

FILED

June 29, 2016

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Ryan Larson,

Appellate Court Case No. A16-0995

Respondent,

v.

Gannett Company, Inc., et al.,

Petitioners.

**REQUEST OF THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS TO PARTICIPATE AS AMICUS CURIAE**

TO: Court of Appeals of the State of Minnesota

Pursuant to Rule 129, the Reporters Committee for Freedom of the Press requests leave to participate as *amicus curiae* in support of Petitioners in the above-captioned petition for discretionary review.

STATEMENT OF INTEREST

The Reporters Committee for Freedom of the Press (hereinafter the “Reporters Committee” or “*Amicus*”) is an unincorporated nonprofit association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and freedom of information litigation since 1970.

Amicus has a significant interest in the question presented by this case because members of the news media play a vital role in disseminating information about matters of public concern to the community. The trial court's decision reduces the ability of the press to rely on the fair report privilege in reporting on government affairs without fear of liability. An *amicus curiae* brief is desirable because the implications of the trial court's decision extend beyond the parties in the case to other members of the news media.

ARGUMENT

This case arises out of the fatal shooting of a police officer, an incident of substantial public interest that prompted numerous, urgent questions within the community concerning, for example, how it happened and whether a dangerous criminal was apprehended. Police officials provided what they believed to be reliable information to the press in order to serve the public's interest in obtaining information about the shooting. The trial court's ruling that much of that information is not protected by the fair report privilege, if allowed to stand, will mean that media organizations will not be able to simply relay to the public what the police are saying without taking on the risk of defamation litigation and liability if any of that information turns out to be wrong, or is even alleged to be wrong. The ability to report this *truthful* information – that police had arrested a suspect, not that the suspect was actually guilty of a crime – must be protected.

Amicus respectfully urge this Court to grant immediate review, and allow *Amicus* to submit a brief. Reversal of the trial court's ruling will serve an important public interest, because litigating this case through a jury trial would unduly burden the news

media and newsgathering, and in turn, reduce the amount of information disseminated to the public. Members of the press should not be mired in litigation when case law is clear that expedited dismissal is appropriate. Review of this case is particularly warranted because questions of fact are undisputed and only a question of law remains. Such questions are preserved for judges, which this Court can and should resolve.

Additionally, if the decision below stands, it would confuse existing fair report law in Minnesota and chill journalists from relying on government pronouncements and proceedings in their reporting. Granting review would allow this Court to clarify principles of the Minnesota fair report privilege.

The fair report privilege protects members of the news media from defamation actions when information obtained from public proceedings and official documents is reported accurately and fairly. *See* RESTATEMENT (SECOND) OF TORTS § 586 (1977) (“The publication of defamatory matter concerning another in a report of an official action or proceeding ... is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported.”). The fair report privilege serves the greater goal of ensuring that the press can safely inform the public about official proceedings and alert the public of accusations being made in public controversies. These protections are critical, as “[t]he public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them.” *Edwards v. Nat’l Audubon Soc’y*, 556 F.2d 113, 120 (2d Cir. 1977).

Nearly every state recognizes the fair report privilege by statute or common law. *Media Libel Law 2013-14*, Media Law Resource Center. While the scope of the fair report privilege varies among states, many courts have found that the fair report privilege covers reliance on a wide ambit of materials in connection with criminal allegations and arrests. *See, e.g., White v. Fraternal Order of Police*, 909 F.2d 512 (D.C. Cir. 1990) (police committee's internal investigation); *Porter v. Guam Publications*, 643 F.2d 615 (9th Cir. 1981) (daily police bulletin); *Ramsey v. Kingsport Publishing Corp.*, 905 F. Supp. 355 (W.D. Va. 1995) (affidavit filed in support of search warrant); *Mark v. Seattle Times, Inc.*, 96 Wash. 2d 473, 635 P.2d 1081 (1981) (prosecutor's affidavit of probable cause). Courts have applied the fair report privilege to statements made by government officials about arrests. *See Yohe v. Nugent*, 321 F.3d 35 (1st Cir. 2003) (statements by police chief); *Turnvill v. Herald Co.*, 459 S.W.2d 516 (Mo. 1970) (statements of policeman). And courts have specifically protected reporting on statements made during government news conferences. *See Wright v. Grove Sun Newspaper Company, Inc.*, 873 P.2d 983 (Okla. 1994) (district attorney's news conference); *Hurst v. Capital Cities Media, Inc.*, 754 N.E.2d 429 (Ill. App. 5th Dist. 2001) (public comments by state's attorney); *Kilgore v. Younger*, 640 P.2d 793 (Cal. 1982) (attorney general's comments at press conference). By granting the petition for review and reversing the trial court's decision, this Court can align Minnesota's fair report privilege with that of other states across the country.

CONCLUSION

The fair report privilege is essential to ensure the news media can continue reporting on government affairs without the burdens of threatened or continuing litigation. Granting immediate review in this case is important, so that this issue can be resolved promptly.

WHEREFORE, the Reporters Committee respectfully requests leave to participate as *amicus curiae* in support of Petitioners.

DATED: June 29, 2016

Respectfully submitted,

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