No. A16-1265

STATE OF MINNESOTA
IN SUPREME COURT

Alejandro Cruz-Guzman, as guardian and next friend of his minor children, et al.,

Petitioners/Cross-Respondents,

vs.

State of Minnesota, et al.,

Respondents/Cross-Appellants,

and

Higher Ground Academy, et al.,

Intervenors/Amici Curiae.

REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS

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OFFICE OF THE ATTORNEY GENERAL
State of Minnesota
KAREN D. OLSON (#0254605)
Deputy Attorney General
KATHRYN M. WOODRUFF (#0307440)
KEVIN A. FINNERTY (#0325995)
ANDREW TWEETEN (#0395190)
Assistant Attorneys General
445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101-2134
(651) 757-1370

ATTORNEYS FOR
RESPONDENTS/CROSS-APPELLANTS

GRAY PLANT MOOTY MOOTY & BENNETT
Daniel R. Shulman (#0100651)
Joy Reopelle Anderson (#0388217)
Richard Landon (#0392306)
Kathryn E. Hauff (#0397494)
500 IDS Center, 80 South 8th Street
Minneapolis, MN 55402

ATTORNEYS FOR
PETITIONERS/CROSS-RESPONDENTS

BRIGGS AND MORGAN, P.A.
Jack Y. Perry (#209272)
Michael W. Kaphing (#389349)
80 South Eighth Street
2200 IDS Center
Minneapolis, MN 55402

JOHN CAIRNS LAW, P.A.
John Cairns (#0014096)
2751 Hennepin Avenue, Box 280
Minneapolis, MN 55408

LAVORATO LAW OFFICES, LLC
Cindy Lavorato (#0061244)
401 College Place, #19
Norfolk, VA 23510

ATTORNEYS FOR
INTERVENORS/AMICUS CURIAE

ATTORNEYS FOR PETITIONERS/
CROSS-RESPONDENTS, cont.

John G. Shulman (#0213135)
Jeanne-Marie Almonor (#0224595)
126 North Third Street, Suite 402
Minneapolis, MN 55405

THE SPENCE LAW FIRM, LLC
Mel C. Orchard III, Esq. (*Pro Hac Vice*)
(WY 5-2984)
15 S Jackson Street
Jackson, WY 83001

LAW OFFICES OF JOHN BURRIS
James Cook (#69888)
7677 Oakport Street, Suite 1120
Oakland, CA 94621

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ARGUMENT

I. THE MINNESOTA HOUSE OF REPRESENTATIVES AND MINNESOTA SENATE ARE IMMUNE AND SHOULD BE DISMISSED FROM THIS LAWSUIT.

Nothing in Petitioners/Cross-Respondents' ("Petitioners") response supports their position that the Minnesota House and Senate are not entitled to legislative immunity in this case. As discussed in Respondents/Cross-Appellants' ("Respondents") initial brief, Minnesota courts look to federal precedent when interpreting similar state constitutional provisions. *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005). Petitioners do not rely on federal case law to support their position and fail in their attempt to distinguish the precedential cases Respondents cited.

In *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719 (1980), Virginia statutes authorized the Virginia Supreme Court "to promulgate and amend rules and regulations" concerning the ethics of practicing law in the state. *Id.* at 721 (citation omitted). The Virginia Supreme Court developed a code of ethics that included a prohibition against advertising. *Id*. at 725. The plaintiff sought to create a legal services directory and sued, among others, the Virginia Supreme Court and its chief justice for promulgating the code. *Id*. at 724–26. The United States Supreme Court held "the Virginia *Court* and its members are immune from suit when acting in their legislative capacity." *Id*. at 734 (emphasis added). It reasoned:

> [T]here is little doubt that if the Virginia Legislature had enacted the State Bar Code and if suit had been brought against *the legislature*, its committees, or members for refusing to amend the Code in the wake of our cases indicating that the Code in some respects would be held invalid, the defendants in that suit *could successfully have sought dismissal on the grounds of absolute legislative immunity*.

Id. at 733–34 (emphasis added).

Despite this definitive statement, Petitioners attempt to distinguish the *Supreme Court of Virginia* opinion by asserting the U.S. Supreme Court "did not expressly address the question of whether the Speech and [sic] Debate Clause applied to the Legislature as a body as well as to its members individually." Pet. Resp. at 28. In light of the Supreme Court's description of the Clause as immunity for a legislative body and its constituent parts—committees and members—Petitioners' assertion has no merit. Indeed, the core holding of the *Supreme Court of Virginia* decision is fully applicable to Minnesota's legislative bodies. This conclusion is also supported by the principle that, without exception, the Speech or Debate Clause must be read broadly to effectuate its purpose. *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 501 (1975); *U.S. v. Brewster*, 408 U.S. 501, 509 (1972).

Petitioners also unsuccessfully attempt to distinguish *Orta Rivera v. Congress of the United States of America*, 338 F. Supp. 2d 272 (D.P.R. 2004). In that case, a statehood advocate from Puerto Rico sued Congress, every U.S. Senator and Representative and others, because he claimed "the 1898 Treaty of Paris between the United States and the Kingdom of Spain, imposed on Congress a duty to determine the political status and the civil rights of the inhabitants of Puerto Rico." *Id*. at 274. The federal court hearing the case held plaintiff's alleged harm not to be redressable against Congress because "under the immunity granted by the Speech and [sic] Debate Clause of

the Constitution, a federal court lacks power to command *Congress* or individual members of Congress to take legislative action." *Id.* at 279 (emphasis added).

Petitioners argue *Orta Rivera* "is not apposite to Plaintiffs claims in this case" because "the claims before this Court involve consideration of whether Plaintiffs' fundamental constitutional rights have been violated by the legislature's failure to comply with its explicit duty under the Minnesota Constitution." Pet. Resp. at 32. But Orta Rivera similarly claimed "the civil rights of the inhabitants of Puerto Rico" were violated by the failure of Congress to abide by a claimed explicit "duty" imposed on it by the Treaty of Paris. 338 F. Supp. 2d. at 274. Likewise, Petitioners' assertion that they "are seeking an order compelling the legislature to fulfill its constitutionally mandated responsibility," Pet. Resp. at 32, is akin to the relief Orta Rivera sought. The requested relief in that case was for "Congress to determine immediately the 'final' political status and the civil rights of the people of Puerto Rico" on the basis that it "had the duty to end the colonial status of Puerto Rico" since at least "the date on which the Puerto Rican Constitution was adopted[.]" 338 F. Supp. 2d at 274.[1]

Petitioners fail to address two other federal cases cited by Respondents: *Newdow v. United States Congress*, 328 F.3d 466 (9th Cir. 2003), *rev'd on other grounds sub nom. Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004); and *Walsh v. U.S. House of*

[1] Petitioners also try to distinguish *Orta Rivera* by noting the federal court dismissed that case because the plaintiff lacked standing, but the court specifically addressed the Speech or Debate Clause in its opinion because that analysis was part of the court's evaluation of the "redressability prong of the standing test[.]" 338 F. Supp. 2d at 278.

Representatives, 2017 WL 1330165 (M.D. Pa. Apr. 11, 2017). In *Newdow*, the Ninth Circuit held it "lack[ed] jurisdiction to issue orders directing Congress to enact or amend legislation." 328 F.3d at 484. It stated the plaintiff's focus on whether a statute violated the Establishment Clause "misse[d] the jurisdictional, or separation of powers, point." *Id.* This is because, when "determining whether or not the acts of members of Congress are protected by the Speech and [sic] Debate Clause, the court looks solely to whether or not the acts fall within the legitimate legislative sphere; if they do, Congress is protected by the absolute prohibition of the Clause against 'being questioned in any other Place.'" *Id.* (emphasis added) (citation omitted). A federal district court similarly held the U.S. House of Representatives was immune from suit when an individual sought a court order requiring "Congress to create 'the best Health Care System in the World.'" *Walsh*, 2017 WL 1330165, at *1-*2. Thus, where, as here, Petitioners argue that the Minnesota House or Minnesota Senate failed to take legislative action, their claims plainly fall within the legislative sphere and are protected by immunity under the Speech or Debate Clause, regardless whether or not there is an alleged duty to do so.

Unable to identify any federal or Minnesota precedent directly on point to support their contention that the Speech or Debate Clause does not provide the House and Senate with immunity from suit, Petitioners instead attempt to rely on the New York State case of *Maron v. Silver*, 925 N.E.2d 899 (N.Y. Ct. App. 2010). Pet. Resp. at 27. While the New York Court of Appeals held in that case that New York's Speech or Debate Clause did not grant immunity to its legislative bodies in a matter concerning pay increases for

judges, the court did so without citing *any* federal precedent. *Maron*, 925 N.E.2d at 912.[2] Moreover, perhaps to minimize its dubious holding, the court also relied on a second rationale for failing to dismiss the case, stating "[i]n any event, all of the parties acknowledge that the Judiciary is entitled to an increase in compensation, and the State defendants have made proclamations outside of the legislative and executive chambers as to why such an increase has not occurred[.]" *Id.*

Petitioners also identify a few cases addressing educational challenges in other states where legislative bodies were named defendants to claim there is no immunity for the House and Senate in this case. *See Bismark Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994); *Idaho Schs. For Equal Educ. Opportunity v. Evans*, 850 P.2d 724 (Id. 1993); *Rose v. Council for Better Educ., Inc*., 790 S.W.2d 186 (Ky. 1989); *La. Ass'n of Educators v. Edwards*, 521 So. 2d 390 (La. 1988); *W. Va. Educ. Ass'n v. Legislature of State of W. Va*., 369 S.E.2d 454 (W. Va. 1988). None of these cases even *mentions* – let alone analyzes – the Speech or Debate Clauses of the federal or various states' constitutions, so they offer absolutely no guidance on the issue before the Court.[3]

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[2] In contrast, the Kansas Supreme Court discussed *Supreme Court of Virginia* and *Eastland* at length in the course of dismissing the Kansas House and Senate from a lawsuit "arising out of the performance of legitimate legislative function[.]" *State ex rel. Stephan v. Kan. House of Representatives*, 687 P.2d 622, 631, 633 (Kan. 1984).

[3] It does not appear that any legislative body sought dismissal on similar jurisdictional grounds in any of the cases cited by Petitioners. In fact, in one instance, the defendants included the President of the Senate and Speaker of the House, not the legislative body, and defendants argued for dismissal by claiming that every member of the General Assembly should have been named as a defendant. *Rose*, 790 S.W.2d at 190, 203–04.

Given that none of Petitioners' cases discusses the respective states' Speech or Debate Clauses or reaches a holding regarding legislative immunity, these authorities stand only for the uncontroversial proposition that a legislative body can be a defendant in a lawsuit if it does not seek to have itself dismissed from it. *Accord Gov't of V.I. v. Lee*, 775 F.2d 514, 520 n.7 (3d Cir. 1985) (legislator waived immunity by voluntarily testifying); *U.S. v. Seeger*, 180 F. Supp. 467, 468 n.4 (S.D.N.Y. 1960) (waiver of legislative immunity where not claimed). Petitioners are wrong to equate these cases with those cited by Respondents that actually discuss, analyze and evaluate the Speech or Debate Clause, including *Supreme Court of Virginia*, *Eastland*, *Newdow*, *Orta Rivera*, *Walsh*, and *Stephan.*

In this case, by contrast, the Minnesota House and Senate seek dismissal pursuant to Minnesota's Speech or Debate Clause. The district court erred in denying this request.[4]

Respondents do agree with Petitioners in one respect: the underlying purpose in recognizing legislative immunity is consistent with the separation of powers principles of the Minnesota Constitution. *Compare* Resp. Opening Br. at 34 *with* Pet. Resp. at 33.

[4] Petitioners reference a memorandum on the Minnesota Senate's website. Pet. Resp. at 26-30. The memorandum is "a compilation and explanation of federal and state cases" prepared by staff of the Office of Senate Counsel, Research and Fiscal Analysis. *See http://www.senate.leg.state.mn.us/departments/scr/treatise/Immunity/legimm.pdf* at 17. It is a legal compendium, not a policy statement. Reference to a court opinion by staff does not represent the opinion of the Minnesota Senate, or by extension, of the Minnesota House. In any event, the law controls, and this Court defines the law.

Respondents disagree with Petitioners, however, with respect both to the scope of the legislature's duty (it is to create a system, which it has done) and any challenge to that duty. Petitioners assert that granting the legislature the immunity to which it is entitled would prevent the legislature from being held "accountable for its failure to act." Pet. Resp. at 33. This is simply not the case. The legislature may be held "accountable" as part of the political process; it cannot, however, be subjected to a judicial proceeding that is directed at its core legislative functions. *Eastland*, 421 U.S. at 503 ("We reaffirm that once it is determined that Members are acting within the 'legitimate legislative sphere' the Speech or Debate Clause is an absolute bar to interference.") (citation omitted); *see also Brewster*, 408 U.S. at 512 ("A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it.") (Warren, C.J., concurring in part and dissenting in part). The House and Senate must be dismissed.[5]

II. DISMISSAL IS REQUIRED BECAUSE ALL INTERESTED PERSONS ARE NOT PARTIES.

As discussed in Respondents' initial brief, the Minnesota Uniform Declaratory Judgments Act ("UDJA") and Minnesota Rule of Civil Procedure 19 require dismissal unless the school districts to be bound by the remedies Petitioners request are made party

[5] If each individual legislator is immune, it begs the question of who would respond on behalf of the House and Senate if the body itself is not immune. Requiring the individual legislators to engage in litigation on behalf of the body would eviscerate individual immunity. Petitioners' reliance on *Office of Governor of State of New York v. Winner*, 858 N.Y.S.2d 871, 873 (N.Y. Sup. Ct. 2008) is misplaced as it involved one legislator raising immunity to silence another member, *i.e.*, "not as a shield, but as a sword[,]" and the court found that the Speech or Debate Clause was not at issue because no legislator was being "criminally prosecuted [or] civilly sued based on" any legislative action.

to this action. *See* Minn. Stat. § 555.11; Minn. R. Civ. P. 19. These mandates are grounded in the "elementary and fundamental requirement of due process[.]" *Berkman v. Weckerling*, 77 N.W.2d 291, 295 (Minn. 1956) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)).

Contrary to Petitioners' current assertions, Petitioners' Prayer for Relief plainly seeks a declaration "[f]inding, adjudging, and decreeing that the defendants have engaged in . . . violations of law[.]" Pet. Add. 83. Indeed, by Petitioners' own account before this Court, a declaration of law is *all* that the Complaint seeks because "the Complaint does not actually ask the court to institute any specific policy[.]" Pet. Resp. at 9. Such a prayer for relief has been fairly construed to seek declaratory relief under the UDJA by this Court and the court of appeals. *See Weavewood, Inc. v. S&P Home Inv., LLC*, 821 N.W.2d 576, 578 n.1 (Minn. 2012) (assuming without deciding that civil complaint may request declaratory relief without referring to UDJA). *See also* Pet. Add. 3–5 (district court analyzing Petitioners' claims under the UDJA).[6]

The importance of bringing the absent school districts in to this matter, or dismissing Petitioners' Complaint in their absence, is underscored by the conduct the

[6] Petitioners' representations to Respondents and the district court in other documents also confirm that they request declaratory relief. *See* Opp. to Defts. Mot. to Dismiss; Doc. ID# 71 at 1 (Petitioners "have filed this lawsuit seeking a declaration . . . ."), 6 ("Plaintiffs are asking for a declaration about whether the state . . . has fulfilled its own duty under the Minnesota Constitution."); Mem. in Supp. of Class Certification; Doc. ID# 126 at 15 ("The relief Plaintiffs seek is both declaratory and injunctive, and is sought with respect to the class as a whole: a declaration that Defendants have violated the fundamental right of the plaintiff class to an adequate education[.]"). In response to interrogatories, Petitioners plainly state that "[t]he remedy Plaintiffs seek in this case is a *declaratory judgment*." (Emphasis added).

Complaint seeks to remedy. Almost exclusively, the conduct Petitioners' Complaint seeks to remedy involves policies controlled and dictated by school districts. *See, e.g.*, Compl. ¶¶ 27 (boundary decisions); 28 (open enrollment policies); 30 (charter school marketing); 33 (misuse of funds); 34 (discipline policies, and classroom and faculty assignments); 48(a) (community schools); 54 (boundary decisions); 55 and 56 (attendance zones); 57 (suburban district boundary changes); 59 and 61 (open enrollment policies). Pet. Add. 57–58, 60–62, 68, 72–75. Under the UDJA and Rule 19, this requested relief would impose significant obligations directly on the school districts and mandates joinder of these entities, lest the action be dismissed.

A. The Minnesota Uniform Declaratory Judgments Act Requires Dismissal of Petitioners' Complaint.

Petitioners' Complaint omits parties necessary to effectuate the declaratory relief they seek. "A declaratory judgment is a 'procedural device' through which a party's existing legal rights may be vindicated so long as a justiciable controversy exists." *Weavewood*, 821 N.W.2d at 579; *see also* Minn. Stat. § 555.12 ("This chapter is declared to be remedial; its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered."). Accordingly, the UDJA requires a broad net be cast to define the parties to an action prior to its adjudication, to ensure efficient and final resolution of the controversy. *Cincinnati Ins. Co. v. Franck*, 621 N.W.2d 270, 274–75 (Minn. Ct. App. 2001); *see also Unbank Co., LLP v. Merwin Drug Co.*, 677 N.W.2d 105, 108 (Minn. Ct. App. 2004) (UDJA joinder requirement is "consonant with but broader than the joinder

requirement in [R]ule 19."). Therefore, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Minn. Stat. § 555.11.

Petitioners represent that "the purpose of this lawsuit is to correct an actual ongoing injury suffered by children throughout the Minneapolis and Saint Paul public school districts[.]" Pet. Resp. at 39. Petitioners define that injury, as noted above, to include conduct, policies, procedures, and activities controlled solely by school districts and charter schools. *See supra* and Resp. Br. at 36. These school districts and charter schools therefore have a claim or interest that would be affected by the judgment sought. If the district court entered judgment declaring that Respondents violated the Minnesota Constitution, as Petitioners request,[7] the absent school districts' and charter schools' interest in boundaries and attendance zones, community school policies, funding allocation, teacher assignments, and discipline "would be affected without providing a full opportunity to litigate the issue or a full adjudication of [their] rights." *Unbank*, 677 N.W.2d at 108. Without their participation as parties, this declaratory judgment action must be dismissed. Minn. Stat. § 555.11. Dismissal in this instance is not undertaken as

[7] Petitioners specifically seek an order:

- "[p]ermanently enjoining the defendants from continuing to engage in . . . violations of law set forth hereinabove";
- "ordering the defendants to remedy the violations of law set forth hereinabove"; and
- "ordering the defendants to provide the plaintiffs forthwith with an adequate and desegregated education."

Pet. Add. 83.

a mere formality; rather, it ensures due process and furthers an essential purpose of the UDJA: to efficiently and finally terminate the controversy presented. *See Cincinnati Ins.*, 621 N.W.2d at 275 (citing Minn. Stat. § 555.06).

Petitioners improperly attempt to sidestep the statutory requirements of the UDJA by claiming it does not apply because they do not expressly invoke it. Pet. Resp. at 34, 37–39. Despite their present statements to the contrary, *see, e.g.*, *id.* at 37, Petitioners clearly presented a claim for declaratory judgment to the district court, as noted above. As they have done elsewhere before this Court, *see, e.g.*, Resp. Opening Br. at 5–7, Petitioners may not shift position on appeal and repudiate their earlier claim. *See Urban v. Cont'l Convention & Show Mgmt.*, 68 N.W.2d 633, 635 (Minn. 1955) ("It is elementary that on appeal a case will be considered in accordance with the theory on which it was pleaded and tried, and a party cannot for the first time on appeal shift . . . position.").

Petitioners' appeal to a court's inherent authority is unavailing and contrary to the claims for declaratory relief in the Complaint and documents submitted to the district court.[8] *See* Pet. Resp. at 38. Petitioners' reference to *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), is especially puzzling, *id.*, as the Complaint plainly does not seek

[8] Petitioners' citation of dicta from *Culligan Soft Water Serv. of Inglewood, Inc. v. Culligan Int'l Co.*, 288 N.W.2d 213 (Minn. 1979) is not persuasive. Pet. Resp. at 38. The cited passage merely describes one purpose of the UDJA. The decision did not announce any limit to the scope of the UDJA. Nothing within the text of the UDJA limits its application to situations before any harm arises. To the contrary, the UDJA is merely a procedural device; like any other action, the basic prerequisite is a justiciable controversy. *Weavewood*, 821 N.W.2d at 579.

judicial review of any act by any Defendant. Indeed, Petitioners do not challenge *any* of the 745 education laws recorded in the Minnesota Statutes 2016 edition.

Unbank and *Frisk v. Board of Education of City of Duluth*, 75 N.W.2d 504 (Minn. 1956), are instructive regarding Petitioners claim for declaratory relief. In both of these cases, the court lacked jurisdiction to enter a declaratory judgment because those with interest in the requested remedy were not joined as parties. *Frisk*, 75 N.W.2d at 514; *Unbank*, 677 N.W.2d at 107–08. The district court and Petitioners err by ignoring these binding authorities. Dismissal of the Complaint is mandatory pursuant to the UDJA.

B. Rule 19 Mandates Joinder of Necessary and Indispensable Parties, Lest The Action Be Dismissed.

Rule 19 requires joinder of necessary parties and mandates dismissal if indispensable parties cannot be joined. Petitioners ignore the first step in the Rule 19 analysis, offering only their misplaced reliance on *Skeen v. State*, 505 N.W.2d 299, 302 (Minn. 1993). Pet. Resp. at 35–36.[9] They also do not address Respondents' citations to the Complaint, *see, e.g.*, page 9, *supra*, which repeatedly demonstrate the necessity of school districts and charter schools to be parties to this action.

For the reasons presented in Respondents' Opening Brief at 37, *Skeen* does not supply the rule of decision on this point. School districts and charter schools, whose conduct is implicated by the Complaint, and which are the sole entities that may remedy that conduct, are indispensable and must be made parties to this action. Minn. R. Civ. P.

[9] In responding to the Rule 19 argument, Petitioners again attempt to recast their claims as failure to establish a "uniform system," when that claim appears nowhere in the Complaint nor was it raised at the district court or court of appeals. Pet. Resp. at 36.

19.01. Otherwise, the case should be dismissed. Minn. R. Civ. P. 19.02. The district court abused its discretion by concluding if the case is not otherwise dismissed that there was no need to join these necessary parties. *See* Pet. Add. 21.

CONCLUSION

As stated in their initial brief and herein, Respondents respectfully request that the Complaint be dismissed in its entirety for lack of subject matter jurisdiction, because Petitioners' claims are nonjusticiable and/or because Petitioners failed to name affected parties under the UJDA. In addition, Respondents respectfully request that the Court dismiss the full Minnesota Senate and House of Representatives on immunity grounds.

Dated: July 31, 2017

Respectfully submitted,

/s/ Karen D. Olson
KAREN D. OLSON, #0254605
Deputy Attorney General
KATHRYN M. WOODRUFF, #0307440
KEVIN FINNERTY, #0325995
ANDREW TWEETEN, #0395190
Assistant Attorneys General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 757-1370 (Voice)
(651) 296-1410 (TTY)
karen.olson@ag.state.mn.us
kathryn.woodruff@ag.state.mn.us
kevin.finnerty@ag.state.mn.us
andrew.tweeten@ag.state.mn.us

COUNSEL FOR RESPONDENTS/CROSS-APPELLANTS

CERTIFICATE OF COMPLIANCE WITH MINN. R. CIV. APP. P. 117, Subd. 3

The undersigned certifies that the Reply Brief of Respondents/Cross-Appellants submitted herein contains 3,705 words (exclusive of the caption, signature block, addendum and certificate) and complies with the type/volume limitations of Minn. R. Civ. App. P. 132. This Reply Brief of Respondents/Cross-Appellants was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2010, the word processing system used to prepare this Brief.

/s/ Karen D. Olson