CASE NO. A04-1691

STATE OF MINNESOTA

IN SUPREME COURT

Chris Nelson, Petitioner, v. Productive Alternatives, Inc., Respondent.	)))))))))))))

RESPONDENT'S BRIEF AND APPENDIX

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ISSUES PRESENTED

I. DOES THE WHISTLEBLOWER STATUTE PRECLUDE A COMMON LAW ACTION FOR WRONGFUL TERMINATION OF EMPLOYMENT BASED ON A PUBLIC POLICY EXCEPTION TO THE AT-WILL EMPLOYMENT DOCTRINE?

The trial court answered the question in the affirmative. The Court of Appeals answered the question in the negative.

Apposite cases:

Phipps v. Clark Oil & Refining Corporation, 396 N.W.2d 588 (Minn.App. 1996, affirmed 408 N.W.2d 569 (1987))

Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002)

Nelson v. Productive Alternatives, 696 N.W.2d 841 (Minn.App. 2005)

II. IF THE WHISTLEBLOWER STATUTE DOES NOT PRECLUDE A COMMON LAW ACTION FOR WRONGFUL TERMINATION OF EMPLOYMENT BASED ON A PUBLIC POLICY EXCEPTION TO THE AT-WILL EMPLOYMENT DOCTRINE, DOES PETITIONER NELSON'S COMPLAINT SET FORTH A LEGALLY SUFFICIENT CLAIM FOR RELIEF?

The trial court and the Court of Appeals both held that the complaint did not set forth a claim upon which relief can be granted.

Apposite cases:

Phipps v. Clark Oil & Refining Corporation, 396 N.W.2d 588 (Minn.App. 1996, affirmed 408 N.W.2d 569 (1987));

Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002)

STATEMENT OF CASE AND FACTS

This is a suit for wrongful discharge brought by Chris Nelson, a former member and an at will employee of Productive Alternatives, Inc., a Fergus Falls based non-profit corporation. Nelson was discharged from his employment on November 3, 2003. Suit was brought in Otter Tail County District Court, Seventh Judicial District, alleging he had been wrongfully discharged from employment by Productive Alternatives, Inc., because of his "actual and/or perceived actions as a member of the corporation."

Productive Alternatives, Inc. made a motion under Rule 12.03 of the Minnesota Rules of Civil Procedure for judgment on the pleadings, on the ground that Nelson's complaint failed to state a claim upon which relief can be granted. What Nelson claims he did or claims he was perceived to have done as a member of the corporation that allegedly resulted in his termination is not a part of the record. The motion was heard by the Honorable Waldemar B. Senyk. No matters outside of the pleadings were presented and considered by the Court. Judge Senyk granted Productive Alternatives, Inc.'s, motion, dismissing Nelson's complaint for failing to state a claim upon which relief can be granted pursuant to Rule 12.02(e) of the Minnesota Rules of Civil Procedure.

Judge Senyk's dismissal was appealed to the Minnesota Court of Appeals. In a decision by the Honorable Harriet Lansing, the Court held that a common law action for wrongful discharge for refusing to participate in an activity that an employee, in good faith, believes violates any state or federal law or rule or regulation adopted pursuant to law, was not displaced by the passage of the Whistleblower Act. The Court of Appeals affirmed the District Court's dismissal of Nelson's complaint for failure to state a claim upon which relief can be granted, because Nelson had not alleged that he was discharged for failure to participate in an activity that

violated a state or federal law or promulgated regulation or rule. Nelson v. Productive Alternatives, 696 N.W.2d 841 (Minn.App.2005).

ARGUMENT

I. The Whistleblower Statute does not preclude a common law action for wrongful termination of employment based on a public policy exception to the employment-at-will doctrine, but the scope of the common law action is more restrictive than actions under the Act and without statutory remedies.

A fair reading of Minnesota case law reveals a good deal of uncertainty whether a common law action for wrongful discharge based on a public policy exception to the employee-at-will doctrine survived the enactment of the Whistleblower Act. See Jonathan W.J. Armour, Case Notes and Comments, "Who's Afraid of the Big, Bad Whistle?· Minnesota's Recent Trend Toward Limiting Employer Liability Under the Whistleblower Statute," 19 Hamline L. Rev. 107, 117 (1995. Courts and commentators have not been in agreement on whether a common law action for wrongful discharge remained after the passage of the Act.

In affirming the trial court's dismissal of the Nelson complaint for failure to state a claim upon which relief can be granted, the Court of Appeals writes persuasively that the Whistleblower Statute "... did not displace the common law action for wrongful discharge for refusing to perform an unlawful act ..." Nelson v. Productive Alternatives, Inc., 696 N.W.2d 841, 845 (Minn.App. 2005). A fair reading of case law also leads to the conclusion that the common law action for wrongful discharge under Minnesota law is narrow in scope, with remedies that are more limited than available to litigants under the Whistleblower Act.

A. Phipps I, Phipps II, and Later Case Law.

Minnesota follows the general rule that an employee-employer relationship is terminable at the will of either party. Skagerberg v. Blandin Paper Co., 266 N.W. 872, 874 (Minn. 1936). In the landmark case Phipps v. Clark Oil & Refining Corp., 396 N.W.2d 588, 592 (Minn.App.

1986) (Phipps I), an employee was terminated for allegedly refusing to dispense leaded gasoline into a vehicle, in violation of the law. The Court of Appeals found that an employee at will could maintain an action against an employer for discharge "...for reasons that contravene a clear mandate of public policy."

After Phipps I and before this court's ruling on appeal, the Minnesota Legislature adopted the Whistleblower Act, §§ 181.932-.935. In Phipps v. Clark Oil and Refining Corp., 408 N.W.2d 569 (Minn. 1987), this court affirmed the Court of Appeals holding in Phipps I, stating:

> "...we hold that an employee may bring an action for wrongful discharge if the employee is discharged for refusing to participate in an activity that the employee, in good faith, believes violates any state or federal law or rule or regulation adopted pursuant to law" Phipps II at 571.

Some courts and commentators have questioned whether common law claims for wrongful discharge had been "displaced" by the Whistleblower Act. In preliminary language in Phipps II, this court stated that because the Legislature had enacted the Whistleblower Act, after Phipps I:

> "...we no longer have before us the policy question of whether or not Minnesota should join the three-fifths of the states that now recognize, to some extent, a cause of action for wrongful discharge ... the only question that remains is whether we should uphold the Court of Appeals decision applying this public policy exception to the November 17, 1984, discharge of Phipps." (emphasis added) Phipps II at 571.

The narrow statement of the question before the court seemed to suggest the decision would have no prospective application. Yet the court's holding does not appear to be so limited.

Some decisions of the Minnesota Court of Appeals have not read Phipps II as establishing a common law cause of action for wrongful discharge independent of the Whistleblower Act. In Bolton v. Department of Human Services, 527 N.W.2d 149, 154 (Minn.App. 1995), the Court of Appeals cited Phipps II for the proposition that common law

claims for retaliatory discharge had been "displaced by the Whistleblower Act." In Williams v. St. Paul-Ramsey Medical Center, Inc., 530 N.W.2d 852, 854 (Minn.App. 1995), the court observed:

> "Minnesota's whistleblower statute codified the public policy exception to the general rule of at will employment. See Phipps v. Clark Oil and Refining Corp., 408 N.W.2d 569, 570-71 (Minn. 1987)." Williams v. St. Paul Ramsey Medical Center, Inc., 530 N.W.2d 852, 854 (Minn.App.1995).

In the unpublished decision, Blanchard v. Northwest Publications, Inc., 2000 WL 54354 (Minn.App.2000) (see R-1), the Court of Appeals affirmed the trial Court's grant of summary judgment on the plaintiff's common law claim for discharge in violation of public policy claim, stating:

> ". . .common law claims for retaliatory discharge have been displaced by the state Whistleblower's Act. See Minn. Stat. § 181.932 (1998), protecting employees from adverse employment action resulting from reporting employers violation of law; Thompson v. Campbell, 845 F.Supp 665, 676 (D.Minn. 1994) (Noting Minnesota Courts have not recognized a common law wrongful discharge claim), (citing the Piekarski v. Home Owners Savings Bank, FSB, 956 F.2d 1484, 1493 (8th Cir. 1992); Steinbach v. Northwestern Nat'l. Life Ins. Co., 728 F.Supp. 1389, 1394 (D..Minn.1989); Bolton v. Department of Human Services, State of Minn., 527 N.W.2d 149, 154, (Minn.App.1995) (recognizing common law retaliatory discharge claims displaced by the Whistleblower Act), rev'd on other grounds, 540 N.W. 2d 523 (Minn.1995)." Thus, Blanchard has no common law claim for discharge in violation of public policy independent of Minn.Stat § 181.932".

Federal Courts have also read Minnesota law as not recognizing the existence of a common law action for wrongful discharge based on a violation of public policy. In Piekarski v. Home Owners Savings Bank, FSB, 956 F.2d 1484 (8th Cir. 1992), the 8th Circuit concluded that Minnesota did not recognize a common law action for retaliatory discharge in Minnesota after the adoption of the Whistleblower Act, stating at 1493:

> Minnesota courts have not recognized a common law action for discharge based on refusal to violate the law that exists independently of the action under Minnesota Statutes § 181.932(1)(2). Maida v. Maxie-Switch Co., No. CO-88-1344, 1989 WL 452, at 2 (Minn.App.Jan.10, 1989); see also Steinbach v.

Northwestern Nat'l. Life Ins. Co., 728 F.Supp. 1389, 1394 (D.Minn.1989) (finding that Minnesota does not recognize a general common law claim for wrongful discharge in rejecting plaintiff's claim because it duplicated a statutory claim).

Similarly, in Thompson v. Campbell, 845 F.Supp. 665 (D.Minn.1994), the Federal Court dismissed the common law claim for wrongful discharge based on plaintiff's complaints of sexual harassment. The Court found that no common law claim for discharge in violation of public policy existed in the state of Minnesota. See also Wall v. Air-Serv Group, LLC, 2004 WL 415253 (D.Minn.2004) (see R-8) (dismissing plaintiff's claim for common law wrongful termination on the basis that "common law claims for retaliatory discharge had been displaced by the Whistleblower Act.") and Cook v. Dominos Pizza, L.L.C., 2001 WL 821952 (D.Minn.2001) (see R-4) (dismissing a constructive discharge claim because "Minnesota does not recognize constructive discharge as an independent common law claim").

Finally, in McClure v. American Family Mutual Insurance Company, 223 F.3d 845 (8th Cir. 2000), the 8th Circuit declined to create a judicial remedy for employment actions taken in violation of public policy where an insurance agent was allegedly terminated for engaging in activity of lobbying the legislature for the enactment of legislation favorable to insurance agents in relationships with the insurance company, citing Phipps II, and the decisions in Piekarski, supra, Thompson, supra, Steinbach, supra, and Blanchard, supra.

The uncertainty about the viability of common law wrongful discharge claims after passage of the Whistleblower Act, as expressed in decisions of the Minnesota Court of Appeals and federal courts, is in contrast to the dicta of recent Minnesota Supreme Court decisions. In Abraham v. County of Hennepin, 639 N.W.2d 342 (Minn. 2002), this court held that a party bringing an action under the Whistleblower Act for money damages was entitled to a jury trial. Explaining the Phipps II decision, this court echoed language from the Phipps II decision,

stating: "... we no longer had before us the policy question of whether Minnesota should join the majority of states which recognize a common law cause of action for wrongful discharge" and "we allowed the employee to pursue a common law cause of action for wrongful discharge and we agreed that the common law protects those fired for their refusal to violate the law." Id. at 352. Further, the continued viability of the common law action appears to be implicit in this court's discussion of the Whistleblower Act and the common law action in both Heglin v. City of Willmar, 582 N.W.2d 897, 903 (Minn. 1998) and Anderson-Johanningmeier v. Mid-Minnesota Women's Center, Inc., 637 N.W.2d 270, 275 (Minn. 2002).

The common law action, limited in scope by Phipps II to the definition used by the legislature in the Whistleblower Act, recognized a cause of action for an employee who is discharged for refusing "...to participate in any activity that the employee, in good faith, believes violates any state or federal law or rule or regulation adopted pursuant to law." (Phipps II at 751) This common law was not abrogated by the passage of the Whistleblower Act. As noted by the Court of Appeals in Nelson, supra at 844, statutes in derogation of common law are strictly construed, and the legislature will not:

> "supplant, impair, or restrict equity's normal function as an aid to complete justice ... Common law remedies remain viable following statutory enactments if the statute does not expressly abrogate the common law remedy or if the statute expressly disclaims any intent to do so ... the Whistleblower Act does not expressly abrogate the common law action in tort for wrongful discharge for refusal to perform an unlawful act ... the legislature could have expressly displaced the common law claim recognized in Phipps I, but it did not." Nelson v. Productive Alternatives, supra at 844.

B. Common Law Action Limited to Wrongful Discharge for Refusal to Violate the Law.

The survival of a common law action after passage of the Whistleblower Act should give no comfort to the present plaintiff. As stated by the Court of Appeals in Nelson, supra, at 845:

> "In permitting Mark Phipps to proceed with his common law action, however, the Supreme Court, Phipps II, restated the scope of the action and restricted the definition of Phipps I, which had included violations of both legislative and judicially recognized public policy, to include only refusal to participate in an activity that violates a law or promulgated rule or regulation."

Indeed, the scope of any Minnesota common law action for wrongful discharge is narrower than the action and remedies available under the Whistleblower Act. "A plaintiff stating a claim under the Whistleblower Statute, Minn. Stat. § 181.932, subd. 1(a) 1996, need not establish that the reported violation of law implicates public policy." Anderson-Johanningmeier v. Mid-Minnesota Women's Center, Inc., supra, at 275. Statutory remedies under the Act may also include reasonable attorney's fees and injunctive and other equitable relief, which are not available under the common law. See § 181.935(a).

II. Nelson's Complaint That he was Wrongfully Discharged from his Employment with a Non-Profit Corporation Because of his Actual and/or Perceived Actions as a Member of the Corporation, Fails to State a Claim Upon Which Relief can be Granted.

A. Standard of Review.

The sole issue on a Rule 12 motion to dismiss for failure to state a claim upon which relief can be granted is the adequacy of the pleadings. Group Health Plan, Inc. v. Philip Morris, Inc., 621 N.W.2d 2 (Minn. 2001). The Court must construe the complaint in a light most favorable to the plaintiff by accepting the complaint's allegations as true. Cooper v. Pate, 378 U.S. 346, 84 S.Ct. 1733 (1964). A complaint must be dismissed if it is clear that no relief can be granted under any set of facts that can be proved consistent with the allegations. Conwed Corp. v. Employers Reinsurance Corp., 816 F.Supp. 1360 (D.Minn.1993).

B. Appellant's Complaint Fails to State a Claim Upon Which Relief Can be Granted.

Nelson's sole complaint against Defendant Productive Alternatives is that he was discharged from his employment because of his "actual and/or perceived actions as a member" of Productive Alternatives, the non-profit corporation that employed him. Construing the complaint in a light most favorable to Nelson by accepting the allegations of the complaint as true, Nelson has failed to state a legally recognizable claim for wrongful discharge under Minnesota law.[1]

In Minnesota, the common law action for wrongful discharge is limited to employees "...discharged for refusing to participate in an activity that the employee, in good faith, believes violates any state or federal law or rule or regulation adopted pursuant to law." Phipps II, supra, at 571 and Abraham, supra, at 352. Nelson makes no claim that he was discharged for refusing to break the law. His suit fails to state a claim upon which relief can be granted.

C. Court should not Recognize a Common Law Cause of Action for Violation of "a Clear Mandate of Public Policy".

Nelson urges this court to reverse the trial court's dismissal, as affirmed by the Court of Appeals, and allow him to proceed with a claim of wrongful discharge from employment "because of his actual and/or perceived actions as a member of the corporation" as a violation of a "clear mandated public policy." He invites the court to consider the very policy question it declined to consider in Phipps II. Only a broad expansion of a wrongful discharge in Minnesota can save Nelson's claim from dismissal. This court should decline to extend the law.

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[1] Nelson has cited the affidavit of Chris Nelson in support of a claim that Nelson's termination was linked to the exercise of his voting rights as a member of the non-profit corporation. See petitioner's appendix at A-7. This affidavit was not submitted to the trial court in opposition to the motion to dismiss and should not be part of the record on appeal. The motion to dismiss was heard and considered by the trial court under Rule 12, not as a motion for summary judgment. The Court of Appeals affirmed the trial court's dismissal under Rule 12.

A public policy exception to the employee at will doctrine has been considered by a number of states since the exception was first recognized by California in Petermann v. International Brotherhood of Teamsters, 344 P.2d 25 (Cal.App. 1959). At the heart of the legal debate has been the "tricky issue" of divining what constitutes "public policy." Christopher L. Pennington, Comment, "The Public Policy Exceptions to the Employee At Will Doctrine: Its Inconsistencies and Application." 68 Tulane Law Review 1583, 1593 (1994).

> "...[T]he Achilles heel of the principle lies in the definition of public policy. When a discharge contravenes public policy in any way, the employer has committed a legal wrong ... But what constitutes clearly mandated public policy? ... There is no precise definition of the term."

Palmateer v. International Harvester Co., 421 N.E.2d 876, 877 (Ill. 1981).

In Anderson-Johanningmeier, this court ruled that a whistleblower claim need not establish a violation of public policy. In her concurring opinion, Chief Justice Blatz cautioned about the inherent problems of the judiciary deciding what constitutes public policy in the context of employment litigation:

> "The respondents contend that a public policy requirement is needed because, without one, an employee's 'mere internal dispute over matters of office and personnel management can easily be recast as a [whistleblower] claim,' forcing courts into the role of 'super-personnel departments.' That, indeed, is a risk that may loom on the horizon. But standing in its shadows is a risk that I believe could present even greater challenges to the judiciary—and that is the risk of being saddled with the ultimate responsibility for determining what employer's decisions contravene 'a clear mandate of public policy'." (See Phipps v. Clark Oil & Ref. Corp., 396 N.W.2d 588, 592 (Minn.App. 1986), aff'd, 408 N.W.2d 569 (Minn. 1987)..."The respondents' confidence that such lines of demarcation can be so easily drawn minimizes the difficulty of the responsibility they are urging upon the courts. Recognizing that much legislation is hotly contested, are the courts to sit as a 'super legislature' to pass muster on the worthiness of a law? And in divining what laws in fact do not embody public policy, will the courts become an unwitting partner with a minority of legislators who were unsuccessful in their attempts to block a bill's passage? These concerns—in conjunction with an appreciation that what one court may view as 'pork' may be gruel in the eyes of legislators working on behalf of their constituents—give me great pause. While we defer to the legislature's wisdom in deciding how

> expansive or narrow it wishes to make the whistleblower statute, flares must be lit to mark the perilous road that the courts will have to maneuver if a public policy provision is adopted." Id. at 277-278.

Judge Magill of the 8th Circuit Court of Appeals expressed a similar view when he wrote in Piekarski, supra at 1493:

> "Once the Minnesota legislature has drawn the line between employment disputes that genuinely implicate public policy and are actionable and those that are not, it is not for courts to redraw that line."

Generally, courts have recognized public policy exceptions for public policy articulated in the statutes in three areas: a) refusing to commit an unlawful act (i.e. Petermann, supra, and Phipps I); b) exercising a statutory right or privilege (i.e. discharge for filing a workers' compensation claim); and c) performing a statutory obligation (taking time off for jury duty). See 68 Tulane Law Review, supra at 1596 to 1604.

Nelson argues that voting rights afforded members of non-profit corporations under Minnesota law express a "clear mandate of public policy." Nelson argues that a discharge for exercising such rights violates a "clear mandate of public policy" and should support a claim of wrongful discharge.

While corporate governance is certainly important, more than a mere statutory expression of public policy should be required. Volumes upon volumes of state and federal laws and regulations contain countless expressions of public policy. Which of these expressions of public policy contain a "clear mandate?" What definition would clearly delineate those expressions of public policy which support a claim of wrongful discharge and those that do not? One such distinction would be a requirement that the policy also involved the public interest. Vonch v. Carlson Cos., 439 N.W.2d 406 (Minn.App. 1989) (rev. denied Minn. July 12, 1989), was a suit brought for wrongful discharge occurring before the adoption of the Whistleblower Act. The

Court of Appeals affirmed a grant of summary judgment against a plaintiff who alleged he was fired after reporting to a corporate officer that his supervisor had committed theft and fraud through alleged travel and expense improprieties. The court stated at 408:

> "The public policy exception to at-will employment was carved out to protect the general public from injury due to a company's neglect or affirmative bad act. Here, the public interest in having Carlson's chief corporate security officer charged with corporate travel and expense improprieties is minimal, at best. The public does not have an interest in a business's internal management problems. If actions are allowed when the public interest is only marginally affected rather than where it is "clearly mandated," the law of at-will employment will be seriously jeopardized, and the public policy 'exception' to at-will employment will become the rule." [2]

Similar views have been expressed in other jurisdictions. See Palmateer, supra, at 879, where the Supreme Court of Illinois stated: "The cause of action is allowed where the public policy is clear, but denied where it is equally clear that only private interests are at stake." See Campbell v. Ford Industries, Inc., 546 P.2d 141 (Or. 1976) where the court limited the application of the public policy exception, refusing to recognize a cause of action for an employee who claimed that he was wrongfully discharged for exercising his statutory right as a stockholder to examine the books of the corporate employer. The Oregon court stated at 249-250: "Although there may be reasons of public policy why the stockholders of a corporation should have the right to examine its books and records, the primary basis for that right is not one of public policy, but the private and proprietary interest of the stockholders, as owners of the corporation." See Norman v. Recreation Centers of Sun City, Inc., 752 P.2d 514 (Ariz.App. 1988) where the Arizona court, citing Campbell, found no public purpose supporting a wrongful discharge claim where an employee of a non-profit corporation was allegedly fired because one of the directors acted in

[2] In Anderson-Johanningmeier, supra, at 274 this court cited Vonch in its discussion of the history of the public policy exception to the employee-at-will doctrine before the enactment of the Whistleblower Statute, stating: "Although the case was not brought under the Whistleblower Statute, the Court of Appeals cited the statute and concluded that the public policy exception to at-will employment protects the general public and that it '[T]he public does not have an interest in a business's internal management problems.'"

breach of fiduciary duties owed to members of the non-profit corporation. In affirming the dismissal of the wrongful discharge suit, the court found that the right claimed by the employee was a matter of private interest, not public policy.

Nelson looks to the Virginia case of Bowman v. State Bank of Keysville, 331 S.E.2d 797 (Va.1985), to support his position. While the Virginia court recognized that shareholders who were employees could bring a cause of action for wrongful discharge for allegedly being fired for failing to vote for a bank's proposed merger, the decision in Bowman is inconsistent with Minnesota law. Minnesota has gone no further than recognizing that an employee fired for refusing to violate the law may sue for wrongful discharge. See Abraham, supra. Arguably, disputes involving the voting rights of corporate shareholders is a private and not a public matter. See Vonch, supra. Moreover, the Bowman decision remains a narrow exception to Virginia law. The Virginia legislature and courts have struggled to give definition to the "Bowman claims," what statutes may serve as a basis for a claim and what plaintiffs fall within the class of individuals who can pursue such a claim. See a discussion of the development of Virginia law since the Bowman decision in Anderson v. ITT Industries Corp., 92 F.Supp.2d 516 (E.D.Va. 2000). We submit that the struggles of the Virginia courts and legislature, in the aftermath of the Bowman decision, underscore the potential problems of the judiciary attempting to define "public policy" for purposes of wrongful discharge claims.

D. Expansion of Minnesota Law, as Plaintiff Suggests, Would Create Unpredictability in Employment Law and Increased Litigation.

Professor Bastress of the West Virginia University College of Law hit the mark when he wrote of the realities of representing employees on employment discharge matters, noting that "[r]epresenting a client who seeks relief from an employment discharge is a lot like playing

Bingo: you hope the client calls out the facts that permit you to maneuver the case into the right squares for forbidden employer motive or conduct in order to win a prize." Robert M. Bastress, "A Synthesis and a Proposal for Reform of the Employment-At-Will Doctrine", 90 W.Va.L.Rev. 319, 325 (1988).

Advising an employer on discharging an employee is as difficult. Employers need to be able to predictably assess, prior to taking action, whether their conduct is legally appropriate and could result in liability.

We submit that an expansion of common law that would permit Nelson to maintain an action for wrongful discharge based on the allegation that he was discharged "for actual or perceived actions as a member" of the non-profit corporation which employed him, would both energize the game of Bingo mentioned by Professor Bastress, while sowing uncertainty in the law regarding employment relations. Employers and employees alike would have little guidance on which of the endless articulations of public policy contained in state and federal statutes and regulations would support a claim of wrongful discharge, if alleged to have been the basis of an employee's termination. With increased frequency, courts would be called upon to resolve these differences. The legislature, not the courts, should "draw the line between employment disputes that genuinely implicate public policy and are actionable and those that are not..." Piekarski, supra, at 1493.

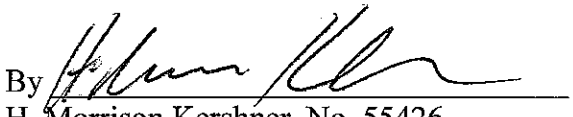
CONCLUSION

Minnesota law recognizes a common law action for wrongful termination for refusing to violate the law. There is no authority in Minnesota law for an employee and member of a non-profit corporation to maintain a common law action for wrongful discharge for "actual and/or perceived actions" on behalf of his non-profit corporation employer. Construing the complaint in a light most favorable to Nelson, the complaint fails to state a claim upon which relief can be granted.

For the forgoing reasons, we respectfully request that the trial court's decision and the Court of Appeals decision dismissing Nelson's complaint be in all respects affirmed.

Respectfully submitted,

PEMBERTON, SORLIE, RUFER
& KERSHNER, P.L.L.P.

By 

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).