

**FILED**

September 26, 2017

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA  
IN SUPREME COURT  
A17-1142

The Ninetieth Minnesota State Senate  
and the Ninetieth Minnesota State House  
of Representatives,

Respondents,

v.

Mark B. Dayton, in his official capacity as  
Governor of the State of Minnesota, and  
Myron Frans, in his official capacity as  
Commissioner of the Minnesota  
Department of Management and Budget,

Appellants,

**RESPONDENTS' RESPONSE TO  
MOTION TO STRIKE**

The Legislature objects to Governor Dayton's motion to strike the introduction and conclusion of the Legislature's informal memorandum filed on September 15, 2017. The Legislature felt it was important to wait to file this objection until after the Legislature made a good-faith effort to mediate with the Governor. Mediation was unsuccessful and the dust has now settled.

The procedural posture of this case is beyond the norm. This Court, by its September 8, 2017 Order, requested "additional input" beyond the Record and the scope of the sole issue before the Court: whether the Governor's line-item vetoes of the entire appropriations to the Senate and House for the 2018–2019 fiscal biennium exceeded the limits of the Minnesota Constitution. (Order 4, Sept. 8, 2017.) The district court declared the Governor's line-item vetoes were unconstitutional and restored the Legislature's appropriations. This Court has not

yet ruled whether the Minnesota Constitution allows the Governor to eliminate all funding for a co-equal branch of government, nor upon the constitutionality of court-ordered funding in the absence of an appropriation. This Court’s Order mandated that the Legislature discuss issues and matters beyond the Record. The Legislature believes its answers are germane to the Court’s Order and accurately describe the procedural posture of this case.

There are misleading statements in the Governor’s motion to strike. First, the Governor moves to strike the Legislature’s factual assertion that the district court “correctly concluded” the Governor’s line-item vetoes were unconstitutional. This Court has not yet decided whether the Governor can use his line-item veto power to effectively abolish another branch of government. Unless this Court were to do so, the district court’s conclusion that the Governor’s line-item vetoes were unconstitutional is the law of the case. *See Add. 3 at Conclusion ¶2*.<sup>1</sup> It is neither outside the record nor improper to quote the lower court opinion.

Second, the Governor argues the Legislature “falsely” claimed he does not dispute that the line-item vetoes of the funding to the Legislature for the 2018–2019 fiscal biennium effectively deprive the Legislature of its ability to function. (*See* Apps.’ Mot. Strike 3–4.) The district court found that, “[b]ut for the Order issued by [the district court] on June 26, 2017, and with the exception of some carry-over funds, [the Legislature] would have been without funding to cover the core functions of the Legislative branch starting on July 1, 2017.” *Add. 3 at Finding ¶10*. The Governor has never argued this factual finding was “clearly erroneous.” *See Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007). The Governor simply ignores

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<sup>1</sup> Citations to “Add.” Appellants’ addendum to their principal brief. Citations to “R.Add” refer to Respondents’ addendum to their principal brief.

the district court's factual finding because he wants this Court to rule that the Judiciary can order funding out of the treasury without an appropriation despite the clear prohibition in Article XI, section 1 of the Minnesota Constitution. If the Governor wanted to dispute the district court's factual finding, he should have done so clearly and directly. He did not. The district's court's factual finding is not clearly erroneous. As the district court stated, "the Governor concedes that his veto is invalid unless the court institutionalizes the extra-constitutional remedy of emergency funding by the Judicial Branch." *Add. 16*.

Third, the Governor claims the Legislature exceeded the scope of the Court's Order by "attempt[ing] to submit further briefing on the merits of the case." (Apps.' Mot. Strike 4.) This appeal is not a run-of-the-mill case. It presents fundamental constitutional issues that continue to evolve as the Governor's line-item vetoes push the Legislature towards a shutdown. The Court asked for additional input on matters beyond the Record and on issues not necessarily before the Court. The Legislature's answers to the Court's Order are accurate, relevant, and helpful to the Court's inquiry.

Finally, the Governor moves to strike a portion of the Legislature's conclusion. (*See* Apps.' Mot. Strike 2–3.) He argues it is false to claim the Governor "agreed to what the Legislature provided to him at the end of the special session." (Apps.' Mot. Strike 2.) The Governor and his senior staff made statements during negotiations that led the legislative leadership to reasonably believe the Governor intended to sign the tax bill. It is clear from the Governor's veto message that he had no intention of actually signing the tax bill.<sup>2</sup> The

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<sup>2</sup>The Governor agreed to call a special session confined to seven issues, including the tax bill. *R.Add. 3*. He signed all the bills, including the tax bill. He then line-item vetoed the

Legislature anticipated this possibility and placed an insurance provision in the Omnibus State Government Appropriations bill to ensure the Governor upheld his end of the bargain. When the Governor realized he could not veto the tax bill without eliminating funding for the Department of Revenue, he line-item vetoed funding for the Legislature in retaliation. If the Governor intended to sign the tax bill as he led the legislative leadership to believe, the so-called “poison pill” would not be an issue.

For all these reasons, the Legislature respectfully requests that this Court deny the Governor’s motion to strike.

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appropriations to the Legislature, demanding they repeal the tax bill. *Add. 43*. It is reasonable to conclude from the Record that the Governor never intended to sign the tax bill.

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