

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Association for Government Accountability,

Case Type: Mandamus

Petitioner,

Court File No. 62-cv-17-3396

Judge John H. Guthmann

vs.

Myron Frans, in his official capacity as Commissioner of Management and Budget as an agency of the Executive Branch of the State of Minnesota; Minnesota House of Representatives Budget and Accounting Office, and Minnesota Senate Fiscal Services Office,

**MINNESOTA HOUSE OF
REPRESENTATIVES' RESPONSE
TO ORDER TO SHOW CAUSE
AND OPPOSITION TO
REQUEST FOR
MANDAMUS RELIEF**

Respondents.

I. Introduction.

The Association for Government Accountability (“AGA”) has petitioned this Court for a writ of mandamus to require Myron Frans (“Commissioner Frans”), the Commissioner of Management and Budget, to pay state legislators a salary of \$45,000 commencing on July 1, 2017. The Petition argues that Governor Dayton’s May 30, 2017, line-item veto of appropriations for the legislature for 2018 and 2019 is wrong, that legislators and their staff should be paid, and that the legislature as a whole should be funded.

The House of Representatives¹ agrees with the AGA that Governor Dayton’s veto was wrong. But the fight belongs to the legislature, not to self-described government watchdogs like the AGA. Unlike the legislature, the AGA lacks standing.

¹ Although the AGA purports to name the “Minnesota House of Representatives Budget and Accounting Office” as a party, there is no such legal entity. The “Budget and Accounting Office” is a department of the Minnesota House of Representatives. It is not a separate entity.

To have standing to seek mandamus relief, a petitioner must show: (1) a government official has failed to perform an official duty; (2) the petitioner has been “specifically injured” by the failure; and (3) there is no adequate relief other than a writ of mandamus. The AGA fails all three prongs of the test. First, the governmental duty at issue is not due to be performed until July 1, 2017. There has not yet been the requisite official failure to perform a governmental duty. Second, the AGA is not “specifically injured” by Governor Dayton’s line-item veto or any failure to pay salaries. Rather, it is the individual legislators and the legislative bodies as a whole that are “specifically injured” by a failure to pay proper salaries and defunding the legislature. Third, alternative adequate relief exists in the form of a lawsuit by the legislature against the executive branch. Indeed, the legislature has already commenced its own action to nullify Governor Dayton’s line-item veto and properly fund the legislature.

For this and the other reasons discussed herein, this Court should deny the writ and dismiss the Petition.

II. Argument.

A. Plaintiff Lacks Standing To Seek a Writ of Mandamus.

Mandamus relief is an extraordinary legal remedy. *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 493 (Minn. Ct. App. 2003). To have standing to seek mandamus relief, a petitioner must prove: (1) an official has “failed to perform an official duty clearly imposed by law”; (2) due to this failure, the petitioner “suffered a public wrong” and was “specifically injured” by the failure; and (3) there is “no other adequate legal remedy.” *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006) *citing and quoting N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004); *see also Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017); Minn. Stat. §§ 586.01 and 586.02. The AGA fails each of these requirements. Consequently, the Petition must be dismissed for lack of standing.

1. Respondents have not “failed to perform an official duty clearly imposed by law.”

Petitioner claims that the Minnesota State Constitution Article IV, section 9, and Minnesota Stat. § 15A.0825, subd. 7, allowed the Legislative Salary Council (“Council”) to “prescribe” the salary of senators and representatives by March 31, 2017, and that any changes in salary must take effect on or before July 1, 2017. (Petition, ¶¶ 10, 14-15) Petitioner seeks a writ of mandamus requiring changes in salary to be implemented on July 1, 2017.

Petitioner’s request for a writ is premature. Under Petitioner’s own analysis, Respondents have no duty to raise salaries until July 1, 2017. (Petition, ¶¶ 10, 14-15) Because it is not yet July 1, Respondents have not “failed to perform an official duty clearly imposed by law.”

2. Petitioner Has Not Suffered A Public Wrong And Was Not Specifically Injured.

To have standing, a petitioner must be a “beneficially interested party.” Minn. Stat. § 586.02. A party is “beneficially interested” if it suffered a “public wrong” that was “specifically injurious” to it and would particularly benefit from the issuance of the writ. *Knudson v. Comm’r of Pub. Safety*, 438 N.W.2d 423, 425 (Minn. Ct. App. 1989) (“[A beneficially interested party must show] a public wrong especially injurious to it, and that it would benefit from an order compelling performance of a statutorily imposed duty.”); *Chanhassen Chirporatic Cntr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003) (petitioner must show it was “specifically injured by a public wrong.”); *see also Breza*, 725 N.W.2d at 110; *Madison Equities, Inc.*, 889 N.W.2d at 571. Petitioner has not suffered a public wrong; nor has it been “specifically injured.”

a. Petitioner Has Not Suffered A Public Wrong.

A public wrong is defined as “a crime, misdemeanor, tort, or breach of a duty owed to and prejudicing the interests of the community at large.” *See, e.g.*, Merriam-Webster, online ed.; Minn. Stat. § 645.08. As set forth *supra*, even under Petitioner’s analysis, the legislature has no duty to increase wages prior to July 1. Accordingly, Petitioner has not suffered a public wrong.

b. Petitioner Was Not Specifically Injured.

Minnesota has applied the “injury-in-fact” test for standing when determining whether a party is “specifically injured” under Minn. Stat. § 586.02. *See Sylstad v. Johnson*, No. C4-98-1932, 1999 WL 314883, at *2 (Minn. Ct. App. May 18, 1999) (“A person whose legitimate interest is injured in fact has standing to pursue a claim. ... The absence of any showing of benefit for a writ of mandamus is tantamount to a lack of standing.”). An injury-in-fact is:

a concrete and particularized invasion of a legally protected interest. The injury must be more than mere dissatisfaction with the State’s interpretation of a statute. [A party] must articulate a legally cognizable interest that it has suffered because of the State’s action and that differs from injury to the interests of other citizens generally.

Webb Golden Valley, LLC v. State, 865 N.W.2d 689, 693 (Minn. 2015) (internal citations and quotations omitted, emphasis supplied); *see also Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007).

Petitioner first claims that it has standing under Minn. Stat. § 586.02 because:

AGA’s taxpayers and voters are beneficially interested in their legislative representatives being paid their salaries so they are available to them and to enact legislation and conduct oversight on the executive and judicial branches and local government. However, absent their respective salary, members of the state legislature will be unable to effectively represent their constituents or will be less available or unavailable to meet with constituents...

(Petition, ¶ 7)

Petitioner’s assertion that it has standing because its members are “taxpayers and voters” fails to identify a specific injury unique to Petitioner—it is the same purported injury suffered by

any other Minnesota taxpayer or voter. Minnesota law is clear that taxpayer suits should be “dismissed unless the taxpayers can show some damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public.” *Olson v. State*, 742 N.W.2d 681, 684 (Minn. Ct. App. 2007); *Walker v. Jesson*, 2014 WL 1758210, *1 (Minn. Ct. App. 2014). Thus, Petitioner lacks standing because its injury does not “differ from an injury to the interests of other citizens generally.” *Webb*, 865 N.W. 2d at 693.

There is a narrow exception to the rule that taxpayers do not have standing for generalized injuries. Taxpayers without a direct injury may still have standing, but only to maintain an action that restrains the “unlawful disbursements of public money.” *Olson*, 742 N.W.2d at 684. Thus, Minnesota courts have been clear that although a taxpayer may have standing to contest the illegal *expenditure* of public funds, there is no taxpayer standing for the *non-expenditure* of public funds. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585 (Minn. 1977) (“Taxpayers may sue to enjoin waste or illegal use of public funds, but this principle does not extend to the nonexpenditure of public funds on a highway project; to hold otherwise would allow a challenge to virtually every legislative enactment affecting business in general.”); *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 147 (Minn. Ct. App. 1999) (holding that taxpayer standing for illegal expenditures only applies where the action is “likely to increase their overall tax burden”); *Olson*, 742 N.W.2d at 684. Here, Petitioner complains of the *non-expenditure* of funds (i.e., *non-payment* to representatives). The *non-expenditure* of tax funds does not increase Petitioner’s overall tax burden or otherwise cause it financial injury. Consequently, Petitioner cannot squeeze itself through the narrow exception to the general rule against taxpayer standing.

Petitioner also claims it has standing because it “expects to continue to lobby [the legislature] in the 2017 and in the 2018 legislative session, but it requires interaction with

legislators between sessions including possible limited hearings on the issue.” (Petition, ¶ 8) This too is a generalized injury. Every Minnesotan has the right to attempt to lobby the legislature; Petitioner’s claimed inability to lobby is just like that of any other Minnesotan. Thus, there is no action “specifically injurious” to Petitioner.²

3. There Are Other Adequate Legal Remedies.

To be entitled to mandamus relief, a petitioner must establish that there is no other “plain, speedy, and adequate remedy in the ordinary course of law.” Minn. Stat. § 586.02. “[T]he remedy which will preclude mandamus must be equally as convenient, complete, beneficial, and effective as would be mandamus, and be sufficiently speedy to prevent material injury.” *Kramer v. Otter Tail County Bd. of Comm’rs*, 647 N.W.2d 23, 26-27 (Minn. Ct. App. 2002) (quotation omitted).

On June 13, 2017, the Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives (collectively, the “Legislature”) filed suit against Governor Dayton and Commissioner Frans, Court File No. 62-CV-17-3601 (the “Legislature’s Action”). The Legislature’s Action seeks a declaratory judgment from the Court that the Omnibus State Government Appropriations bill became law when Governor Dayton signed it on May 30, 2017, that Governor Dayton’s line-item vetoes violate the Separation of Powers Clause of the Minnesota

² To the extent the AGA claims organizational/associational standing, the Court must first determine if the members of the AGA suffered a specific injury (here, for the reasons set forth *supra*, they did not). Assuming the AGA could articulate a specific injury suffered by its members, the Court would next need to consider: “(1) if [the AGA] were denied standing would that mean that no potential plaintiff would have standing to challenge the regulation in question? and (2) for whose benefit was the regulation at issue enacted?” *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 915 (Minn. Ct. App. 2003). Here, plainly, there are other potential plaintiffs. On June 13, 2017, the House of Representatives and Minnesota Senate sued Governor Dayton for the use of his line-item veto. With respect to pay increases, aggrieved representatives or senators would have standing to sue for wrongful pay. Further, it should be clear that Minnesota’s Constitutional Amendment regarding legislative salaries was not for the benefit of the AGA, a “government watchdog association” that does not receive legislative salaries. (Petition, 1)

Constitution and are thus null and void, and that the appropriations for the funding of the Minnesota House of Representatives and Senate became law with the rest of the bill. (Complaint in the Legislature’s Action, ¶¶ 32-35) The Legislature’s Action also seeks injunctive relief compelling Commissioner Frans to allot such funds as necessary to pay for the obligations of the Legislature. (Complaint in the Legislature’s Action, ¶¶ 37-39)

Through its requested remedies of declaratory judgment and injunctive relief, the Legislature’s Action provides an alternative, adequate legal remedy to the writ requested by the AGA (declaratory judgment and injunctive relief). The Legislature’s Action is more convenient, more complete, more beneficial, and more effective than the instant one. The Legislature’s Action is more complete because it names Governor Dayton as a party, whereas the Petition does not. (Petition, ¶¶ 24, 25, 30) Because, as discussed more fully *infra*, Governor Dayton is an indispensable party and because Petitioner has failed to name him, the Petition does not currently offer the possibility of complete relief. The Legislature’s Action is “sufficiently speedy” because it is on the same temporal track as the Petition. *See, e.g.*, Minn. Stat. § 586.06 (a contested writ is treated like any other civil action). The Legislature’s Action is more beneficial because resolution of the Legislature’s Action will not only resolve the issues raised in the Petition, but will also do so with the full participation of the true antagonists, the Legislature and Executive. There is no reason for the Court to hear duplicative motions and decide duplicative issues. Moreover, given that Petitioner’s counsel seeks his attorney’s fees from public funds, it is a waste of funds for the Petitioner to proceed. Accordingly, Petitioner lacks standing to proceed.

B. The Petition Should Be Dismissed Because It Is Not Ripe.

“Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative

policies....” *Leiendecker v. Asian Women United of Minnesota*, 731 N.W.2d 836, 841 (Minn. Ct. App. 2007) quoting *Nat’l Park Hospitality Ass’n v. Dep’t of the Interior*, 538 U.S. 803, 807 (2003) (quotation omitted). A justiciable controversy must exist in order for a claim to be properly before a court. *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949). Hypothetical issues that have no existence in the present—but exist only in the realm of the future—are not ripe. *Id.* To establish ripeness, the litigant must show a direct and imminent injury. *Leiendecker*, 731 N.W.2d at 841.

Here, the only purported injury is a future one. To date, all representatives and their staff have been paid in accord with their regular schedule. According to Petitioner’s own analysis, there is no obligation to pay any increased rate until July 1. Thus, at present, there is only a hypothetical future issue raised by the Petitioner, not a present issue.³ Any decision by this Court would be an impermissible advisory opinion. *See Limmer v. Swanson*, 806 N.W.2d 838, 839 (Minn. 2011).

C. The Petition Should Be Dismissed Because It Fails To Name An Indispensable Party.

Minnesota Rule of Civil Procedure 19.01 requires that a person be joined as a party if s/he “claims an interest relating to the subject matter of the action” and if not joining him will leave a party subject to a “substantial risk of double, multiple, or otherwise inconsistent obligations.” Relatedly, Minn. Stat. § 555.11 provides that, “when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration.” Failure to join an indispensable party necessitates dismissal without prejudice. *Unbank Co., LLP v. Merwin Drug Co.*, 677 N.W.2d 105, 109 (Minn. Ct. App. 2004).

³ To the extent Petitioner argues that Governor Dayton’s line-item veto creates a current direct and imminent injury, Respondents agree. But the Petition cannot be used to override Governor Dayton’s line-item veto because, among other things, Governor Dayton is not named as a party by the Petition. Consequently, the Legislature’s Action is ripe; the Petition is not.

The Petition asks this Court to issue a writ of mandamus requiring Commissioner Frans to pay state legislators commencing on July 1, 2017. (Petition, Prayer for Relief) Petitioner's requested relief is incompatible with Governor Dayton's line-item veto.

To the extent Petitioner challenges Governor Dayton's line-item veto of funding or seeks to use the writ of mandamus as an end-run around the veto, Petitioner has failed to join an indispensable party. Governor Dayton has an interest in his powers as governor and the application of his veto. Even assuming Petitioner has standing (it does not), it cannot ask this Court to abridge Governor Dayton's power without first joining Governor Dayton as a party. Doing so would undermine the separation and balance of powers between the executive, legislative, and judicial branches. *See, e.g., Unbank*, 677 N.W.2d at 108 ("If courts, through a declaratory judgment action, undertake to decide administrative-licensing issues without the participation of the licensing authority, the coequal branches of government relinquish a necessary balance. Licensees cannot confer licensing power on courts by tactical litigation that excludes consideration of the power and discretion of the licensing authority. The district court properly determined that the commissioner was a necessary party to the declaratory action.").

III. Conclusion.

For the foregoing reasons, the House of Representatives respectfully requests that this Court deny the AGA's request for a writ of mandamus and dismiss the Petition.

LAPP, LIBRA, THOMSON,
STOEBNER & PUSCH, CHARTERED

Dated: June 22, 2017

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions including costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211 to the party or parties against whom the allegations in this pleading are asserted.

/s/Amy L. Schwartz
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