

No. A23-1284

STATE OF MINNESOTA
IN SUPREME COURT

FILED

August 20, 2024

OFFICE OF
APPELLATE COURTS

Energy Transfer LP (f.k.a. Energy Transfer Equity, LP), et al.,

Appellants,

vs.

Greenpeace International (a.k.a. Stichting Greenpeace Council), et al.,

Defendants,

Unicorn Riot, et al.,

Respondents.

**REQUEST OF THE FORUM FOR CONSTITUTIONAL RIGHTS
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
IN SUPPORT OF RESPONDENTS UNICORN RIOT, ET AL.**

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The Forum for Constitutional Rights (“FCR” or the “Prospective Amicus”) respectfully seeks permission under MRCAP 129.01 to file an *amicus curiae* brief in *Energy Transfer LP v. Greenpeace Int’l*, No. A23-1284 (Minn.).

Identity of the Prospective Amicus

The Forum for Constitutional Rights is a general public-benefit corporation organized and run under Minnesota law. FCR provides public education about constitutional history and rights, including (but not limited to) First Amendment rights. FCR’s educational efforts include filing *amicus curiae* briefs in key cases. In this regard, FCR has filed amicus briefs with the Minnesota Supreme Court,¹ the Minnesota Court of Appeals,² the Supreme Court of the United States,³ and the United States Court of Appeals for the Eighth Circuit.⁴

FCR is non-partisan, aiming to elevate discourse on constitutional matters by highlighting enduring principles rooted in America’s constitutional traditions – principles like freedom of the press and due process. *See* U.S. CONST. amends. I, V, XIV. FCR supports consistent judicial enforcement of these principles, thus ensuring these core values remain central in American civic life.

¹ *See, e.g.*, Brief of *Amicus Curiae* FCR Supporting Respondent Joseph Hamlin, *State v. Schaffer*, 8 N.W.3d 220 (Minn. 2024) (No. A23-0036); Brief of *Amicus Curiae* FCR Supporting Appellants Drake Snell, et al., *Snell v. Walz*, 985 N.W.2d 277 (Minn. 2023) (No. A21-0626).

² *See, e.g.*, Brief of *Amicus Curiae* FCR Supporting Respondents/Cross-Appellants Unicorn Riot, et al., *Energy Transfer LP v. Greenpeace Int’l*, 7 N.W.3d 153 (Minn. App. 2024) (No. A23-1284).

³ *See, e.g.*, Brief of *Amici Curiae* Restore the Fourth, Inc. & FCR in Support of Respondent, *FBI v. Fikre*, 601 U.S. 234 (2024) (No. 22-1178); Brief of *Amici Curiae* FCR & Foundation for Individual Rights & Expression in Support of Petitioner, *Ark. Times LP v. Waldrip*, No. 22-379 (U.S. brief filed Nov. 23, 2022).

⁴ *See, e.g.*, Brief of *Amicus Curiae* FCR Supporting Appellants, *Northland Baptist Church of St. Paul v. Walz*, 37 F.4th 1365 (8th Cir. 2022) (No. 21-2283).

Interest of the Prospective Amicus

FCR's interest in *Energy Transfer LP* is public in nature. This case concerns the Minnesota Free Flow of Information Act (MFFIA), Minn. Stat. §§ 595.021 to 595.025. The MFFIA exists to protect "the confidential relationship between the news media and its sources." *Id.* § 595.022. The MFFIA shields any person "who is or has been directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purpose of transmission, dissemination or publication to the public." *Id.* § 595.023. Consistent with these mandates, the court of appeals correctly held that the MFFIA protects Respondents Unicorn Riot and Niko Georgiades (a journalist for Unicorn Riot).

Position of the Prospective Amicus

FCR supports Respondents in terms of the court of appeals' determination that the MFFIA protects Respondents' news-gathering activities. FCR's amicus brief would address the first question posed by *Energy Transfer's* PFR: "Should the qualified privilege established by the MFFIA apply when a purported newsgatherer engages in unlawful or tortious conduct?" The court of appeals answered 'yes,' and FCR supports affirmance of that answer.

Reasons Why a Brief by the Prospective Amicus Is Desirable

Energy Transfer LP turns on the extent to which the MFFIA protects news-gathering activities. The MFFIA applies to all persons "directly engaged in the gathering, procuring, compiling, editing, or publishing of information for the purposes of transmission, dissemination, or publication to the public." Minn. Stat. § 595.023. The MFFIA recognizes just two exceptions to this rule: one for

certain listed criminal offenses (felonies and misdemeanors) and the other for defamation. *See* Minn. Stat. § 595.024, subd. 2(1). The MFFIA further narrows these two exceptions by forbidding their application unless: (1) “information cannot be obtained by alternative means or remedies less destructive of First Amendment rights”; and (2) a “compelling and overriding interest” exists that requires disclosure “to prevent injustice.” *Id.* § 595.024, subd. 2(2), (3).

Energy Transfer “does not assert” any MFFIA “exception” applies in this case. *Energy Transfer LP v. Greenpeace Int’l*, 7 N.W.3d 153, 160 (Minn. App. 2024). Energy Transfer instead maintains that the MFFIA generally does not protect “information acquired during or related to a purported newsgatherer’s unlawful conduct.” *Id.* But the MFFIA expresses no such exception, and it is well-settled that Minnesota courts will not “add words to the plain language of a statute to fit with an identifiable policy.” *Gen. Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019). The court of appeals correctly enforced that principle here — one that is of vital importance to ensuring that debates over the “wisdom” of a statute are “waged at the legislature, not in the judicial branch.” *S. Minn. Beet Sugar Coop v. Cty. of Renville*, 737 N.W.2d 545, 553 n.3 (Minn. 2007).

FCR expects that before this Court, Energy Transfer will use provocative hypotheticals to make Energy Transfer’s rewriting of the MFFIA seem like mere statutory interpretation — for example, Energy Transfer’s hypothetical in its PFR of a reporter “break[ing] into a law office in the middle of the night, copy[ing] newsworthy documents, and then assert[ing] a blanket privilege under MFFIA.” Energy Transfer Pet. for Review 5 n.2, *Energy Transfer LP v. Greenpeace Int’l*, No. A23-1284 (Minn. PFR filed June 5, 2024). Against these hypotheticals, however,

there are numerous real-world examples of invaluable journalism that Energy Transfer’s rewriting of the MFFIA would jeopardize, contrary to “the intention of the legislature.” Minn. Stat. § 645.16 (legislative intent “may be ascertained by considering” the “necessity for the law,” the “mischief to be remedied,” and “the consequences of a particular interpretation”). FCR therefore respectfully submits that it would be able to provide the Court “relevant precedent, arguments, and policy considerations not included in the primary briefs.” *St. Paul Fire & Marine Ins. Co. v. API, Inc.*, 738 N.W.2d 401, 411 (Minn. App. 2007).

Conclusion

This case presents a question that touches upon the very “basis of our government”: legal protection of journalism essential to an informed electorate. 2 WRITINGS OF THOMAS JEFFERSON 99-100 (H.A. Washington ed. 1853). Because argument by FCR would help in achieving a “true picture” of this question, *id.*, the Court should grant FCR’s request for permission to file an amicus brief in *Energy Transfer LP v. Greenpeace Int’l*, No. A23-1284 (Minn.).

Respectfully submitted,

Dated: August 20, 2024

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