A22-0852

STATE OF MINNESOTA
IN COURT OF APPEALS

State of Minnesota by Smart Growth Minneapolis, et al.,
Respondents,

vs.

City of Minneapolis,
Appellant.

BRIEF OF AMICUS CURIAE MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY

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STATEMENT OF *AMICUS CURIAE*[1]

Amicus curiae Minnesota Center for Environmental Advocacy ("MCEA") is a Minnesota nonprofit organization founded in 1974. MCEA uses law and science to protect Minnesota's environment, its natural resources, and the health of its people. Consistent with its mission, MCEA enforces and defends Minnesota's bedrock environmental laws, including the Minnesota Environmental Rights Act ("MERA"), Minn. Stat. §§ 116B.01-13.

In this brief, MCEA seeks to highlight issues related to MERA for the Court to consider when it decides this appeal. In particular, MCEA is concerned that legal positions taken by Appellant City of Minneapolis (the "City"), if adopted by this Court, would narrow MERA's application in subsequent cases, contrary to the broad, remedial purpose of the statute. MCEA asks that the Court avoid holdings that would be detrimental to the future application and enforcement of MERA.

STATEMENT OF THE CASE AND FACTS

Prior to the City's December 7, 2018 vote on whether to submit the Minneapolis 2040 Comprehensive Plan (the "2040 Plan") to the Metropolitan Council, Respondents filed a declaratory judgment action against the City under MERA. (Verified Compl. ¶¶ 98-103, *State by Smart Growth Minneapolis v. City of Minneapolis*, No. 27-18-19587 (Minn. Dist. Ct. Dec. 3, 2018). Respondents alleged that: (1) Respondents met their prima facie

[1] Counsel for *amicus curiae* Minnesota Center for Environmental Advocacy authored this brief in whole. No other person or entity made a monetary contribution to the preparation or submission of this brief.

showing that the City's decision to approve the 2040 Plan was "likely to cause the pollution, impairment, or destruction" of Minnesota's natural resources, (*id.* ¶¶ 98, 101); (2) the City could not meet its burden to rebut Respondents' prima facie case or to show an affirmative defense, (*id.* ¶ 102); and, therefore, (3) Respondents were entitled to an injunction "unless and until" the City either rebutted Respondents' prima facie case *or* proved an affirmative defense "presumably through a voluntary environmental review," (*id.* ¶ 103).

After the District Court and this Court agreed that voluntary environmental review is not an available remedy for a MERA claim challenging a comprehensive plan, the Minnesota Supreme Court reversed, affirming the expansive rights and remedies available under MERA and remanding to the District Court to reinstate Respondents' complaint. *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 589-90, 97 (Minn. 2021). On remand, the parties both moved for summary judgment. The District Court granted Respondents' motion and denied the City's motion, reasoning that Respondents had shown a prima facie case under MERA that a "full build-out" of the 2040 Plan would violate MERA. (City's Add. at 1, 21). It is unclear to what extent the District Court considered evidence introduced by the City challenging Respondents' averments about the materially adverse environmental effects resulting from approval of the 2040 Plan. (*See, e.g.*, City's Br. at 12-13, 48-49).

As relevant to this *amicus curiae* brief, on July 1, 2022, MCEA requested leave to submit a neutral *amicus curiae* brief to address concerns about the interpretation of MERA. (Request for Leave at 3, *State by Smart Growth Minneapolis v. City of Minneapolis*, No.

A22-0852 (Minn. App. July 1, 2022)). This Court granted leave and stated that MCEA's interest appeared to be more aligned with Respondents. Order at 1, *State by Smart Growth Minneapolis v. City of Minneapolis*, No. A22-0852 (Minn. July 13, 2022).

ARGUMENT

I. Adoption Of A Comprehensive Plan Could Materially Adversely Affect The Environment And Thus Violate MERA

The City offers a series of unpersuasive legal arguments in support of its position that a comprehensive plan cannot be the "cause" of a MERA violation. (*See* City's Br. at 37-46 ("No MERA cases have addressed comprehensive plans or general zoning ordinances[.]"). But the City's legal attacks on the question of whether the 2040 Plan could materially adversely affect the environment and, thus, violate MERA, all fail. This Court should avoid endorsing any of the City's theories as contrary to MERA's language, purpose, and controlling caselaw.

A. The Minnesota Supreme Court already decided that the 2040 Plan can cause environmental harm redressable by MERA

Last year, after affirming MERA's broad scope and purpose, the Minnesota Supreme Court held that conduct under MERA is not limited to shovel-ready projects. *Smart Growth*, 954 N.W.2d at 589-90, 593-97. Because a comprehensive plan "has the direct effect of controlling a city's land use development," and because the alleged full build-out "is what the actual land-use criteria contained in the Plan allows for," the Minnesota Supreme Court concluded that the 2040 Plan can cause Respondents' claimed environmental harm. *Id.* at 596. The City's bald assertion that no MERA case has addressed

a comprehensive plan "or made assumptions about future construction on the scale present here" is flatly wrong. (City's Br. at 37).

If the environmental consequences of a comprehensive plan were too speculative, distant, remote, attenuated, or high-level to satisfy the "causation" standard under MERA, as the City argues throughout its brief, then the Minnesota Supreme Court would have dismissed this case last year. (*See* City's Br. at 37-49). While the parties may disagree about what the 2040 Plan "authorizes"—such as how many new units can be developed under the revised zoning ordinance—there is no support for the City's position that comprehensive plans cannot be the subject of a successful MERA action.

B. MERA allows for actions challenging high-level government decisions like planning and zoning

The City's argument that MERA claims are limited to "permits or permissions" for specific projects finds no support in the appellate cases, or the statute's plain language and structure. (City's Br. at 38).

The Minnesota Supreme Court has again and again affirmed MERA's broad scope and never suggested that "conduct" is limited to a permit or permission. In *Smart Growth*, it rejected a statutory construction that "would severely limit the broad protections clearly intended by MERA." 954 N.W.2d at 593. In *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Department of Natural Resources*, it noted that, "consistent with MERA's broad sweep, the few limits on MERA's application have been drafted narrowly and noted expressly." 946 N.W.2d 373, 380 n.3 (Minn. 2020). In *State by Schaller v. County of Blue Earth*, the Court agreed that its "prior caselaw suggests a broad scope of

protection under MERA." 563 N.W.2d 260, 266 (Minn. 1997). The Minnesota Supreme Court has said that MERA gave the "force of law" to Aldo Leopold's land ethic, and "'enlarge[d] the boundaries of the community to include soils, waters, plants, and animals.'" *In re Christenson*, 417 N.W.2d 607, 615 (Minn. 1987). And in one of its first decisions interpreting the statute, Minnesota's high court concluded that the Legislature "drastically changed" Minnesota's legal landscape in 1971 when it adopted MERA. *Cnty. of Freeborn v. Bryson*, 243 N.W.2d 316, 321 (Minn. 1976).

The Minnesota Supreme Court has consistently reaffirmed that the Legislature meant what it said with the words "any conduct by any person." Minn. Stat. § 116B.02, subd. 5. This Court should decline the City's invitation to depart from the Supreme Court's consistent interpretation affirming the broad sweep of MERA's application.

Moreover, MERA was clearly intended to reach high-level government decisions, not just permits for specific projects. It provides for a cause of action, for example, challenging "an environmental quality standard, limitation, [or] rule . . . promulgated or issued by the state or any agency." Minn. Stat. § 116B.10, subd. 1. Environmental quality standards, limitations, and rules are high-level decisions that authorize general conduct, not specific projects. *See, e.g.*, Minn. Stat. § 14.02, subd. 4 (defining "Rule" as "every agency statement of general applicability and future effect . . . adopted to implement or make specific the law"). The idea that high-level planning cannot be subject to MERA because "assumptions" or "guesswork" are involved in the "theoretical" harm the plan allows, as the City asserts, finds no support in MERA itself. (City Br. at 38-39). If a state-wide "rule" —which would necessarily require the court to make assumptions about the

rule's future theoretical impact—can be subject to a MERA challenge, certainly a city plan authorizing future construction falls within the law's ambit. Respondents' challenge to the adoption of the 2040 Plan is actionable under MERA.

C. Environmental impacts should be evaluated by what the challenged conduct allows

The City incorrectly faults the District Court for accepting Respondents' expert affidavit showing environmental impacts of a "full build-out" of what Respondents allege is allowed by the 2040 Plan. (*See* City Br. at 34-40). But environmental impacts are and must be assessed by what is *allowed*. This is a cornerstone on which environmental protection and regulation is built. For several reasons, this Court should affirm that adverse impacts under MERA are based on what is allowed by the challenged conduct.[2]

It is a bedrock principle of environmental law and regulation that potential future consequences of an action or allowance are measured by what is authorized, even though the authority granted may never be fully used. This principle makes sense: Environmental laws seek to prevent what is often irreversible harm to our shared natural resources by considering the maximum impact of an authorized action. MERA's purpose—"to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction," Minn. Stat. § 116B.01—is served best by this Court reinforcing this principle here.

[2] In this matter, however, it appears that there may be a factual dispute as to what in fact is allowed under the 2040 Plan. If this Court were to reverse, it should do so based on this narrow ground. *See infra*, Part II.

Examples of this principle abound in environmental regulation: Powerplants are permitted to emit a maximum, measurable amount of air pollution; water appropriation permits specify a maximum volume of water that can be withdrawn; and logging plans specify the maximum cordage of timber to be harvested. In every context, the permit, plan, or other action authorizing a future activity that may have adverse environmental impacts establishes a ceiling or limit on what is allowed. This ceiling is used both to evaluate and prevent potential environmental impacts.

Consider, for example, water appropriation permits, which the state requires to ensure groundwater resources are protected and maintained. Under the applicable statute, the Department of Natural Resources ("DNR") must evaluate the environmental impacts of the "maximum pumping rate" requested by the permittee to test whether that maximum amount sought will impact other resources. *See* Minn. Stat. § 103G.287, subd. 1(4). This assessment is required regardless of whether the permittee *intends*—at least at certain times—to appropriate less water. The idea is that if DNR ensures *maximum* withdrawals allowed are sustainable, then *actual* withdrawals, which are assumed to be something less than maximum, are likewise sustainable and will meet the applicable standard. *See* Minn. Stat. § 103G.287, subd. 5 (allowing permits "only if the commissioner determines that the groundwater use is sustainable to supply the needs of future generations and . . . will not

harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells").[3]

The same is true with water quality permits, which the state uses to authorize the discharge of pollutants to surface waters while maintaining (or restoring) the quality of those waters for drinking, recreation, and other uses. *See, generally,* Minn. Pollution Control Agency, *NPDES/SDS Permits: Permitting Process for Surface-Water Dischargers* (2021), https://www.pca.state.mn.us/sites/default/files/wq-wwprm1-02.pdf). These discharge permits contain effluent limits (numeric limits on the maximum amount of the pollutant to be discharged) that are calculated to achieve or maintain water quality. For example, the Minnesota Pollution Control Agency ("MPCA") may determine that 0.8 mg/L phosphorus is the maximum amount a discharger can have in its effluent. *See, e.g.*, *In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit No. MN0040738*, 763 N.W.2d 303, 307 (Minn. 2009) (setting permit limit at 0.8 mg/L). To achieve that 0.8 mg/L limit, however, an operator will have to target its discharge at a much lower concentration. *See id.* (noting that MPCA would "intervene" if discharge was consistently above 0.47 mg/L to ensure that the enforceable maximum was not violated). Thus, water quality is protected by measuring (and modeling) the maximum pollutant discharge *allowed* by the permit, even though the predicted or probable amount of pollutant discharged may be much lower.

[3] Of course, sometimes DNR gets it wrong, and the environment suffers. *See White Bear Lake*, 946 N.W.2d at 376-78 (recognizing that over-pumping aquifers caused lake water levels to drop significantly). Consideration of the maximum impact of an action can build in a margin of safety to protect resources, but even this, as *White Bear* counsels, is not always enough.

Evaluating what is *allowed* by an action, plan, or permit, is the standard way that environmental regulations protect natural resources. This Court should affirm this principle here.

The 2040 Plan should be evaluated based on what the Plan authorizes and not by what the City expects. If the factual record demonstrates that the Plan authorizes development that will materially adversely affect the environment, then its approval will likely materially adversely affect the environment making it actionable under MERA. What might happen, or what the City predicts will happen, is a different question that typically plays no role in environmental regulation because *predictions* and *assurances* are often wrong, which can lead to irreversible environmental damage. And that is exactly what MERA intends to avoid.

D. The "Causation Standard" under the Minnesota Environmental Protection Act ("MEPA") does not define causation under MERA

The City's argument encouraging this Court to adopt a narrow interpretation of "causation" in this case based on the state's environmental review law, MEPA, Minn. Stat. §§ 116D.01-11, should be rejected. (*See* City's Br. at 37-46). While the Minnesota Supreme Court has noted that MERA and MEPA were passed and work in tandem, s*ee White Bear Lake*, 946 N.W.2d at 380-81, the court already squarely rejected the argument the City offers here.

The City asserts that Respondents' claims are foreclosed because they cannot draw a "'reasonably close causal relationship between the environmental effect and the alleged cause'" (City Br. at 45 (quoting without citation *In re Minn. Power's Petition for Approval*

of EnergyForward Res. Package, 958 N.W.2d 339, 348 (Minn. 2021)). The City made this same argument to the Minnesota Supreme Court last year, and it was flatly rejected:

> [T]he City contends that Smart Growth has not alleged sufficient facts showing that the City's adoption of the Plan *is likely to cause* the type of environmental damage that MERA aims to prevent.
>
> The City argues that the Plan is a high-level planning document—simply a statement of policies, goals, and intentions for future development—and that adoption of the Plan does not in and of itself *cause* environmental effects. Rather, the City argues that it would need to take subsequent actions to implement any part of the Plan before environmental effects might occur. The City's position is that the appropriate time for a MERA challenge is when a specific, discrete project is approved, and that Smart Growth's reliance on the alleged environmental damage from a projected full build-out of the Plan is too speculative and tenuous.

Smart Growth, 954 N.W.2d at 595 (emphases in original). The Court rejected the City's "causation standard" argument and then went on to state that, based on the allegations in the complaint, the causal connection between the 2040 Plan and the alleged environmental impacts was sufficient to state a claim under MERA. *Id.* The City's "causation standard" argument is wholly without merit.

Moreover, *Minnesota Power* is neither relevant nor analogous here. *Minnesota Powe*r addressed the Minnesota Public Utilities Commission's ("PUC's") decision to approve affiliate-interest agreements governing construction and operation of a Wisconsin power plant without performing environmental review under MEPA. 958 N.W.2d at 341. The Minnesota Supreme Court held that the "government action" in MEPA that requires environmental review "is the action necessary to allow the project to proceed, either through a permit or other agency approval, the absence of which would block the project." *Id.* at 347. The court relied on a United States Supreme Court case that held "'where an

agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant "cause" of the effect.'" *In re Minn. Power*, 958 N.W.2d at 348 (quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 770 (2004)). In other words, the court found that the Minnesota PUC did not have the requisite control over construction of a power plant in Wisconsin. Here, by contrast, the City has control over the 2040 Plan's changes to the City's zoning ordinance and future development. It issues the permits needed to build multi-family housing in areas newly zoned for denser residential dwellings. *Minnesota Power* is inapposite.

Further, *Minnesota Power* addressed when a proposal is sufficiently concrete to meet the definition of a "project" that may be subject to environmental review. 958 N.W.2d at 344. Compared to "conduct" under MERA, which the courts have consistently affirmed as broad and far-sweeping, a "project" under MEPA "is a definite, site-specific, action that contemplates on-the-ground environmental changes, including changes in the nature of the use." *Minnesotans for Responsible Recreation v. Dep't of Nat. Res.*, 651 N.W.2d 533, 540 (Minn. App. 2002). Thus, the causation standard under MEPA cannot be grafted onto MERA.

E. The immediacy of an environmental impact is not a consideration under MERA

The City argues that Respondents' MERA claim must fail because neither the build out authorized by the 2040 Plan, nor any alleged environmental impact, will happen immediately. (*See generally*, City Br. at 55). But the immediacy of potential environmental

impacts is not an appropriate consideration when the conduct at issue allows or permits future actions with adverse consequences.

First, nothing in MERA's plain language requires the adverse environmental consequences to immediately follow the challenged conduct. The statute recognizes a cause of action for conduct that "materially adversely affects or is likely to materially adversely affect the environment." Minn. Stat. § 116B.02, subd. 5. The courts "do not add words or phrases to an unambiguous statute." *See, e.g.*, *Cnty. of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2013) The City asks the Court to add an immediacy requirement into MERA where none exists. This, the Court cannot do.

Second, the City's argument makes no practical sense. Many environmental harms are slow to develop. The impacts of climate change, for example, are not immediately felt following the authorized construction of a new coal-fired power plant. And nor is an aquifer immediately drained following the grant of a water appropriation permit. For these reasons, courts have repeatedly weighed potential environmental impacts that will first threaten resources years after an action is authorized. For example, last year the Minnesota Supreme Court ordered a contested case hearing to develop facts on whether a clay slurry designed to prevent mining pollution from contaminating surface and groundwater at mine closure—more than 20 years later—would sufficiently protect the environment. *In re NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 739, 752-54 (Minn. 2021). A contested case was ordered *now* even though the alleged environmental harm would not occur until reclamation, which the mining company indicates would occur well after the year 2040. *Id.* at 739. In another example, phosphorus discharge from a

wastewater treatment facility permitted in 1977 into a shallow lake drove the Minnesota Pollution Control Agency to classify the lake as impaired for nutrients in 2002. *In re Alexandria*, 763 N.W.2d at 306. As these cases recognize, environmental harms can ferment as minor inconveniences or small impacts for years before morphing into a materially adverse effect. The 2040 Plan, like the authorizations in these examples, will have long-term effects.

II. If This Court Determines A Remand Is Required It Should Base Its Decision On The City's Factual Allegations, Not Its Legal Arguments

If this Court is inclined to reverse the District Court, it should do so in the narrowest possible way: by finding a genuine dispute of material fact rather than a legal error in the District Court's analysis.

A. This Court routinely resolves appeals on the narrowest grounds

Appellate courts commonly seek to resolve the appeal on the narrowest grounds. *See, e.g.*, *Dep't of Highways. v. O'Connor*, 183 N.W.2d 574, 576 (Minn. 1971) (declining to address second issue where court's decision on the first issue was dispositive); *Whelan v. Hennepin Healthcare Sys., Inc.*, No. A13-0241, 2013 WL 3491278, at *3 (Minn. App. July 15, 2013) (refusing to address remaining legal question "because we are able to resolve the issues on appeal upon other grounds"). Appellate courts also commonly decline to reach issues on appeal if the record is insufficient to facilitate judicial review. *See, e.g.*, *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (declining to reach the merits of an issue that was not fully developed at the lower court).

Here, the narrowest way to reverse the District Court is to find a genuine issue of material fact and avoid the legal issues raised by the City's arguments. Resolving this case in this manner is especially prudent here because Respondents' MERA claim typically requires a fully developed factual record.[4]

B. MERA cases alleging a "Material Adverse Effect" typically require development of a robust factual record, which appears to be missing here

Whether conduct "materially adversely affects the environment" is a fact-intensive question. To assess whether the alleged conduct will cause redressable environmental harm under MERA, the Minnesota Supreme Court has instructed courts to weigh five fact-intensive factors. *Schaller*, 563 N.W.2d at 267. When evaluating a MERA claim using the *Schaller* factors, appellate courts typically review a thorough factual record, often including a trial with expert testimony. *See, e.g.*, *State ex rel. Friends of the Boundary Waters Wilderness v. AT&T Mobility, LLC*, No. A11-1725, 2012 WL 2202984, at *1 (Minn. App. June 18, 2012) (reviewing record of a 4-day bench trial, including 15 witnesses, depositions of 17 additional witnesses and 123 trial exhibits); *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 176 (Minn. App. 2003) (affirming district court determination, following trial, that polo ground was protected resource, but proposed use did not inflict materially adverse impact); *White v. Minn. Dep't of Nat. Res.*, 567 N.W.2d 724, 739 (Minn. App. 1997) (remanding for further proceedings where expert testimony "is subject to challenge at a later stage" but

[4] In its brief, the City explains that the District Court "truncated" discovery and, as a result, at least one of the City's experts was unable to produce a timely expert report. (City's Br. at 7).

appears to be sufficient to establish a prima facie case when viewed in light most favorable to non-moving party).

Here, the record appears to include disputed material facts, and the District Court may have erred in not viewing the City's evidence in a light most favorable to the City when it granted Smart Growth's motion.

1. The Court could remand to develop a factual record on what the 2040 Plan authorizes

It is unclear from the record, factually, what is allowed by the 2040 Plan. The Pauly Report references different calculations—148,389, 42,630, and 48,908—of "new units" of housing. (City Br. at 9-10). A*micus curiae* Metropolitan Council suggests that these calculations are based on an earlier forecast and that its "current official 2040 household forecast for the City is . . . an increase of only *24,829 households* during the 2020-2040 planning horizon." (Met. Council's Br. at 21 (emphasis in original)). The Metropolitan Council further asserts that it "requires" comprehensive plans to use "official forecasts" and that it "will not be able to support a higher level of growth without an official change in forecasts." (*Id.* at 22). Based on the limited record developed below, it is not clear whether the Metropolitan Council's requirements and limitations effectively curtail what was presumed by the District Court to be allowed by the City's 2040 Plan. On this basis, the Court could remand for further development of the record.

2. The Court could remand based on the District Court's failure to view the City's factual evidence in a light most favorable to the City

The District Court appears not to have viewed the City's evidence in a light most favorable to the City in granting summary judgment to Respondents. The District Court

stated that "the City has not put forth any evidence showing that a full build-out will not have any of the potential adverse environmental impacts the Pauly Report identifies. The City has offered no evidence to rebut Plaintiffs' prima facie showing." (City's Add. at 24). The District Court suggests that the City relied entirely on the Bujold Report, which did not address environmental effects. But, according to the City, the record includes other evidence: The City states that its witnesses testified to the benefits of dense development, including "reducing energy consumption and carbon emissions, . . . reducing automobile dominance, [and] improving tree coverage." (City Br. at 12-13). These averments may, if viewed in the light most favorable to the City, suggest material fact disputes on whether the City can rebut the allegations establishing Respondents' prima facie case. *See White,* 567 N.W.2d at 739 (remanding for additional proceedings even where evidence was "conclusory or speculative").

Because MERA cases alleging material adverse effects to the environment require fact-intensive application of the *Schaller* factors and because there appear to be unresolved material fact disputes in this matter, remand for further proceedings may be appropriate here as it was in *White*.

CONCLUSION

Amicus curiae MCEA urges the Court to ensure that its holding in this case does not narrow remedies under MERA and undermine the statute's broad remedial purpose. If the Court determines that remand is appropriate, it should do so on the narrowest grounds, finding that material issues of disputed fact remain, which would allow for development of a more robust factual record.

Dated: August 25, 2022

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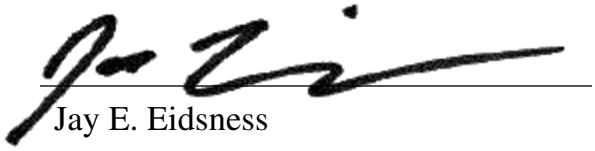
CERTIFICATE OF COMPLIANCE

The undersigned counsel for Amicus Curiae Minnesota Center for Environmental Advocacy hereby certifies that the Brief of Amicus Curiae filed herewith complies with the requirements of Minn. R. Civ. App. P. 132.01, subd. 3: The print is a 13-point, proportionately spaced typeface utilizing Microsoft 365 and the text of the brief, including footnotes and headings, contains 4328 words, excluding the cover page, Table of Contents, Table of Authorities, and this certificate and acknowledgment.

Dated: August 25, 2022

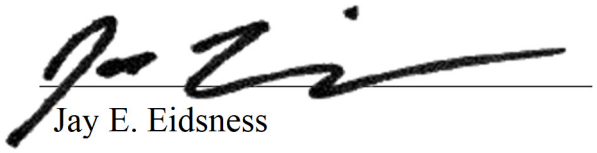


Jay E. Eidsness

CERTIFICATION

In compliance with this Court's March 20, 2020 Order, no paper copies of this brief will be filed with the Court. I hereby certify that, should the Court request a paper copy of this brief, the content of the accompanying paper brief will be identical to the electronic version filed and served, except for any binding, colored cover, or colored back, and any corrections or alterations to this electronically filed brief will be separately served and filed in the form of an errata sheet.

Dated: August 25, 2022



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