities and counties, effective legal advice protects public interests and dollars. It also avoids inefficient and ineffective legal strategies, leading to better outcomes for all the parties as well as for the judicial system.

Effective legal advice frequently reduces the need for litigation. And if a lawsuit cannot be avoided, it guarantees that cities and counties will enter litigation on equal footing with private litigants. This Court has previously noted that public interests may be impaired without such equal footing: "A basic understanding of the adversary system indicates that certain phases of litigation strategy may be impaired if every discussion is

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[4] Commentators have characterized such third-party communication as "normal cooperation" in the amicus context. Minn. R. Civ. App. P. 129.01, Advisory Committee Comment – 2000 Amendments (commenting: "The rule [requiring certification regarding authorship] is not intended to discourage the normal cooperation between the parties to an action and the amici, including the providing of access to the record, the exchange of briefs in advance of submission, and other such activities that do not result in someone other than the amicus preparing the amicus brief.").

available for the benefit of opposing parties who may have as a purpose a private gain in contravention to the public need as construed by the agency." *Minneapolis Star & Tribune Co. v. Hous. & Redev. Auth.*, 251 N.W.2d 620, 625 (Minn. 1976) (holding that the attorney-client privilege may operate as an exception to the requirements of the Open Meeting Law—requirements currently codified at chapter 13D of the Minnesota Statutes).

**B. Minnesota attorneys are obligated, without limitation, to fulfill their professional responsibilities to their public clients, including their responsibilities regarding confidentiality, privilege, and work product under Minn. R. Prof. Conduct 1.6. The MGDPA expressly incorporates these professional responsibilities under Minn. Stat. § 13.393.**

Minnesota attorneys who represent cities and counties take their ethical obligations seriously and strive to comply with them. The proper application of the attorney-client privilege and the common-interest doctrine allows government attorneys to fulfill their professional responsibilities to their public clients, including their responsibilities regarding confidentiality, privilege, and work product under Rule 1.6 of the Minnesota Rules of Professional Conduct—responsibilities that do not distinguish between public and private clients. Furthermore, the MGDPA expressly incorporates these standards of "professional responsibility" and provides that they govern the "dissemination" of data for "an attorney acting in a professional capacity for a government entity":

> Notwithstanding the provisions of this chapter and section 15.17, the use, collection, storage, and dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility; provided that this section shall not be construed to

> affect the applicability of any statute, other than this chapter and section 15.17, which specifically requires or prohibits disclosure of specific information by the attorney, nor shall this section be construed to relieve any responsible authority, other than the attorney, from duties and responsibilities pursuant to this chapter and section 15.17.

Minn. Stat. § 13.393.

Section 13.393 does three important things. First, it provides a special classification for qualifying attorney data, that not only removes it from the presumption that government data is public under Minn. Stat. § 13.03, subd. 1, but that also exempts it entirely from the MGDPA's statutory framework. Second, it defers to this Court's inherent and constitutional authority over the practice of law—authority that mandates a separation of powers between the judicial and legislative branches of government. Minn. Const. art. III, § 1; *See Prior Lake Am. v. Mader*, 642 N.W.2d 729, 737-40 (Minn. 2002) (discussing this separation-of-powers issue and this Court's inherent and constitutional authority to determine the scope of the attorney-client privilege, irrespective of conflicting legislative requirements in sunshine laws). Third, by incorporating the standards of "professional responsibility," section 13.393 incorporates all of Rule 1.6's standards, including those regarding confidentiality—a doctrine that provides even broader protection for client communication than the doctrines of privilege and work product provide.[5]

[5]*See generally* William J. Wernz, *Minnesota Legal Ethics*, 358-415, Minnesota State Bar Association (11th ed. 2021) (discussing and distinguishing Rule 1.6's professional responsibilities regarding confidentiality, privilege, and work product).

This is the first time that this Court will interpret Minn. Stat. § 13.393. But both the Minnesota Court of Appeals and the commissioner of the Department of Administration have interpreted section 13.393, and they have both concluded that qualifying attorney data is exempt from the MGDPA's requirements. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 450-51 (Minn. Ct. App. 2017) (providing that the data of attorneys contracting as city attorneys and prosecutors is governed by the "statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility," not by the MGDPA); *Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 295 (Minn. Ct. App. 2003) (providing that documents subject to a district court's protective order is governed by the protective order, not by the MGDPA); *City Pages v. State,* 655 N.W.2d 839, 843 (Minn. Ct. App. 2003) (providing that the effect of section 13.393 is to make the MGDPA inapplicable); Op. Minn. Dep't Admin. No 18-007 (June 15, 2018) (advising that "section 13.393...essentially removes the records from the Data Practices Act," and referencing three prior consistent advisory opinions).

In short, this Court should hold that Minn. Stat. § 13.393 operates in harmony with the attorney-client privilege and the common-interest doctrine to allow government attorneys to fulfill their professional obligations to their public clients under the rules of professional responsibility. *See Prior Lake Am.*, 642 N.W.2d at 737 (noting that, as a "matter of comity," this Court will allow statutes to stand if they are consistent with this Court's inherent and constitutional authority over the practice of law).

## II. The common-interest doctrine should apply to privileged communication and to work product, in both litigated and non-litigated matters, and it should fall within the scope of the existing exemption from the MGDPA's requirements for privileged communication. Such a result is consistent with *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436 (Minn. 1998). It is also good public policy.

To provide needed certainty for Minnesota clients and attorneys, this Court should further develop its application of the common-interest doctrine in *Schmitt* to clarify the doctrine's scope, by confirming three points: (1) the doctrine applies to privileged communication and to work product;[6] (2) the doctrine applies in litigated and non-litigated matters;[7] and (3) the doctrine operates as an exemption from the MGDPA's requirements.

These clarifications are needed to ensure that state and federal courts will consistently apply the common-interest doctrine. *See In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (discussing federal application of the common-interest doctrine, consistent with the Restatement of the Law Governing Lawyers).[8] Such consistency is good public policy for several reasons: (1) it will prevent plaintiffs from forum shopping; (2) it will protect the MGDPA from misuse by federal litigants who, under the court of appeals' holding, can make a data request under state law to obtain

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[6] *See* Appellants' Brief, pp. 22-24; Joint Amici Curiae Brief MAJ, MDLA, MSBA, and MFCG, pp. 16-17; Amicus Curiae Brief Chamber of Commerce of the United States, pp. 19-21.

[7] *See* Amicus Curiae Brief National Association of Manufacturers, pp. 9-11; Amicus Curiae Brief Chamber of Commerce of the United States, p. 21.

[8] *See also John Morrell & Co. v. Local Union 304 A of Un. Food & Com. Workers*, 913 F.2d 544, 555-56 (8th Cir. 1990) (discussing federal application of the common-interest doctrine); *Shukh v. Seagate Tech., LLC*, 872 F. Supp.2d 851, 855 (D. Minn. 2012) (discussing same).

documents to which they would be denied access under the federal law's application of the common-interest doctrine;[9] and (3) it is consistent with *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436 (Minn. 1998), in which this Court held that the attorney-client privilege operates as an exemption from the MGDPA's requirements.

In *Kobluk*, an assistant professor requested, under the MGDPA, two earlier drafts of a letter in which the University had communicated its decision to deny him tenure. *Id.* at 439. A provost had prepared the draft letters in consultation with an attorney from the University's Office of the General Counsel who had been assigned to serve as the legal advisor in the matter. *Id.* This Court concluded that, even though the final letter was meant to be published to a third party, the preliminary drafts were protected by the attorney-client privilege because they were prepared for the purpose of communicating legal advice or requesting legal advice, and the provost and the attorney demonstrated an intent to keep the drafts confidential. *Id.* at 441.

Therefore, under *Kobluk*, the attorney-client privilege operates as an exemption from the MGDPA's requirements. Logic dictates that the common-interest doctrine should likewise operate as an exemption (assuming this Court recognizes the common-interest doctrine here or confirms that it has already done so in *Schmitt*). This is so because the common-interest doctrine operates as an exception to the waiver of the attorney-client privilege. Therefore, if the common-interest doctrine applies, then it

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[9]A person's motivation for requesting data, or their status as a federal litigant, is irrelevant under the MGDPA, which provides: "Unless specifically authorized by statute, government entities may not require persons to identify themselves, state a reason for, or justify a request to gain access to public government data." Minn. Stat. § 13.05, subd. 12.

follows that the attorney-client privilege has not been waived and will continue to operate as an exemption from the MGDPA's requirements.

*Kobluk* is important for two additional reasons. First, it illustrates how the attorney-client privilege frequently applies in the MGDPA context. In *Kobluk*, the attorney-client privilege attached to communication, through draft documents, between a provost (an authorized agent for the Board of Regents) and an attorney from the general counsel's office. *See* Minn. Prof. R. Cond. 1.13 (a) (providing that a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents). In short, *Kobluk* illustrates that a government attorney's client, for the purpose of the attorney-client privilege, may be an authorized agent of the governing body. Indeed, the client of a government attorney may vary depending on the facts and could potentially be: (1) the governing body as a whole; (2) individual members of the governing body; (3) the authorized agents of the governing body; or even (4) the collective, common interests of the constituents that the governing body represents.[10] Because of this, amici urge this Court to adopt a rule of law that is pragmatic, and that recognizes that the client of a government attorney may vary depending on the facts, that

[10] *See* Jeffrey L. Goodman and Jason Zabokrtsky, *The Attorney-Client Privilege and the Municipal Lawyer*, 48 Drake L Rev. 655, 661-63 (2000) (discussing the complexity of defining a municipal lawyer's client).

there is not always an outside client,[11] and that in some circumstances, the client might not even be a specific person or entity.[12]

Second, *Kobluk* demonstrates that, in the MGDPA context, the attorney-client privilege that is available to a public client is not limited or distinguished from the privilege that is available to a private client. When *Kobluk* discusses the attorney-client privilege that is available to the University of Minnesota, it simply references the privilege's statutory codification at Minn. Stat. § 595.02 and its classic description made by Wigmore. 574 N.W.2d at 440. This is important because it demonstrates that the attorney-client privilege that is available to a public client under the MGDPA is broader than the privilege that is available to it under the Open Meeting Law.[13]

This Court has held that the exception to the Open Meeting Law under the attorney-client privilege applies "when the balancing of the purposes served by the attorney-client privilege against those served by the Open Meeting Law dictates the need for absolute confidentiality." *Prior Lake Am.*, 642 N.W.2d at 737. This Court also noted in dicta that the scope of the attorney-client privilege is narrower for a public client when it is constrained by the Open Meeting Law. *Id.*

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[11] *See* Appellants' Brief, pp. 24-26 (discussing why the court of appeals erred in concluding that the attorney-client privilege cannot apply unless there is communication with an outside client).

[12] Here, for example, amici represent the collective, common interests of Minnesota cities and counties and of the attorneys who represent them.

[13] *See* Minn. Stat. § 13D.01, subd. 1 (listing the public bodies that are subject to the Open Meeting Law).

But there are several reasons why the scope of the attorney-client privilege is not narrower for a public client under the MGDPA. First, *Kobluk* governs because it directly addresses the attorney-client privilege of a public client under the MGDPA. And again, *Kobluk* does not limit the attorney-client privilege that is available to a public client or distinguish it from the privilege that is available to a private client.

Second, the text of the MGDPA and the Open Meeting Law differ. As previously noted, the MGDPA (under Minn. Stat. § 13.393) expressly incorporates the standards of professional responsibility, including the standards regarding confidentiality, privilege, and work product under Rule 1.6. And again, Rule 1.6 does not distinguish between attorneys with public clients and those with private ones.

Third, the purpose of the Open Meeting Law is centered on the public's right to have access to the deliberations and official actions of public bodies, not to have access to government data. The Open Meeting Law is only triggered by a "meeting" of a public body that is subject to its requirements. *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983) (defining a meeting, under the Open Meeting Law, as a gathering of a quorum or more of a public body to discuss, decide, or receive information on official matters). In contrast, the MGDPA applies to government data, not meetings.

Fourth, the balancing of public interests is different under the two statutory sections. The public has a strong interest in accessing the meetings of public bodies because, as previously noted, this is where a public body deliberates and takes official action. In addition, when a public body meets, it generally provides an opportunity for the

public to comment on official matters.[14] Indeed, the public interest in providing public access to the meetings of public bodies is so strong that the Open Meeting Law provides that not-public data, that the MGDPA prohibits from disclosure, may be discussed at an open meeting without liability or penalty if it relates to a matter within the scope of the public body's authority, and the discussion is reasonably necessary to conduct official business. Minn. Stat. § 13D.05, subd. 1(b); Minn. Stat. § 13.03, subd. 11. In contrast, the MGDPA applies to data, not meetings, and its application more frequently requires a balancing of public interests that gives greater weight to the competing public interests of data privacy and effective government operations.

## III. Several safeguards confirm that the public interest in providing access to public government data will receive proper consideration when it is balanced with the competing public interests that underlie a public client's exercise of the attorney-client privilege and the common-interest doctrine.

Several safeguards confirm that the public interest in accessing public government data will receive proper consideration when it is balanced against the competing public interests that underlie a public client's exercise of the attorney-client privilege and the common-interest doctrine. First, the MGDPA provides data requestors with access to neutral third parties who can evaluate claims of attorney-client privilege and the common-interest doctrine as a basis for denying access to requested data. The MGDPA provides data requestors who disagree with a government entity's data-practices decision

[14] *See St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch.*, 332 N.W.2d 1, 4 (Minn. 1983) (noting that the Open Meeting Law serves three purposes: (1) to prohibit actions from being taken at secret meetings, (2) to ensure the public's right to be informed, and (3) to give the public an opportunity to present its views to the public body) (citations omitted).

with the right to request an advisory opinion from the commissioner of the Department of Administration. Minn. Stat. § 13.072, subd. 1(a). The MGDPA also provides data requestors with access to both administrative and civil proceedings and remedies. Minn. Stat. § 13.085 (administrative proceedings and remedies); Minn. Stat. § 13.08 (civil proceedings and remedies).

Second, if a government entity claims that communication or work product is protected under the attorney-client privilege or the common-interest doctrine, it must demonstrate that the criteria corresponding to the privilege or doctrine have been satisfied. This Court has set out the criteria applicable to the attorney-client privilege, and it has further noted that the privilege is to be strictly construed, and that the entity claiming it bears the burden of proof. *Kobluk*, 574 N.W.2d at 440. These criteria will also apply to the common-interest doctrine because the doctrine only applies to privileged communication.

And finally, even though the public cannot access communication or work product that is protected under the attorney-client privilege or the common-interest doctrine, it will still have adequate knowledge of what the government is doing. The public will continue to have access to the meetings of public bodies under the Open Meeting Law. And the public will continue to have access to large amounts of government data that are classified as public data under the MGDPA.

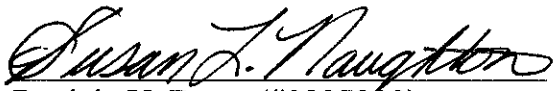
## CONCLUSION

Amici respectfully request this Court to reverse the court of appeals' holding regarding the common-interest doctrine, and to confirm that this Court recognized the doctrine in *Schmitt*. In addition, to provide needed certainty for Minnesota clients and attorneys, this Court should clarify the scope of the common-interest doctrine, by confirming three points: (1) the doctrine applies to privileged communication and to work product; (2) the doctrine applies in litigated and non-litigated matters; and (3) the doctrine operates as an exemption from the MGDPA's requirements.

Such clarifications are consistent with *Kobluk* and with Minn. Stat. § 13.393. Such clarifications are also good public policy because they will ensure that federal and state courts will consistently apply the common-interest doctrine, that cities and counties will receive fully informed legal advice, and that government attorneys will be able to fulfill their professional responsibilities to their public clients.

Respectfully submitted,

Dated: September 15, 2021



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**A20-1344**

**STATE OF MINNESOTA**
**IN SUPREME COURT**

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Energy Policy Advocates,

*Respondent,*

vs.

**CERTIFICATION**
**OF BRIEF LENGTH**

Keith Ellison, in his official capacity as Attorney General, Office of the Attorney General,

*Appellants.*

I certify that this document conforms to the requirements of the applicable rules and is produced with a proportional 13-point font. This document was prepared using Microsoft Word for Office 365, which reports that its length is 4,048 words.

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