

STATE OF MINNESOTA

COUNTY OF RAMSEY

FILED  
Court Administrator

JUN 20 2011

By js Deputy

11-9295  
DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Civil

Case Number:

12-CV-11-5203

In Re: Temporary Funding of  
Core Functions of the Executive  
Of the State of Minnesota

NOTICE OF INTERVENTION OF STATE  
SENATORS WARREN LIMMER, SCOTT  
NEWMAN, ROGER CHAMBERLAIN  
AND SEAN NIENOW; NOTICE TO  
REMOVE PRESIDING JUDGE AND  
ALTERNATIVE WRIT OF MANDAMUS  
AND PETITION FOR THE ISSUANCE OF  
A WRIT OF MANDAMUS COMPELLING  
THE GOVERNOR TO CALL A SPECIAL  
SESSION OF THE LEGISLATURE

TO: The Parties of Record of the foregoing action, to-wit, Minnesota Attorney General Lori Swanson, 102 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155-1609 and Governor Mark Dayton, 100 State Capitol, 75 Rev. Martin Luther King, Jr. Blvd., St. Paul, MN 55155-1609.

YOU ARE HEREBY NOTIFIED, that, pursuant to Rule 24.03 of the Minnesota Rules of Civil Procedure; the above-captioned, duly-elected Minnesota State Senators, Warren Limmer, Scott Newman, Roger Chamberlain and Sean Nienow, desire and intend to intervene as a matter of right, as necessary parties or, in the alternative, as permissive parties, as authorized under Rules 24.01 and 24.02 of the Minnesota Rules of Civil Procedure, in the above-captioned matter.

The pleadings in this matter, to date, have failed utterly to include these Interveners, or any other duly elected legislators, as the necessary and essential parties they, in fact, are in any consideration of the underlying Petition in the matter in accordance with the Minnesota

Constitution. These Interveners have, each and all, voted for the necessary appropriations to fund Minnesota state government that were rejected and vetoed by the above-noticed Governor, Mark Dayton, who now purports to act on behalf of the citizens of the state by circumventing the Constitution of the State of Minnesota on matters of expenditure and appropriation.

More specifically, these Interveners herein state that these proceedings, to the extent they seek the expenditure of funds without appropriation of the legislature as required under the Minnesota Constitution are unconstitutional or, in the alternative, seek a plainly unconstitutional remedy.

An alternative and appropriate constitutional remedy exists in the calling, by the Governor, of a special session of the legislature for the purpose of appropriating the necessary funds and there has not been, nor could there be, any showing that such a remedy has been attempted, much less attempted and failed.

YOU ARE FURTHER NOTIFIED, that these interveners expressly object to designation of the currently designated presiding judge in this matter inasmuch as her previous participation in the earlier unallotment litigation, in addition to her participation in the Senate Recount in which her actions could have, and were, perceived by some citizens to have been partisan or, in some way biased, in her determinations. The critical nature of these proceedings requires the selection of a presiding judge whose partisan background or experience would place him or her above any such recrimination or reproach, whether or not justified in fact. This allegation is intended to serve as

Notice of Removal under Rule 63.03 of the Minnesota Rules of Civil Procedure at such time as these Interveners may be determined to have standing herein.

These same interveners also PETITION, herein, this Court for the Issuance of a Writ of Mandamus, pursuant to Minnesota Statute §586.03, requiring Governor Mark Dayton to call a special session of the Minnesota legislature for the purpose of funding the ongoing functions of State Government.

As PETITIONERS, these same State Senators, Warren Limmer, Scott Newman, Roger Chamberlain and Sean Nienow, state and allege as follows:

1. That they are duly elected Minnesota State Senators and, in that capacity, share the exclusive authority vested in the legislature under the Minnesota Constitution to consider and pass appropriations, and have, therefore, standing to bring this action.
2. That Article XI, Section 1 of the Minnesota Constitution expressly states that “***No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.***”
3. That these Petitioners, in fact, complied with their duties and voted for an appropriation law to fund the function of the State government.
4. That Governor Mark Dayton vetoed the legislation and has created, as a result, a circumstance in which no funding will exist for the continuance of the functions of State government after June 30, 2011.

5. That the lack of funding that will result from Governor Mark Dayton's veto of appropriation legislation will effectively shut down State Government.
6. That no authority exists in the Minnesota Constitution for the expenditure of funds without the direct authority and participation of the legislature and, in particular, without the passage by the legislature of a law appropriating funds for that purpose.
7. That the legislature cannot, on its own initiative, go into a legislative session for the purpose of authorizing the expenditures necessary to keep the government functions funded.
8. That Article IV, Section 12, of the Minnesota Constitution gives to the Governor, as one of his powers and duties, the duty to call a special session of the Minnesota legislature "on extraordinary occasions".
9. That the prospective shutdown of State government for want of appropriations by law is manifestly an "extraordinary occasion" remediable only by action of the Governor to call the legislature into session to pass the necessary appropriation bill.
10. That Minnesota Statute §586 creates a remedy, the Writ of Mandamus, to require a public official to do a duty he or she is required to do but is, for whatever reason, unwilling to do.
11. That the only way in which the State of Minnesota can legally continue to spend money in order to fund its ongoing operations is by "appropriation by law" which requires the legislature to enact a bill appropriating funds for that purpose.
12. That the only way the legislature can accomplish its constitutional obligation is for the Governor to perform his constitutional duty to call a special session of the legislature.

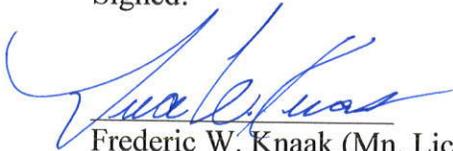
- 13.** That these allegations and assertions, in addition to those submitted to the Court by Governor and Attorney General of the State of Minnesota, constitute a sufficient factual basis by which the Court can properly issue a Writ compelling the Governor to call a special session of the legislature for the purpose of effecting the ongoing funding of Minnesota State legislative functions.
- 14.** That the Court must necessarily deny the Petition of the Attorney General and the supportive position take by the Governor with respect to the Attorney General's opinion in this matter as, at the very least, premature, and, more accurately, as unconstitutional.

WHEREFORE, in addition to those matters otherwise noticed above, THESE PETITIONERS Pray this Court for the following relief:

1. Issuance of Writ of Mandamus compelling Minnesota Governor Mark Dayton to call, in accordance with his duties under the Minnesota Constitution, a Special Session of the Minnesota legislature for the purpose of permitting the legislature to enact appropriation legislation to fund the ongoing operation of Minnesota Government.
2. An Order Denying the relief sought by the Attorney General and Governor herein.
3. Such further relief as the Court may deem appropriate and just under the circumstance, including the inclusion of Senators Scott Newman, Roger Chamberlain and Sean Nienow as necessary parties to the above-captioned action.

Dated: June 20, 2011

Signed:



Frederic W. Knaak (Mn. Lic. 0056777)

Attorney for Intervener/Petitioners Limmer, Newman, Chamberlain and Nienow

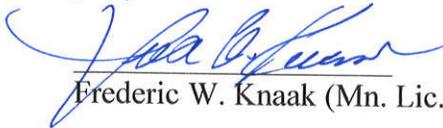
Knaak & Associates, P.A.

4501 Allendale Drive

St. Paul, MN 55110

(651)490-9078

**Acknowledgement:** Frederic W. Knaak, as attorney for the aforesaid individuals, Senators Warren Limmer, Scott Newman, Roger Chamberlain and Sean Nienow, states that they acknowledge and are aware that the inappropriate use of legal proceedings, including in this case if so found, could result in sanctions, including attorneys fees, being awarded to an aggrieved party.



Frederic W. Knaak (Mn. Lic. 0056777)

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