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UPPER MIDWEST LAW CENTER

May 21, 2025

Judge Leonardo Castro
Ramsey County District Court
15 W Kellogg Blvd
Saint Paul, MN, 55102

VIA E-FILE

Re: *Minnesota Gun Owners Caucus v. Tim Walz, et al.*, Case No.: 62-CV-25-1083
Plaintiff's Position on Affidavits Supporting Associational Standing

Dear Judge Castro:

The Court's current order for *in camera* review and subsequent sealing of any affidavits from members of the Minnesota Gun Owners Caucus protects the First and Fifth Amendment rights of MGOC and its members, consistent with broad and persuasive precedent for establishing associational standing. MGOC asks the Court to maintain its current order for *in camera* submissions and for subsequent filing into the case under seal, such that MGOC members' identities will not be revealed to anyone other than the Court and its staff—and certainly not to prosecutors. MGOC is further willing to provide redacted affidavits to Defendants so they can understand their *substance*. Defendants' contrary proposal of turning over third-party *identities* to prosecuting attorneys would chill MGOC's First Amendment rights, pose grave risk to the members' First and Fifth Amendment rights, and make it impossible for MGOC to tender those affidavits.

First, the Court can fully assess MGOC's standing through *in camera* review or anonymous affidavits. Minnesota courts draw from federal courts for associational standing analysis, which hold in analogous contexts that anonymous or pseudonymous affidavits from members affected by a challenged law are sufficient for associational standing. *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 498 (Minn. 1996) (citing *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)); *NAACP v. Trump*, 298 F.Supp.3d 209, 225 (D.D.C. 2018). In *NAACP*, where "each plaintiff provided an anonymous affidavit from at least one of its members stating that the member was a DACA beneficiary," the court noted that "the government does not seriously dispute—nor could it—that these affidavits are sufficient." *Id.* at 225, 225 n.10. A DACA beneficiary would not identify himself to the first Trump Administration because the administration tried to rescind DACA, which had made beneficiaries "low priorities for removal under the federal immigration laws." *Id.* at 216. Similarly here, Defendant Walz posted on X that the binary trigger ban being challenged in this case is an important priority for his administration (Doc. 1 ¶74). An MGOC member would thus be very unwise if he or she announced to Minnesota's chief law-enforcement officer that he or she is affected by this law.[1]

Further, the U.S. Supreme Court has approved this Court's *in camera* proposal for resolving associational standing. In *Rumsfeld v. FAIR*, 547 U.S. 47, 52 n.2 (2006), the Court agreed that FAIR had standing, after "Plaintiffs submitted the FAIR membership list for in camera review." *FAIR v. Rumsfeld*, 291 F.Supp.2d 269, 286 n.6 (D.N.J. 2003). The Tenth Circuit also approved *in-camera* submissions in *Speech First, Inc. v. Shrum*, 92 F.4th 947, 950 n.1 (10th Cir. 2024) ("the district court could later verify the existence and status of the pseudonymous members through in camera review"). To

[1] Other federal courts have accepted anonymity or pseudonymity to prove standing. *See, e.g.*, *Am. All. for Equal Rights v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 773-75 (11th Cir. 2024) (distinguishing *Summers v. Earth Island Institute*, 555 U.S. 488 (2009), and collecting other cases).

that court, "organizational standing is proper even when the qualifying member of the plaintiff organization is anonymous," because "there is longstanding Supreme Court authority supporting standing for organizations whose injured members are not named." *Id.* (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 458-59 (1958) (anonymous status of association's members posed no standing hurdle)).

Second, only sealing the affidavits under Rule 26.03—even from Defendants and their counsel—adequately protects MGOC's and its members' constitutional rights. The Court may "issue protective orders for the purpose of protecting an individual or organization's association right," *In re GlaxoSmithKline PLC*, 732 N.W.2d 257, 268-269 (Minn. 2007), depending on "whether a party asserting the need for a protective order has sufficiently established a potential chilling effect on its association right," and, if so, whether the state has an overriding compelling interest. *Id.* at 269-70. The greater the danger to associational rights, the stronger the argument against disclosure. *Id.* at 272 (citing *Black Panther Party v. Smith*, 661 F.2d 1243, 1267 (D.C. Cir. 1981)).

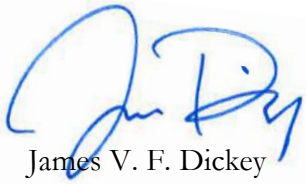
The threat of felony prosecution and waiver of Fifth Amendment rights to the members, and the chilling effect on MGOC and its members' First Amendment rights, far outweigh any state interest in knowing the members' names. "[T]he threat of felony prosecution would have a chilling effect" on the members' associational rights. *Doe v. State*, No. 62-CV-19-3868, 2022 Minn. Dist. LEXIS 9338, *120 (Ramsey Cnty., July 11, 2022) (allowing abortion providers to proceed pseudonymously). Revealing the members' identities to prosecutors makes them targets for felony prosecution. Further, the members' identities "could be used in a criminal prosecution or could lead to other evidence that might be so used." *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972). The Fifth Amendment stands against this. *Id.* MGOC and its members would also suffer objectively reasonable chill if required to disclose the members' identities to proceed in this Court. By naming names, MGOC would suffer embarrassment from failing to protect and even facilitating its members' prosecutions. It would lose reputation, donations, and "the potential for the withdrawal of active members or the dissuasion of prospective members from joining." *GlaxoSmithKline PLC*, 732 N.W.2d at 270.

The members' identities are also irrelevant to the merits of this case, which is proceeding on an almost entirely public record and in which further discovery is unnecessary. Only one characteristic of any MGOC member is relevant to this case—whether the member is affected by the binary trigger law—and even that is relevant only to MGOC's standing, not to the merits. Thus, Defendants' purported interest in jurisdictional discovery does not support a requirement that MGOC members expose themselves to prosecution. *See Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1038 (9th Cir. 2015) (distinguishing *Summers* and finding that where "members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury," there's "no purpose" served by naming names). Any legitimate interest Defendants have in jurisdictional discovery is outweighed by MGOC and the members' constitutional interests and practically resolved by the Court's *in camera* review of member affidavits.

Finally, these government defendants have no legitimate argument that they need to see people's names to have an adversarial proceeding. These same government defendants routinely litigate *the merits*—not merely standing—of Minnesota Government Data Practices Act claims through *in camera* review while keeping plaintiffs seeking disclosure of government data arguing with a privilege log in the dark. *See* Minn. Stat. §§ 13.08, subd. 4(a); 13.39, subd. 2a (2024). They litigate privilege issues the same way all the time. This argument is pure pretext for intimidation.

MGOC respectfully asks the Court to maintain its order except to clarify that MGOC's members' identities will remain sealed and out of the view of Defendants or their counsel, permanently.

Very truly yours,



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