

22-302.

No. _____

In The
SUPREME COURT OF THE UNITED STATES

SEP 1 2022

Brent A. Ristow,

Pro se Petitioner,

v.

Amanda Cunningham,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the State of Minnesota in A21-1204.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a private citizen who has submitted allegedly defamatory statements, to the government, *ex parte*, outside of any adversarial proceeding, about another private citizen, is entitled to assert absolute immunity as a defense for the making of such statements?

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PETITION FOR WRIT OF CERTIORARI

The Plaintiff, a private citizen, respectfully petitions the Court for a writ of certiorari to review the opinion of the Court of Appeals for the State of Minnesota, and asserts this Petition presents an issue of first impression: Whether a private citizen who has submitted allegedly defamatory statements, to the government, *ex parte*, outside of any adversarial proceeding, about another private citizen, is entitled to assert absolute immunity as a defense for the making of such statements?

PARTIES AND PROCEEDINGS

The Parties to this action are those described on the cover of this Petition.

On August 31, 2020, the District Court, Second Judicial District, Ramsey County, in the state of Minnesota issued an Order in Ristow v. Cunningham, case no. 62-CV-19-5039, based on the filings and without oral argument, granting Ms. Cunningham's motion for partial summary judgment.

Upon transfer of venue to the District Court, Sixth Judicial District, Saint Louis County, in the state of Minnesota, this action was reassigned as case no. 69-DU-CV-20-1564.

On September 16, 2021, final judgment was entered in the District Court, Sixth Judicial District, Saint Louis County, in the state of Minnesota making the August 31, 2020, order final for purposes of appeal.

On April 18, 2022, the Court of Appeals for the state of Minnesota issued an Opinion in Ristow v. Cunningham, case no. A21-1204, based on the filings and without oral argument, affirming the August 31, 2020, order of the Second Judicial District.

The April 18, 2022, Opinion of the Court of Appeals is not reported.

On June 21, 2022, the Supreme Court, for the state of Minnesota, issued an order in Ristow v. Cunningham, case no. A21-1204, based on the filings, without oral argument, denying Petitioner's petition for further review, without comment.

JURISDICTION

The Minnesota Court of Appeals entered judgment the same day it entered its opinion, on April 18, 2022.

The Minnesota Supreme Court, the state court of last resort, entered an order denying review, on June 21, 2022.

Because Ms. Cunningham has claimed to be absolutely immune; this court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Constitution of these United States, amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Constitution of these United States, amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. In March of 2017 Petitioner and Respondent, Ms. Cunningham, ended a personal relationship. (APP, p. 16, last para.).

2. On December 1, 2017, Petitioner applied to the Minnesota Board of Law Examiners (the Board) to take a state licensing exam, the Minnesota bar exam. (APP, p. 17, first para.).

3. Over the 27th & 28th of February 2018, Petitioner sat for the Minnesota bar exam. (APP, p. 17, first para.).

4. On April 16, 2018, the Board notified Petitioner that he had passed the Minnesota bar exam but that he would not be recommended for admission as their character and fitness investigation is not complete, is ongoing, and any request for additional information would be posted to his application portal. (APP, p. 17, first para.).

5. On October 4, 2018, eleven (11) months into its character and fitness investigation into Petitioner's state license application, Ms. Erin Wacker, the character and fitness investigator at the Board, contacted Ms. Graning, now remarried, and going by Amanda Cunningham, informed Ms. Cunningham of the Board investigation, and asked Ms. Cunningham if she would like to contribute any information she deemed appropriate about Petitioner's character for use in determining his application. (APP, p. 17, first para., and p. 41 through 45).

6. On October 10, 2018, 10:55 am, in an email to Ms. Cunningham, while discussing whether Petitioner would receive notice of Ms. Cunningham's defamatory *ex parte* statement, Ms. Wacker used the words "If" and "we" in stating:

If he ends up having access to your affidavit, we will make sure to give you notice. (APP, p. 44, top of page).

7. Two days later, on October 12, 2018, Ms. Cunningham sent Ms. Wacker an *ex parte* statement including false and defamatory accusations, viciously maligning Petitioner's character. (APP, p. 17, first para., and p. 41 through p. 45).

8. On October 12, 2018, Ms. Wacker received and inserted Ms. Cunningham's defamatory *ex parte* statement into Petitioner's application file for consideration by the Board. (APP, p. 17, first para., and p. 41 through p. 45).

9. On February 12, 2019, the Board issued a First Determination, denying Petitioner's application, determining Petitioner lacked the good moral character allegedly requisite to obtaining a state license, stating:

The Minnesota State Board of Law Examiners (Board) has made an adverse determination pursuant to Rule 15A of the Board's Rules for Admission to the Bar (Rules) with regard to your application for admission to the Bar of Minnesota. You have a right to appeal this decision and ask for a formal hearing before the Board prior to a final determination being made. If you do not ask for a hearing, this adverse determination will become the final decision of the Board.

10. Board Rule 15A, Adverse Determination, states in full:

When an adverse determination relating to an application's character, fitness, or eligibility is made by the Board, the director shall notify the applicant of the determination, the reasons for the determination, the right to request a hearing, the right to be represented by counsel, and the right to present witnesses and evidence.

11. In February of 2019 Petitioner appealed the First Determination (APP, p. 17, first para.). And in response the Board scheduled an appeal hearing under Rule 15A for July 16, 2019, and they sent Petitioner a copy of his application file. (APP, p. 31, second para.).

12. In preparation for the July 16, 2019, hearing Petitioner, while reviewing his application file, became aware, for the first time, of the false and defamatory *ex parte* statements Ms. Cunningham had made to the Board about Petitioner. (APP, p. 31, second para., and comment that defamatory statement produced *after* Petitioner requested a hearing).

13. On May 21, 2019, based on his understanding of Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963), Petitioner filed a Motion to Exclude with the Board asking that Ms. Cunningham's defamatory *ex parte* statements be excluded as evidence from the July 16, 2019, hearing on the grounds Petitioner had not received notice of them or an opportunity to respond thereto prior to the First Determination. (APP, p. 27 second sentence, and p. 27 through p. 40).

14. Though an administrative appeal this was the initial instance of Petitioner having raised the issue of lack of notice and opportunity with respect to Ms. Cunningham's defamatory *ex parte* statements.

15. On June 26, 2019, the Board issued an order that held the Board had no obligation to provide Petitioner with Ms. Cunningham's statement prior to the First Determination (APP, p. 29, and p. 30) while also asserting that the burden of proving character lies with Petitioner (APP, p. 33, third sentence), and characterizing his advocacy for his due process rights as an "attack" (APP, p. 36, last sentence). (APP, p. 27 through 40).

16. On July 19, 2019, Petitioner, seeking relief from Ms. Cunningham, initiated this action in Minnesota state court, Second Judicial District, Ramsey County, and asserted claims of defamation and defamation *per se* based on Ms. Cunningham's October 4, 2018, *ex parte* statements to Ms. Wacker made over the phone, and Ms. Cunningham's October 12, 2018, statement sent to Ms. Wacker via email. (APP, p. 18, first para.).

17. In her Answer filed on August 27, 2019, Ms. Cunningham asserted absolute immunity under Rule 13B of the Board. (APP, p. 7 top of page, and p. 18, second para.).

18. Rule 13B: Immunity of Persons or Entities Providing Information to the Board, states:

Any person or entity providing to the Board or its members, employees, agents, or monitors, any information, statements of opinion, or documents regarding an applicant, potential applicant, or conditionally admitted lawyer, is immune from civil liability for such communications.

19. On May 8, 2020, Ms. Cunningham formally moved for partial summary judgment asserting her statements to the Board were protected by absolute immunity through application of Rule 13B. (APP, p. 18, second para.).

20. On June 26, 2020, Petitioner filed a Memorandum in Opposition to Ms. Cunningham's May 8th motion asserting in response that absolute immunity could not apply because Petitioner did not have notice of Ms. Cunningham's statements or any opportunity to respond to them prior to the First Determination because they were not made at/during any adversarial proceeding. (APP, p. 7, end of starting para., p. 8, start of first new para., and p. 9, first sentence).

21. This was the first instance in this action of Petitioner having raised the issue of lack of notice and opportunity with respect to Ms. Cunningham's defamatory *ex parte* statements.

22. On August 31, 2020, the Hon. Laura Nelson, judge in the District Court for the State of Minnesota, Second Judicial District, Ramsey County, issued an order, without oral argument, granting Ms. Cunningham's motion for partial summary judgment on absolute immunity grounds. (APP, p. 1 through p. 12).

23. In the August 31, 2020, order the court interpreted Rule 13B, stating:

The immunity granted by Rule 13B is absolute because it is granted without regard to the speaker's intent. (APP, p. 7, second para.).

24. In the Order, Judge Nelson, quoting Mahoney & Hagberg v. Newgard, 729 N.W.2d 302 (2007), described the elements that must be present for absolute immunity to be available as a defense in Minnesota, as follows:

In Minnesota 'statements, even if defamatory may be protected by absolute privilege in a defamation lawsuit if the statement is (1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) the statement at issue is relevant to the subject matter of the litigation.' (APP, p. 8, start of page).

25. Judge Nelson then cites Rule 15 of the Board as fulfilling the proceeding requirement, stating:

An applicant to the Board for admission to the Minnesota Bar may, *inter alia*, request a hearing, be represented by counsel, and subpoena and present witnesses and evidence. Rule 15.A-F. Rules for Admission to the Bar. Therefore, the Board's administration of the Bar, and specifically their evaluation of Ristow, which included Cunningham's communications with the Board, is considered a quasi-judicial proceeding. (APP, p. 9, middle of para.).

26. Rule 15B, Request for Hearing, is the only opportunity provided an applicant under Board rules to request a hearing, and states that the right to request a hearing does not apply until the First Determination has been made, Rule 15B reading in full:

Within 20 days of notice of an adverse determination the applicant may make a written request for a hearing. If the applicant does not timely request a hearing, the adverse determination becomes the final decision of the Board.

27. Following a change of venue and dismissal of remaining claims and a series of clerical errors by the court, on September 16, 2021, Hon. Jill Eichenwald, judge in the District Court for the State of Minnesota, Sixth Judicial District, Saint Louis County, issued an order making the August 31, 2020, order final for purposes of appeal. (APP, p. 13 through p. 14).

28. On September 18, 2021, Petitioner filed an appeal of the August 31, 2020, order, asserting that absolute immunity cannot apply in a claim for defamation and defamation *per se* in Minnesota because Ms. Cunningham's defamatory statements were made *ex parte*, and because Petitioner did not have notice of them and/or any opportunity to respond to them in defense of his interests. (APP, p. 19, first sentence, p. 19, start of second para., and p. 21, first half of para.).

29. This was the second instance in this action of Petitioner having raised the issue of lack of notice and opportunity with respect to Ms. Cunningham's defamatory *ex parte* statements.

30. On October 27, 2021, Ms. Cunningham filed a Response in the appeal and again asserted that she is entitled to be absolutely immune to Petitioner's claims of defamation and defamation *per se* through operation of Board Rule 13. (APP, p. 19, end of second para.).

31. On April 18, 2022, the Hon. Johnson (presiding), Reyes, and Cochran, judges for the Court of Appeals for the State of Minnesota, issued an Opinion stating:

The parties have cited case law in which the absolute-privilege doctrine has been applied to statements made in adversarial quasi-judicial proceedings. The parties have not cited any precedential opinion in which the absolute-privilege doctrine has been applied to statements made during a government agency's *ex parte*, non-adversarial investigation. (APP, p. 21, only para.).

32. In the April 18, 2022, Opinion the court goes on to state:

We need not decide whether the absolute-privilege doctrine applies in the circumstances of this case, Rule 13B provides a more straightforward means of resolving the appeal. (APP, p. 22, only para.);

33. And, in concluding by holding that absolute immunity applied, stated:

The plain language of rule 13B makes clear that the supreme court intended to confer civil immunity on persons who provide information to the board concerning applicants for admission to the bar, without any qualification or preconditions, such as the three requirements of the absolute-privilege doctrine. We are unaware of any reason why rule 13B should not be applied in a straightforward manner to the facts and circumstances of this case. (APP, p. 23, bottom of para.).

34. On April 29, 2022 Petitioner appealed the April 18, 2022 Opinion asserting: That any rule of the Board must comply with existing state and federal law; That such federal law includes the due process right to be informed of the evidence used in determining his character before the First Determination, as described in Willner v. Committee on Character and Fitness, 373 U.S. 96 (1964), the due process right to confront evidence adverse to his character before the First Determination, as described in Greene v. McElroy, 360 U.S. 474 (1959); And that such state common law includes the right that absolute immunity can only apply to defamatory statements made during an adversarial proceeding where he has an opportunity to, upon their making, confront those statements, as described in Matthis v. Kennedy, 243 Minn. 219 (Minn. 1954), and Jenson v. Olson, 141 N.W.2d 488 (1966).

35. This was the third instance in this action of Petitioner having raised the issue of lack of notice and opportunity with respect to Ms. Cunningham's defamatory *ex parte* statements.

36. On May 20, 2022, Ms. Cunningham asserted in response that the Court of Appeals applied the clear language of Rule 13B in upholding the August 31, 2020, Order granting partial summary judgment and that therethrough Ms. Cunningham is entitled to absolute immunity.

37. On June 21, 2022, the Supreme Court for the State of Minnesota denied Petitioner's petition for further review without comment. (APP, p. 25).

38. After viewing the actions of the Board and Ms. Cunningham in light of Willner, Greene, and Goldberg v. Kelly, 397 U.S. 254 (1970), Petitioner initiated Ristow v. Peterson, et al., case no. 21-cv-2405-SRN-DTS (the 2405 action) in United States District Court for the District of Minnesota, in Saint Paul.

39. In the 2405 action Petitioner has asserted, based on their actions surrounding soliciting and then hiding Ms. Cunningham's defamatory *ex parte* statement, against employees and members of the Board, in their individual capacities, violations of 42 U.S.C. §1983, and §1985.

40. In the 2405 action Petitioner has asserted, based on a thoroughly documented pattern of conduct towards Petitioner, violations by Ms. Cunningham of 42 U.S.C. §1983, and §1985.

41. In response, the Board defendants and Ms. Cunningham have each asserted as a defense and support for a Motion to Dismiss that they are entitled to absolute immunity by operation of Board Rule 13B.

42. As of this writing the 2405 action is pending a determination by the United States District Court, District of Minnesota on the Board defendants and Ms. Cunningham's motions to dismiss.

ARGUMENT

Under the interpretation of Petitioner's due process rights in his application as described by this court in Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963), the Board had a duty to provide Petitioner with Ms. Cunningham's defamatory *ex parte* statement, prior to the First Determination, and provide Petitioner with an opportunity to respond thereto in defense of his interests.

The Board did not provide Petitioner with notice and opportunity with respect to Ms. Cunningham's defamatory *ex parte* statement, electing instead to hide it until the appeal phase of the process. Statement Of Case Nos. 6-10, 12, 13, 15, 38 (SOC, 6-10, 12, 13, 15, 38).

Trying to cure the failures of the Board the courts of Minnesota have remained closed to Petitioner and in so doing have misinterpreted the rule in Minnesota that allows absolute immunity only for allegedly defamatory statements made in a specific context, during an adversarial proceeding, and that are relevant thereto. (SOC, 19-26, and 28-37).

The rule in Minnesota, describing the defense of absolute immunity in a claim for defamation, as drawn by the Minnesota Supreme Court, is that allegedly defamatory statements are entitled to absolute immunity on the conditions that: They were made during an adversarial proceeding; such proceeding includes the administration of oaths, the production of the accusations; that the offended party, during such proceeding, have an opportunity to respond thereto in defense of their interests; and, that the allegedly defamatory statements be relevant to the subject matter of the proceeding. Burgess v. Turtle & Co., 155 Minn. 479 (Minn. 1923) (statements initiating an adversarial proceeding); Matthis v. Kennedy, 243 Minn. 219 (Minn. 1954) (statements by witness and attorney representatives during the adversarial proceeding); Jenson v. Olson, 141 N.W.2d 488 (1966) (available only when the adversarial proceeding includes the administration of oaths, the production of books and papers, and requires that charges be in writing with an opportunity to be heard); Mahoney & Hagberg v. Newgard, 729 N.W.2d 302 (2007) (not available to all statements made during the adversarial proceeding, does not apply to statements that are irrelevant to the subject matter of the proceeding).

The rule in Minnesota applies absolute immunity to the *statement*, the allegedly defamatory statement, on the conditions that the statements are made in a specific context, during an adversarial proceeding, and relevant thereto.

In light of Jenson, had the Board provided Petitioner with notice of and an opportunity to respond to Ms. Cunningham's defamatory *ex parte* statement, prior to the First Determination, this civil action may have little merit. Again, however, they did not, instead hiding that evidence from Petitioner until the appeal phase of the process.

In her Wednesday October 10, 2018, 10:55 am email to Ms. Cunningham, while discussing whether Petitioner would receive notice of Ms. Cunningham's defamatory *ex parte* statement, Ms. Wacker stated:

If he ends up having access to your affidavit, we will make sure to give you notice;

which implies both the knowledge of a duty to provide Petitioner with Ms. Cunningham's defamatory *ex parte* statement, but also an intent by Ms. Wacker and others at the Board to avoid that duty. (SOC, 6-8).

The fault in the failures of Ms. Wacker and others at the Board in hiding evidence from Petitioner in the form of Ms. Cunningham's defamatory *ex parte* statements cannot lie at the feet of Petitioner.

The District Court, while allegedly viewing the facts in a light most favorable to Petitioner, tries to cure the failure of the Board by holding that a right to appeal a determination constitutes the existence of a single quasi-judicial proceeding (SOC 9, 10, 19-26), conflicting with the rule in Minnesota as described in Jenson.

Petitioner asserts that any argument against this Petition that a right to appeal does constitute a single quasi-judicial proceeding is dangerous in that such argument seeks to, through the appeal process, shift due process burdens from the government onto the private citizen, and must be resolved in favor of the Petition.

The Court of Appeals, while acknowledging the *ex parte* nature of Ms. Cunningham's statement, ignores the District Court and tries to cure the failure of the Board by holding that Ms. Cunningham *herself*, her *person* is somehow absolutely immune (SOC, 28-33), misinterpreting the rule in Minnesota that applies absolute immunity only to the allegedly defamatory *statement* and only when made in a specific context, during an adversarial proceeding, and relevant thereto.

That absolute immunity is only allowed for acts in an adversarial proceeding is mirrored in Tenney v. Brandhove, 341 U.S. 367 (1951) (legislative immunity), and Pierson v. Ray, 386 U.W. 547 (1967) (judicial immunity), and Imbler v. Pachtman, 424 U.S. 409 (1976) (prosecutorial immunity, leaving the criminal prosecutor only qualified immunity for acts during an investigation).

Nowhere is the *person* found absolutely immune. And finding Ms. Cunningham immune, in her *person*, conflicts with the holding of Mahoney, that absolute immunity will not protect allegedly defamatory statements, made by a person, during an adversarial proceeding, that are not relevant to the proceeding.

Petitioner has asserted in the 2405 action that Ms. Cunningham, while failing in her obsessive pursuit of Petitioner through a personal relationship and then the courts, upon being contacted by Erin Wacker on October 4, 2018, at the height of a social movement intended to address abuse of power imbalances in relationships, now, seeing her opportunity, conjured the accusations in her *ex parte* statement with the intent of interfering with his application in hopes the Board would act adversely towards Petitioner. (SOC 38-42).

Petitioner asserts Ms. Cunningham, and those similarly situated do, and should, bear the risk of costly litigation for submitting defamatory *ex parte* statements to the government about other private citizens, people should be encouraged to treat people civilly, they should be held to the truth of their statements, and contingency fee litigation serves to help ensure meritless claims do not enter the system.

Any risk associated with the making of defamatory *ex parte* statements to the government, including the actions of the Board described herein, about another private citizen, rests with the maker, here Ms. Cunningham.

Any argument against this Petition that denying Ms. Cunningham absolute immunity would stifle speech to the government must be resolved in favor of the Petition as freely accepting the risk of the defaming of a private citizen is no form of justice familiar to the reasoned people of this Republic.

Petitioner asserts that any argument that the specter of a perjury action is sufficient to prevent even maliciously defamatory *ex parte* statements to the government is dangerous in that such argument seeks to take for the government the private citizen's right to defend their interests through civil confrontation and must be resolved in favor of the Petition.

Any argument asserted against this Petition regarding the importance of a profession and a sovereign right of a state to regulate that profession is frivolous in that such argument seeks to incorrectly classify this petition as an attack on the Board's determinations, and it seeks to elevate a perception above the rights of the private citizen.

The Opinion of the Minnesota Court of Appeals holds that a state civil administrative agency can make an individual, any individual the agency chooses, by their own rule, absolutely immune to the Constitution (SOC, 31-33), a holding not consistent with precedent, the equal protection clause of the Constitution, or any sense of ordered liberty.

This court has previously held in McDonald v. Smith, 472 U.S. 479 (1985) that absolute immunity, through an assertion of the freedom of speech, does not apply to allegedly defamatory *ex parte* statements submitted by a private citizen to the government about a nominee for public office.

Logic necessitates that if absolute immunity is not available to the private citizen who is alleged to have made, to the government, defamatory *ex parte* statements, about a nominee for public office, that absolute immunity is not available to the same private citizen who is alleged to have made, to the government, defamatory *ex parte* statements about another private citizen.

As Justice O'Connor asked during oral arguments in McDonald:

isn't there a basic difference in the justification for immunity [in] libel or defamation actions for witnesses in judicial proceedings, simply because they're subject to cross examination to get at the truth? ([[and]] to [[in]] translated from hearing audio).

Petitioner asserts that Justice O'Connor's question is the same presented here, and that the answer is, yes, it is because of contemporaneous cross examination, that the statements are subject to such direct confrontation, that absolute immunity can apply, to defamatory statements, and why absolute immunity does not apply to Ms. Cunningham's defamatory *ex parte* statements here, those made in secret to a state licensing agency *via* phone and email.

In conclusion, the Board had a duty to provide Petitioner with Ms. Cunningham's defamatory statement.

They did not, instead hiding that evidence from Petitioner, and that risk lies with Ms. Cunningham.

The rule in Minnesota does not allow absolute immunity for allegedly defamatory *ex parte* statements, like those of Ms. Cunningham.

The district court tried to cure this failure but in so doing misinterpreted the proceeding requirement holding a right to appeal a determination constitutes a single quasi-judicial proceeding, conflicting with the part of the rule in Minnesota described by Jenson.

The court of appeals also tried to cure this failure but in so doing misinterpreted the rule and interestingly rendered Ms. Cunningham *herself*, her *person*, immune, conflicting with the rule in Minnesota that applies absolute immunity only to the *statement*, if made in a specific context and relevant thereto.

Ms. Cunningham, Ms. Wacker, and others at the Board, are defendants in the 2405 action where Petitioner has asserted various due process violations.

All defendant's in the 2405 action have asserted, as support for pending motions to dismiss, that they are entitled to absolute immunity under Rule 13B.

And therefore,

Petitioner, respectfully, requests this Court accept this Petition in order to examine whether a private citizen who has submitted allegedly defamatory statements, to the government, *ex parte*, outside of any adversarial proceeding, about another private citizen, is entitled to assert absolute immunity as a defense for the making of such statements.

I, Brent Alan Ristow, of 1027 Ottawa Avenue, West Saint Paul, Minnesota, 651-260-0970, declare, under the penalty of perjury, that the foregoing is true and correct.

Respectfully,

Executed on:

In the County of:

Brent A. Ristow

In the State of: