STATE OF MINNESOTA

IN COURT OF APPEALS

In re TEGNA Inc., Petitioner. State of Minnesota, Plaintiff, v. Joseph Francis Sandoval II, Defendant.	**PETITION FOR WRIT OF PROHIBITION** Appellate Court No. _____ Trial Court No. 62-CR-22-6099 The Hon. Joy D. Bartscher

TO: The Court of Appeals for the State of Minnesota:

Pursuant to Minnesota Rule of Civil Appellate Procedure 120, Petitioner TEGNA Inc. on behalf of its broadcast station KARE-TV ("KARE 11") respectfully requests that this Court issue a writ of prohibition restraining the Ramsey County District Court, the Hon. Joy D. Bartscher, from enforcing unconstitutional prior restraints on speech issued on July 19, 2024, in oral and written orders that purport to prohibit the media, including KARE 11, from displaying, publishing, or disseminating a sentencing memorandum lawfully obtained from the Court's public access website and require destruction of that memorandum. In support of its petition, KARE 11 states as follows:

PRELIMINARY STATEMENT

Through Minnesota Court Records Online ("MCRO"), KARE 11 lawfully obtained a sentencing memorandum in the above-captioned double-murder case. The memorandum directly relates to a matter of substantial public concern, on which KARE 11 has extensively reported—namely, the systemic failings of the criminal legal system

to treat defendants deemed incompetent and ensure the safety of the public from those same individuals when their criminal cases are dismissed. The memorandum also relates to other, ongoing reporting by KARE 11 about allegations of fraudulent billing by the company that operated the sober house where the murders occurred.

Under clear and binding precedent, KARE 11 has a First Amendment right to use the sentencing memorandum and any information derived from it in its news reporting and, in fact, intended (and intends) to do so. But on July 19, 2024, a Ramsey County District Court orally, and then in writing, prohibited it from doing so (collectively, the "July 19 Orders" or the "Orders").

The Court even went so far as to order members of the media to destroy the memorandum:

> I do want to notify anybody that is here from the media that may have had access to … the memorandum that the defense prepared … that this order says that if there were copies made no additional copies or any portion of the memorandum should be made by parties who had access to it … [and] if somebody printed a copy of that memo, I'm ordering that they destroy any printed copy of that memo. If that memo was shared with anyone and they received it, it should be destroyed.

The Court issued its July 19 Orders without any notice to the media that it was contemplating doing so. Worse, the Court knew counsel for KARE 11 was in the courtroom—counsel attended in hopes of addressing an unrelated issue—but denied KARE 11 an opportunity to be heard. Indeed, before the hearing began, the Court explicitly made clear that only the parties and family members of the victims would be allowed to speak on the record. The Court did not consider a single alternative prior to

issuing its Orders, nor did it provide any explanation why such unconsidered alternatives would be inadequate here.

KARE 11 now seeks relief from this Court to restore and safeguard its fundamental First Amendment rights. The July 19 Orders are quintessential prior restraints, "the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In fact, the Supreme Court of the United States has **never** held a prior restraint constitutional, and has said such infringement on speech would be proper only in the most exceptional case. This is no such case. Accordingly, under the First Amendment, the Orders cannot stand, and KARE 11 respectfully requests that this Court swiftly issue a writ of prohibition restraining Ramsey County District Court Judge Joy D. Bartscher from enforcing her unconstitutional July 19 Orders.

Unless and until the Orders are lifted, and with each passing minute, KARE 11 suffers the ongoing, significant harm of having truthful speech about the lawfully obtained sentencing memorandum infringed. It therefore requests that this Court consider and grant this Petition expeditiously.

STATEMENT OF FACTS

KARE 11 has long followed the prosecution of Joseph Sandoval for murdering two people, as part of its series titled "The Gap: Failure to Treat, Failure to Protect." The series, which is the culmination of a years-long investigation by KARE 11, focuses on the systemic failings in cases of individuals who are charged with crimes, found to be incompetent, have their cases dismissed without court-ordered mental health treatment or

oversight, and go on to commit new, sometimes more serious, offenses—*i.e.*, "the gap." Sandoval's is just such a case.

Before being charged with, and subsequently pleading guilty to, two counts of Second Degree Murder, Sandoval was charged with numerous crimes, including several violent offenses, but was repeatedly found incompetent. His cases were all dismissed. A.J. Lagoe, Brandon Stahl, & Steve Eckert, *KARE 11 Investigates: Capitol blunder delays deadly gap case reforms*, KARE 11 (Feb. 9, 2023), https://www.kare11.com/article/news/investigations/kare-11-investigates-blunder-delays-gap-reforms/89-7bdf386b-1555-4cab-a386-b24ffc9c1958. Sandoval was committed to the care of the Department of Human Services, but, due to funding shortages, was "provisionally discharged" to Evergreen Treatment Recovery Center and dropped off at one of its sober homes in St. Paul. *Id*.

Within just a couple of hours of arriving, Sandoval murdered two people. *Id*.

Sandoval was charged with the murders in 2022, but just as soon ordered to undergo a competency evaluation. Declaration of Isabella Salomão Nascimento ("Nascimento Decl."), Ex. 1. His case was suspended for approximately nine months, until he was found competent to proceed on June 16, 2023. *Id*. Nearly a year later, Sandoval entered a *Norgaard* guilty plea, and his sentencing was set for July 19. *Id*.

On May 31, KARE 11 submitted a Notice of Visual or Audio Coverage to allow camera coverage of Sandoval's sentencing hearing. On July 15, the Court issued a two-page written denial of that request. *Id*. Ex. 2 (the "July 15 Order"). KARE 11 recognizes that court rules do not allow it to appeal this decision, but briefly recounts the context

surrounding its camera request because that request is why counsel for KARE 11 was in the courtroom on July 19. In addition, the Court's comments made in connection with the request reveal important truths about views of the media that underpin its July 19 Orders.

Citing Minn. Gen. R. Prac. 4.02(d)—which does not govern cameras at sentencing but applies only "before a guilty plea has been accepted or a guilty verdict has been returned"—the Court claimed in its July 15 Order that Minn. Stat. § 518B.01 prohibited camera coverage of the sentencing, absent "a request in writing or on the record [by the victim] asking the judge to allow coverage," and that "neither victims' family is requesting such coverage." July 15 Order at 1-2. The Court noted that "[b]oth parties previously objected" to such coverage, *id*. at 2, though neither the State nor the defense had objected to the requests for camera coverage of the sentencing hearing. Additionally, and without elaboration, the Court claimed that "there [wa]s good cause to prohibit audio or video coverage of the proceedings." *Id*.

After the Court issued its July 15 Order, both victims' families filed correspondence asking the Court to grant KARE 11's request for camera coverage at sentencing. Nascimento Decl. Exs. 3, 4. On July 17, KARE 11 likewise filed correspondence, essentially asking the Court to reconsider and explaining the bases for its request—in particular, that Sandoval's case is a matter of significant public interest and concern, especially in light of KARE 11's ongoing reporting on "the gap"; that Minn. Stat. § 518B.01 does not apply, but even if it did, its requirements had been satisfied in this case given the requests by the victims' families; and that there was no good cause to support denying the request. *Id*. Ex. 5.

Sandoval filed a belated objection to KARE 11's request raising new grounds to deny camera coverage. *Id.* Ex. 6. In response, counsel for KARE 11 informed the Court that they intended to attend the hearing and asked for an opportunity to be heard on the camera coverage request before sentencing began, *id*. Ex. 7. The Court denied the request without explanation. *Id*.

Separately, on July 16, counsel for Sandoval filed a sentencing memorandum in support of his request for a downward durational departure. *Id*. Ex. 1. Sandoval's counsel attempted to file the memorandum as a non-public document, *Id*. Ex. 8, but when the Court accepted the filing, its staff rejected the confidential filing status, indicating that "the document security [was] incorrectly designated as confidential or sealed" and "has been changed to public." *Id*. at 1. The memorandum then became available for public access on MCRO, and KARE 11 (and possibly other, unknown third parties) lawfully obtained a copy.

As it had told the Court it would, KARE 11 and its counsel attended Sandoval's sentencing hearing on July 19. Nascimento Decl. ¶ 13; *id*. Ex. 7. The Court began by addressing the several requests for coverage it had received, including KARE 11's May 31 request, its July 17 correspondence, and its request to be heard. *Id*. Ex. 9 at 2:4-3:6. The Court reiterated that it would not allow counsel to be heard on the matter, *id*. at 3:7-10, and then launched into a cynical diatribe against the media and its long-recognized role in democracy as a proxy and watchdog for the public:

> I believe that the media coverage would make this case more a circus than a solemn proceeding in which the Court is making a decision about many people's lives. The purpose of

> media coverage is supposed to be, supposedly what I have been instructed, is to have transparency about what is going on in a courtroom. I don't think that that's what the purpose is of media coverage quite frankly. The public is welcome in any courtroom in the whole State of Minnesota. … [I]f [the public] were interested in this case, [they] could come in court and could watch what's going on in court and they have chosen not to. And in this particular case camera in the courtroom would serve no public interest at all and would in fact detract from the fair administration of justice.

Id. at 3:22-4:14.[1]

Then, without any notice to the press or public or allowing either an opportunity to be heard on the matter—despite knowing that counsel was in the gallery—the Court announced that it would be immediately entering a protective order related to "something that [the defense] had filed confidentially" that "was rejected incorrectly and should have been accepted as confidential." *Id*. at 5:12-20. It continued,

> It is my understanding that at least one media outlet was able to access that information that should have been confidential and [the defense] has requested that the Court issue a protective order.
>
> …
>
> So I am going to sign this order and it will be filed with the Court after court today. But **I do want to notify anybody that is here from the media** that may have had access to

[1] The Court's personal views on the "purpose" of media coverage ignore findings of the Minnesota Supreme Court that "allowing greater visual and audio coverage … increase[s] transparency about how we conduct our business and enhance[s] the public's understanding of, and confidence in, its court system." *See* Order Promulgating Amendments to the General Rules of Practice for the District Courts, Nos. ADM10-8049, ADM09-8009 (Minn. Mar. 15, 2023) at 5, attached as Nascimento Decl. Ex. 11; *see also id.* at 7 (finding that expanded camera coverage "will promote transparency and confidence in the basic fairness that is an essential component of our system of justice in Minnesota").

> information that should have been confidential, which is including the memorandum that the defense prepared … that this order says that if there were copies made that no additional copies or any portion of the memorandum should be made by parties who had access to it or their representatives or agents of the parties who accessed it. And that includes that it can't be shared with any of the other attorneys that are involved in this case.
>
> …
>
> **[I]f somebody printed a copy of that memo, I'm ordering that they destroy any printed copy of that memo. If that memo was shared with anyone and they received it, it should be destroyed.** And anybody is prohibited from [dispersing] it further. The memorandum shall not be used for any purpose than consideration by the Court and parties for sentencing.
>
> **The memorandum shall not be published, publicly exhibited, shown, displayed**, used for educational, research, or demonstrative purposes or used in any other fashion except in judicial proceedings in the above-referenced action. So that's going to be filed shortly.

Id. at 5:21-24, 6:10-7:18 (emphasis added).

The Court doubled down on its destruction order: "What is not included in [the written order] is my order that I just made that if there are any copies that were reproduced … that those should be destroyed and are not to be distributed." *Id*. at 7:19-22 (the "Destruction Order"). The Court filed the written protective order at the conclusion of the sentencing hearing. Nascimento Decl. Ex. 10 (the "Gag Order").

The Court's July 19 Orders had immediate and far-reaching consequences on KARE 11's reporting. For example, KARE 11 had planned to use non-sensitive information from the sentencing memorandum in a broadcast about Sandoval's sentencing. For fear of contempt, however, KARE 11 omitted that information from the

broadcast, which aired at 6:30 p.m. that day. *See* A.J. Lagoe & Steve Eckert, *KARE 11 Investigates: 'GAP' case murderer sentenced to 38 years*, KARE 11 (July 19, 2024), https://www.kare11.com/article/news/investigations/kare-11-investigates-gap-case-murderer-sentenced/89-f013dbe9-dd54-4567-a736-c8f834939587.

Portions of the sentencing memorandum are also pertinent to KARE 11's ongoing reporting on other, related matters of significant public concern. *See, e.g.*, A.J. Lagoe, Steve Eckert, & Gary Knox, *KARE 11 Investigates: Feds launch probe into Twin Cities addiction treatment center*, KARE 11 (May 9, 2024), https://www.kare11.com/article/news/investigations/kare-11-investigates-feds-launch-probe-into-twin-cities-addiction-treatment-center-evergreen-recovery/89-5ff27f0b-0354-4f30-8287-64f037cbf850. Thus, without immediate relief by this Court, KARE 11 will once again before forced to choose between reporting on information it lawfully obtained from the Court's public docket, and risk being held in contempt, or giving up its constitutionally guaranteed right to freedom of the press and depriving the public of information on matters of significant public interest and concern.

STATEMENT OF THE ISSUES

1. Whether the Court's written Gag Order prohibiting the display, publication, or dissemination of a sentencing memorandum lawfully obtained from the Court's public access website constitutes an invalid prior restraint on speech under the First Amendment.

   Suggested Answer: Yes.

2. Whether the Court's oral Destruction Order requiring the destruction of the lawfully obtained sentencing memorandum violates the First Amendment.

   Suggested Answer: Yes.

3. Whether the Court's July 19 Orders further violate the First Amendment because they were entered without affording the press and public due notice or an opportunity to be heard, and because the Court failed to consider any alternatives to the exceptional remedy of a prior restraint or provide explanation why such alternatives are inadequate.

Suggested Answer: Yes.

STATEMENT OF REASONS WHY THE EXTRAORDINARY WRIT SHOULD ISSUE

"A writ of prohibition is an extraordinary [remedy] issued out of [an appellate] court for the purpose of keeping inferior courts … from going beyond their jurisdiction." *State v. Hartman*, 112 N.W.2d 340, 346 (Minn. 1961). "Before a writ of prohibition is issued, three elements are required: (1) an exercise of judicial or quasi-judicial authority, (2) which is unauthorized by law, and (3) causes harm for which there is no adequate remedy at law." *Minneapolis Star & Tribune Co. v. Lee*, 353 N.W.2d 213, 214 (Minn. App. 1984).

The Minnesota Supreme Court has repeatedly recognized that a writ of prohibition is the appropriate relief where "a trial court issues an unconstitutional prior restraint of free speech." *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 434 (Minn. App. 1985); *see Lee*, 353 N.W.2d at 214-15 (finding that a prior restraint order satisfies the three elements of a writ of prohibition); *Nw. Public'ns, Inc. v. Anderson*, 259 N.W.2d 254, 256 (Minn. 1977) (in the context of a writ of prohibition, holding the media has "standing to challenge . . . orders" that "have the effect of either directly or indirectly interfering with their functions of collecting or disseminating the news").

The restrictions of the July 19 Orders are classic examples of unconstitutional prior restraints. As the Supreme Court has long recognized, the "dominant purpose" of the First Amendment's free-speech clause is to outlaw prior restraints. *See N.Y. Times Co. v. United States*, 403 U.S. 713, 723-24 (1971) (Douglas, J., concurring). For this reason, every prior restraint "comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *see also Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 259 (1974) (White, J., concurring) ("the First Amendment erects a virtually insurmountable barrier" to prior restraints).

Indeed, the Orders in this case run counter to an unbroken line of precedent rejecting prior restraints, and while the Court has not gone so far as to say that protection from prior restraints is "absolutely unlimited," it has hypothesized that, to uphold one, it would take a truly "exceptional case[]" akin to preventing "the publication of the sailing dates of transports or the number and location of troops" during wartime. *See Near v. Minnesota*, 283 U.S. 697, 716 (1931); *see also N.Y. Times*, 403 U.S. at 726 (Brennan, J., concurring) (suggesting that suppressing "information that would set in motion a nuclear holocaust" could be justified).

Further contextualizing what it might consider "exceptional," more than 50 years ago, the Supreme Court held that a newspaper could not be enjoined from publishing the Pentagon Papers, even where the documents had been provided to the newspaper by a third party who had stolen them and even where their disclosure could threaten the security of the country. *See generally N.Y. Times*, 403 U.S. 713.

Since then, the Court has repeatedly reaffirmed that, if a news organization "lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *Fla. Star v. B.J.F.*, 491 U.S. 524, 533 (1989) (quoting *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979)). This principle is at its strongest when the information to be published is made public by the court itself, and applies even where—as here—the information was disclosed by the court inadvertently. *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) ("[T]he First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. . . . Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it.").

For example, in *Cox Broadcasting*, the Supreme Court held that a television station could not be sanctioned, civilly or criminally, for broadcasting the name of a 17-year-old deceased rape victim, despite a Georgia statute making it misdemeanor to do so, after the clerk of the court made records containing the victim's name available to the reporter for inspection. 420 U.S. at 471-72, 495-96; *see also Bohnen v. Dorsey & Whitney, LLP*, 2017 Minn. App. LEXIS 89, at *3 (June 13, 2017) (suggesting, in a case where the Star Tribune successfully moved to unseal certain documents filed with the court, it would be an impermissible prior restraint to prohibit "the publication of information that was lawfully obtained by media representatives").

This case is no different. Here, whether properly or improperly, court administration made the sentencing memorandum publicly available, and KARE 11 lawfully obtained the document from the Court's own website, MCRO. Indeed, the Court tacitly admits as much, when it says that it was aware "at least one media outlet was able to access that [memorandum] that **should have been** confidential" but was "rejected incorrectly" by the clerk's office. Nascimento Decl. Ex. 9 at 5:13-24 (emphasis added). It is thus without question that the Court's July 19 Orders prohibiting publication of lawfully obtained information and requiring destruction of the same run afoul of the First Amendment.

But even if this were not the case, its Orders still could not stand. Before *any* prior restraint order may be imposed, a trial court must provide the press and public notice and an opportunity to be heard, and the court must "make specific factual findings" to support "that the order was necessary under the unique circumstances of the case presented," sufficient to survive strict scrutiny. *Nw. Publ'ns*, 259 N.W.2d at 257-58; *Schmidt*, 360 N.W.2d at 435. That is, a prior restraint must be narrowly tailored to serve a compelling state interest, *Schmidt*, 360 N.W.2d at 435, which means the court must consider all alternatives to its order and make a record of the reasons "that each is inadequate," *Nw. Public'ns*, 259 N.W.2d at 257. The Court here failed to comply with a single one of these requirements:

- It failed to give the press or the public any notice that it was considering a protective order restricting speech until it had already decided to sign it, *see* Nascimento Decl. Ex. 9 at 6:10-12;

- It denied the press an opportunity to be heard, despite the fact that counsel had specifically alerted the Court that they were attending the sentencing hearing and had asked for a chance to be heard on another access-related issue, *see* Nascimento Decl. Ex. 7; and

- It gave no consideration to any alternative options, instead signing the Gag Order, entering it immediately, and compounding its harm by orally imposing the additional Destruction Order, *see* Nascimento Decl. Ex. 9 at 7:9-22.

Simply put, the procedural posture of the Court's July 19 Orders is as constitutionally infirm as the Orders themselves. Indeed, it is as if the Court failed to give the First Amendment and the fundamental rights it affords both the press and public any consideration whatsoever.

Because the Court's Orders fly in the face of decades of U.S. Supreme Court, Minnesota Supreme Court, and Minnesota Court of Appeals case law, KARE 11 is entitled to immediate relief in the form of a writ of prohibition restraining Ramsey County District Court Judge Joy D. Bartscher from enforcing them.

CONCLUSION

WHEREFORE, KARE 11 respectfully requests an order granting the petition for a writ of prohibition and immediate issuance of the writ.

Dated: July 24, 2024

BALLARD SPAHR LLP

s/ Isabella Salomão Nascimento

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WORD COUNT CERTIFICATE

I hereby certify that the foregoing document conforms to the requirements of the applicable rules, is produced with a proportional font, and the length of this document is 3,720 words. This document was prepared using Microsoft Office Word.

/s/ Isabella Salomão Nascimento
Isabella Salomão Nascimento

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2024, I caused the foregoing to be electronically filed with the Minnesota Court of Appeals through the E-MACS application. I further certify that, pursuant to Minn. R. Civ. App. P. 120.02 and 125.03, I caused the foregoing to be served on the following by U.S. Mail:

Ramsey County District Court
Attn: Chief Judge Sara Grewing
Judge Joy D. Bartscher
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I also caused the foregoing to be filed with the trial court's electronic filing and service system.

/s/ Isabella Salomão Nascimento
Isabella Salomão Nascimento

ACKNOWLEDGEMENT

Petitioner, by the undersigned, hereby acknowledges that pursuant to Minn. Stat. § 549.211 sanctions may be imposed under this section.

/s/ Isabella Salomão Nascimento
Isabella Salomão Nascimento