

NO. A11-1200

State of Minnesota
In Supreme Court

Jill Krout, Howard Veldhuizen, and Mark Lee,
Petitioners,

vs.

City of Greenfield,
Respondent.

**PETITION FOR REVIEW
OF DECISION OF COURT OF APPEALS AND APPENDIX**

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STATE OF MINNESOTA
IN SUPREME COURT

Jill Krout, Howard Veldhuizen,
and Mark Lee,

Petitioners,

**PETITION FOR REVIEW OF DECISION OF
COURT OF APPEALS**

vs.

APPELLATE COURT CASE NO. A11-1200

City of Greenfield,

DATE OF FILING OF COURT OF APPEALS
DECISION: APRIL 16, 2012

Respondent.

LEGAL ISSUES FOR REVIEW

1. **Whether Under The Minnesota Government Data Practices Act ("MGDPA" or the "Act"), Elected Officials Are Employees For Purposes Of Section § 13.43, Such That Their Personnel Data Is Not Subject To Disclosure.**

The Court of Appeals declined to rule on the issue, concluding that on the record presented, these particular elected officials were not employees because the Respondent City so determined, and further concluding that each governing body may determine for itself whether its elected officials are employees for purposes of § 13.43 of the MGDPA.

2. **Whether Appellants' Private Cell Phone Records Disseminated By Respondent City Constituted "Personnel Data" Under § 13.43 Of The MGDPA Insofar As The Records Were "Maintained Because" The Appellants Were Employees Of The City Government.**

The Court Of Appeals declined to rule on the issue.

**STATEMENT OF CRITERIA RELIED UPON TO
SUPPORT THE PETITION**

1. **The issues presented are important ones for the Supreme Court to Rule upon.**

The issue of whether elected officials in the state of Minnesota are employees for purposes of the MGDPA remains unresolved. Without citation to legal authority, the Commissioner of the Department of Administration has suggested an ad hoc rule by which each governing body can decide for itself whether its elected officials are employees for purposes of § 13.43 of the

MGDPA. That approach has now been adopted by the Court of Appeals. This interpretation of the MGDPA is unworkable, legally or practically. It derives from no language or legislative history of the MGDPA. It further creates a patchwork quilt arrangement by which Minnesota governing bodies each independently determine the employment status of their elected officials without legal guidance or consistency - from city councils to the Governor's office. The Commissioner's approach also fails to balance the competing MGDPA policies to protect personnel data while preserving open government - instead granting unfettered and unguided authority to individual governing bodies as to how they to treat personnel data relating to their elected officials under the Act.

2. A decision by the Supreme Court will help develop, clarify and harmonize the law on a question, the resolution of which will have state wide impact and which likely will recur unless resolved. Insofar as these are issues of first impression, a decision by the Supreme Court will develop and clarify the MGDPA's application to personnel data pertaining to elected officials throughout Minnesota; guide governing bodies throughout the State on this issue; and result in a consistent application of the policies of the Act. The Department of Administration solution, now sanctioned by the Court of Appeals, leaves the issue legally unremedied, inviting further legal challenges, and proliferation of MGDPA data requests for personnel data given the uncertainty of the law.

STATEMENT OF THE CASE

Appellants were former elected officials of the Respondent City of Greenfield. In response to an MGDPA request, Respondent demanded and received from plaintiffs their phone records for their personal, private cell phones, then disseminated those records to the public.

In an initial summary judgment proceeding, the trial court ruled that the Respondent had no right to obtain plaintiffs' personal phone records, as they were not "government data" subject to the MGDPA. The parties then stipulated that the records became "government data" after the City collected them and each party

moved in a second summary judgment proceeding for relief on the issue of whether dissemination of the phone records violated the MGDPA. This determination hinged upon whether Appellants, as elected officials, were employees of Respondent for purposes of the Act and whether their private cell phone data constituted "personnel data" protected from dissemination under Minn. Stat. § 13.43 of the Act.

The Trial Court granted Respondent's and denied Appellants' motions for summary judgment, ruling that elected officials are not employees entitled to the protections extended to "personnel data" under the MGDPA.

The Court of Appeals affirmed.

ARGUMENT IN SUPPORT OF THE PETITION

This case presents a critical and fresh issue under the MGDPA: whether elected officials constitute employees under § 13.43 of the Act, such that their personnel data is not subject to public disclosure. This issue not only impacts elected officials at all levels in the State of Minnesota; it also implicates one of the important policies addressed by the Act: the intended *limitation* on the scope of public disclosure as to defined data on public servants.

In response to half a dozen inquiries over the years, the Commissioner of the Department of Administration has opined that governing bodies can determine for themselves whether their elected officials are employees under the Act. This previously unexamined approach was specifically rejected by the Trial Court as "it would effectively allow municipalities to override the legislature by dictating the operation of the MGDPA. . . . [and] further complicate an already complex statutory scheme." (May 6, 2011 Order And Memorandum Granting Defendant's Motion For Summary

Judgment, Appendix at A-93-108). This Minnesota Attorney General's Office has also declined to adopt this interpretation of the Act. The reasons are clear, as articulated by the Trial Court: the Commissioner's approach, while simple, has no legal support in the Act; invites inconsistent treatment of elected officials; and requires every governing body throughout the State to address the issue separately and without legal guidance.

The Court of Appeals adopted the Commissioner's approach, "on the facts of this case" because it saw "no reason to diverge from the commissioner of administration's opinions . . . [which were] directly on point and long standing." (April 16, 2012 Unpublished Opinion of the Minnesota Court of Appeals, at p. 7, Appendix at A-270-277). In its decision, the appellate court addressed none of the legal arguments made by either side based in the language and legislative history of the MGDPA; failed to address the reasons the Trial Court rejected this approach; and failed to explain why the facts of this case uniquely established that Appellants were not city employees.

As argued fully in Appellants' Brief and Reply Brief, no MGDPA language or legal history supports the conclusion that elected officials were intended to constitute a separate class of individuals under the Act, such that their personnel data was unprotected by § 13.43. In fact, the Act's structure and history compels the opposite conclusion: that the legislature intended the protections of § 13.43 to apply broadly to personnel data on all classes of public servants.

The Court of Appeals also failed to adequately distinguish this Court's decision in *Republican Party of Minnesota v. Patrick H. O'Connor, et al.*, 712 N.W. 2d 175, 176 (Minn. 2004) in which the Minnesota Supreme court ruled that election judges, as appointees of municipal bodies, were "employees" for purposes of § 13.43 by virtue of

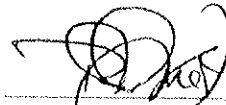
being compensated for their services at rates set by municipal bodies. In particular, the Court of Appeals failed to discuss why any distinctions between appointed and elected officials - who often occupy the same offices - would override the MGDPA policy favouring protection of personnel data under § 13.43 of the Act.

Most critically, failing to provide protection for elected officials' personnel data is anathema to the important policy underlying § 13.43 of the Act - that the public right to open government is outweighed by rights of privacy as to personnel data. There is no reason that this policy concern should not apply equally to elected officials' personnel data.

For these reasons, the Petitioners seek an order granting review of the decision of the Court of Appeals.

May 16, 2012

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