FILED
July 16, 2021
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

Energy Policy Advocates,

Appellant,

vs.

Keith Ellison, in his official capacity as Attorney General, et al.,

Respondents.

ORDER

#A20-1344

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. We filed a precedential opinion in this matter on June 1, 2021. Respondents filed a petition for further review in the supreme court on June 23, 2021. The petition is pending, and entry of judgment on this court's opinion is stayed by operation of Minn. R. Civ. App. P. 136.02.

2. Respondents move this court "for an order staying the precedential effect of this court's . . . decision." Respondents assert that "certain legal communications . . . will be inhibited; internal communications between attorneys representing the State of Minnesota may be exposed to adversaries without remedy; and sensitive investigative and policy data may be released into the public domain." Appellant opposes the motion.

3. In our opinion, we affirmed in part with respect to the district court's decision that certain data need not be disclosed, and we reversed in part with respect to certain other data and remanded for review of the documents in dispute. We did not order that any particular data must be disclosed. Respondents do not assert that appellant is seeking to immediately enforce the decision in this case prior to the entry of judgment, that there is a risk of mootness, or that a stay is necessary to preserve the supreme court's jurisdiction should review be granted.

4. "The panel deciding the merits of an appeal . . . determines the form of the written opinion, which may be a precedential opinion, nonprecedential opinion, or order opinion." Minn. R. Civ. App. P. 136.01, subd. 1(a). The appellate rules do not authorize a party to seek to change the form of this court's opinions after filing. *See* Minn. R. Civ. App. P. 140.01 (providing that no petition for rehearing is allowed in this court).

5. Even before judgment is entered, "a precedential opinion of this court has immediate precedential effect, which is not limited by the availability or grant of further appellate review." *State v. Chauvin*, 955 N.W.2d 684, 695 (Minn. App. 2021), *rev. denied* (Minn. Mar. 10, 2021). Respondents appear to be seeking to limit the effectiveness of this court's decision in other cases or circumstances, none of which are before us. Respondents cite no applicable rule or Minnesota caselaw authorizing this court to delay the precedential effect of a recent opinion, and such a stay would be inconsistent with the holding in Chauvin. The cases on which respondents rely are distinguishable. *See Ribaudo v. Nicholson*, 21 Vet. App. 137, 142, 144-45 (Vet. App. 2007) (granting stay because of potential impact on "overburdened" administrative

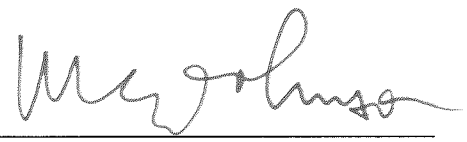
system, which could result in more than 800,000 additional claims and delays in the processing of claims by "millions of veterans" and dependents); *Andrie v. Dep't of Treasury*, 493 Mich. 900 (Mich. 2012) (involving stay by reviewing court on collection of taxes pending completion of that court's own review). Assuming arguendo that this court had discretion to stay the precedential impact of a decision, we note that respondents failed to provide any factual support for their assertion that the disclosure of protected information to adversaries or into the public domain has been ordered by any court or is otherwise imminent.

6. Our denial of respondents' motion does not preclude respondents from seeking stays in the other actions to which respondents have referred. An order compelling disclosure of documents over objection may be stayed by the issuing court to preserve appellate jurisdiction and prevent mootness. *Webster v. Hennepin Cnty*, 891 N.W.2d 290, 293 (Minn. 2017).

IT IS HEREBY ORDERED: The motion to stay the precedential effect of this court's decision is denied.

Dated: July 16, 2021

BY THE COURT



Matthew E. Johnson
Opinion Judge