

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Association for Government Accountability,

Case Type: Civil

Petitioner,

Court File No. 62-CV-17-3396

v.

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  
Department,

**PETITIONER'S  
MEMORANDUM RESPONDING TO  
ORDER TO SHOW CAUSE**

Respondents.

**INTRODUCTION**

A constitutional crisis is looming where neither the Commissioner of Management and Budget, nor the Minnesota House of Representatives Budget and Accounting Office, nor the Minnesota Senate Fiscal Services Department, will be issuing and redeeming warrants for salaries of employees for the legislative branch of government on July 1, 2017. “Employees” under Minnesota law, include elected representatives. While the Minnesota Governor likely has the constitutional authority to exercise a line-item veto and did so to defund the state legislative branch, the instant underlying mandamus action is *not* challenging that authority, nor the Governor’s actions. *The Governor is irrelevant to the underlying action.* Instead, it is the Governor’s *veto* as a *fact* which is of relevancy here.

Further, what is relevant is that the Commissioner of Management and Budget (“Commissioner”), the Minnesota House of Representatives Budget and Accounting Office, and the Minnesota Senate Fiscal Services Department cannot cripple the core functions of the legislative branch by failing to issue and redeem warrants to those individuals who serve and are part of the legislature. To do so would effectively deprive the people of representation which they are constitutionally entitled to under the Minnesota Constitution. As for the Association for Government Accountability (“AGA”), the situation specifically deprives the Association of out-of-session lobbying of legislators and their staff for laws and investigations to meet the objectives of the AGA.

A writ of mandamus is the only remedy for the AGA. The writ of mandamus is the most efficient and proper vehicle to avert a constitutional crisis. It will ensure that the AGA can effectively do its job for its members within expectations of the framework of the representative type of government to which it is entitled. Declaratory judgment is not an available remedy as there is no private cause of action within the Minnesota Constitution or under state statute to seek injunctive relief under Minnesota’s Declaratory Judgment Act.

Moreover, the district court has the authority, as it has in the past during our numerous fiscal impasse crises, to issue orders requiring funding for core functions of agencies and departments despite the lack of appropriations. *This case is no different*, hence, the district court has the authority to grant the requested writ.

Nevertheless, after the AGA filed its petition for a writ of mandamus, this Court issued an order for a hearing to show cause why the relief requested for the issuance for a writ should not be granted. Specifically, the Court requested briefing on three issues:

- Petitioner's standing;
- That the alleged controversy is not justiciable; and
- Whether Governor Mark Dayton is an indispensable party.<sup>1</sup>

This is no run-of-the-mill civil action. Like the fiscal impasse cases of the past, the remedy sought must be timely, effectively and efficiently adjudicated to avoid crippling our constitutional form of government. If not, the AGA will not be able to function as it is mandated to do so by its membership. Because of the specific relief requested, the AGA *has standing*.

Further, as for the Respondents, there is no illusory duty to ensure compensation is paid. Legislator pay is not discretionary. The Minnesota House of Representatives Budget and Accounting Office and the Minnesota Senate Fiscal Services Department are responsible for issuing warrants for legislative salaries. The Management and Budget Office has a duty to ensure funding to redeem these warrants for both the Minnesota House of Representatives Budget and Accounting Office and the Minnesota Senate Fiscal Services Department. In short, there is a collective duty to issue and redeem warrants to pay state legislators' salaries.

Further, the controversy is justiciable. The Governor's veto is a *fact*. The veto has eliminated funding for legislative salaries — effective July 1st. There exists an impasse; and, like the past fiscal impasse cases, the harm occurs as funding is lost on July 1, 2017. For instance, in those cases, appropriation bills were vetoed, but the impact was not felt until the fiscal year would come to an end beginning on July 1st. Court orders to require *continued*

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<sup>1</sup> Or. at 2(June 12, 2017).

*funding* were issued as the agency, department, or program was to lose funding and suffer possible irreparable harm.

There is *no immediate relief* available. Like the past fiscal impasse cases, the legislature and executive branches continued debating about the government's budget; but while those discussions continued, it did not prevent the district court from issuing orders to ensure agencies, departments, or programs were continuously funded. This Court has the authority to avert any possible constitutional crisis to ensure the legislative branch can continue to function as it should and as it must.

With July 1st just nine days away, this Court should grant the AGA's Petition and issue the writ of mandamus requiring the Respondents to issue and redeem warrants for the state legislator's salaries commencing on July 1, 2017 and continuously until a legislative appropriation relating thereto is enacted.

**I. The Association for Government Accountability has standing to seek relief for a writ of mandamus directing the Respondents to issue warrants to pay the salaries of state legislators.**

To obtain a writ of mandamus, petitioner must meet the statutory standing requirements of Minnesota Statute §§ 586.01-586.02 (1982). A petitioner must demonstrate:

- (1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.<sup>2</sup>

"Generally, mandamus will not issue to compel a public official to do an act absent a request having been made upon the officer to do the act. *Alevizos v. Metro. Airports Comm'n of Mpls. & St. Paul*, 298 Minn. 471, 496, 216 N.W.2d 651, 666-67 (1974). We have identified

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<sup>2</sup> *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995) (citations omitted).

two exceptions to this general rule. No request is necessary when a public duty, rather than a private duty, is involved.<sup>7</sup> *Id.*, 216 N.W.2d at 667. Nor is a demand required when such a demand would be futile. *Id.*, 216 N.W.2d at 667.”<sup>3</sup>

Here, each of the Respondents has a specific public duty to issue and redeem warrants to ensure the legislators receive their respective salaries. Otherwise, the legislative function will come to a halt, in violation of the Minnesota Constitution.

The Association for Government Accountability (“AGA”) meets each of the standing requirements under the governing statute for this Court to issue a writ of mandamus.

**A. State law requires the Respondents to issue and redeem warrants to pay the salaries of state legislators.**

Because the Minnesota House of Representatives Budget and Accounting Office and the Minnesota Senate Fiscal Services Department prepare the payrolls and issue the warrants to pay the state legislators, and because the Commissioner is responsible to ensure funding to redeem the warrants, the first element for the AGA’s standing is met.

Under Minnesota Statute § 16A.011, subd. 10, the definition of employee includes elected officials: “‘Employee’ includes elected officials, officers, and employees of the state, or agency, as the context requires.” Thus, when we speak of “employee” or “elected official” or “legislator,” it is in the context of an “employee” of the state.

As the AGA explained in its Petition, the Office of Management and Budget is an agency of the executive branch of government. The Commissioner, Myron Frans, an

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<sup>3</sup> *N. States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 491–92 (Minn. 2004)

appointee of Governor Mark Dayton, is the director of the Office, which provides a number of fiscal and financial services to the state including the payroll for state employees, and notably here, the funding and redemption of warrants issued by the Minnesota House of Representatives Budget and Accounting Office and issued by the Minnesota Senate Fiscal Services Department.

State law requires the Commissioner to redeem the face value of any warrant issued:

The commissioner of management and budget shall in no case purchase, redeem, or receive any warrant at less than its face value....<sup>4</sup>

Moreover, the Commissioner is to create an appropriation budget account for government entities wherein spending is controlled at the appropriation level and managed through expense budgets.<sup>5</sup> Notably, the Commissioner recognizes that appropriation accounts are to be established by a session law, state statute *or court ruling*:

All appropriations must have the correct legal authority in session law, state statute, or court ruling.<sup>6</sup>

Thus, payments, such as for legislators' salaries, are made from the appropriation account.

Minnesota Statute § 16A.17, subd. 1, establishes when salaries are to be paid, either semimonthly or biweekly:

The commissioner, with the approval of the governor, may choose to pay salaried employees semimonthly or biweekly.<sup>7</sup>

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<sup>4</sup> Minn. Stat. § 16A.012 (2009).

<sup>5</sup> Pet. for Writ, Ex. I (Minn. Mang. and Budget Statewide Operating Policy). The policy is authorized under Minnesota Statute § 16A.01, subd. 4 (2009).

<sup>6</sup> Pet. for Writ, Ex. I (Minn. Mang. and Budget Statewide Operating Policy), App. 129.

<sup>7</sup> Legislators are salaried employees. Kaardal Decl.

The same law, under Minnesota Statute § 16A.17, subd. 5, identifies the Commissioner's payroll duties to include the issuing of warrants to pay salaries:

When the department prepares the payroll for an agency, the commissioner assumes the agency head's duties to make authorized or required deductions from, or employer contributions on, the pay of the agency's employees and to prepare and issue the necessary warrants.

Minnesota Statute §16A.17, subd. 6 identifies how payrolls are prepared, but with an exception for the legislative branch of government which may prepare its own payroll and issue warrants for salary payments as the Commissioner is required by law:

The commissioner shall prepare the payroll for the executive branch. Upon the request of the Rules Committee of the senate or the house of representatives or the Supreme Court, as appropriate, the commissioner shall prepare the payrolls of the legislative and judicial branches in a similar way.

In this regard, the Senate Fiscal Services Department prepares the Senator's payroll and issues the warrants for payment of salaries:

The responsibility of the Fiscal Services Department is to prepare all warrants and abstracts for payment of Senate salaries ....<sup>8</sup>

Similarly, in the House of Representatives payroll salaries of the elected officials (and staff) and warrants are issued through the House Budget and Accounting Department:

[The House Budget & Accounting Department] [f]inancial functions include: accounting, budgeting, staff and member payroll ....<sup>9</sup>

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<sup>8</sup> Kaardal Decl. Ex. A (Fiscal Services Dept.).

<sup>9</sup> Kaardal Decl. Ex. B (2016-17 Biennial Budget- Minnesota Legislature).

Thus, in this respect, both agencies of the senate and the house substitute the role of the Commissioner with the preparation of legislative employee payrolls and issuance of warrants of which the Commissioner must fund and redeem.<sup>10</sup>

Moreover, the Commissioner's Office establishes the appropriation account from which payroll warrants are redeemed whether by session law or "court ruling" — as here, where a court ruling is sought and a requested writ may be issued accordingly. Notably, as to funding and redemption of warrants, there is no discretion. The duties of the Commissioner and the senate and house agencies are not illusory. They have been provided with specific duties and responsibilities to pay salaries to state legislators.<sup>11</sup>

In addition, elected officials are entitled, effective on July 1, 2017, to the salary of \$45,000 as established by law<sup>12</sup> and by resolution per diem and expense reimbursements.<sup>13</sup> The law has not been repealed and remains in effect.<sup>14</sup> Again, there is no discretion as to

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<sup>10</sup> There is nothing in the record to suggest that either the Senate or the House of Representatives requested the Commissioner to prepare the payroll for the legislature staff or members: "Upon request of the Rules Committee of the senate or house of representatives... the Commissioner shall prepare the payroll of the legislative and judicial branches in a similar way." Minn. Stat. 16A.17, subd. 6.

<sup>11</sup> By committee resolution as well, these same legislative agencies are provided with additional direction, such as increased salary payments to legislative leadership and instructions related to per diem and expense payments. *E.g.* Kaardal Exs. E (House leadership salary resolution); F (Senate leadership salary resolution); G (House per diem and expense resolution ); H (Senate per diem and expense resolution); I (House expense reimbursement by resolution); J (Senate expense reimbursement by resolution).

<sup>12</sup> Minnesota Constitution, Art. IV, Section 9; Minn. Stat. § 15A.0825, Subd. 7 ("By March 31 of each odd-numbered year, the Council must prescribe salaries for legislators to take effect July 1 of that year."); Kaardal Decl Ex. C (Compensation of Minnesota Legislators 1872 – Present (Minn. Leg. Ref. Lib.); and Ex. D, (Chap. 3 § 16, 1997 Minn. Sess. Laws.)

<sup>13</sup> *Supra* n.10.

<sup>14</sup> The only law repealed by the recent constitutional amendment on legislative compensation which established the Legislative Council to prescribe legislative salaries, was related to any

whether these warrants are to be issued by the responsible agencies and redeemed by the Commissioner. Their respective duties are without question. These duties must be performed.

**B. The failure to fund the legislative branch of government is a public wrong especially injurious to the Association for Government Accountability because it will be unable to fulfill its legislative agenda to lobby and investigate while the legislature is out-of-session.**

The second element to obtain a writ of mandamus is fulfilled by the AGA that there must be “a showing of a public wrong especially injurious to the petitioner.”<sup>15</sup> First, what is the AGA? As we explained in our Petition, the AGA is an association of people organized in Minnesota to promote government accountability. It uses private and *public* resources as a catalyst to investigate issues arising from the conduct of governmental entities or officials — appointed or elected — that are contrary to the best interests of the people. Whether it be inefficiencies of government or out-right illegalities, the AGA has sought to ensure that when government fails to the detriment of the people, the AGA will use all methodologies necessary to stop the wrongful acts.<sup>16</sup> Accordingly, the AGA does whatever it can to assist the government to comply with law.

For example, the AGA successfully obtained a permanent injunction against Wabasha County to prevent the County Sheriff's Department from operating an illegal enterprise under a so-called safe driver class in *Association for Government Accountability, et al. v. Wabasha*

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*increase* in salaries since 2015: “Any *salary increase* for legislators authorized in law by the legislature after January 5, 2015, is repealed.” Minn. Const. art. IV, § 9 (emphasis added).

<sup>15</sup> *Coyle*, 526 N.W.2d at 207.

<sup>16</sup> Pet. for Writ ¶

*County, et al.*, Wabasha County District Court File No. 79-CV-13-751.<sup>17</sup> From that litigation, the AGA sponsored legislation, and lobbied for its passage, to prevent local governments to create similar enterprises as a revenue source that is not otherwise allowed by state law.<sup>18</sup> Much work is accomplished by the AGA when the legislature is out-of-session, as it is during session. Between sessions, the AGA can seek out legislators to promote the AGA's agenda whether it is creating new laws or strengthening existing laws. The AGA can request investigative hearings of legislators for fact-finding to substantiate claims of governmental or agency abuse. The AGA would cooperate with legislative staff and resources for research and to draft proposed legislation in anticipation of the next legislative session. These activities are especially important and necessary to the AGA to meet its objectives as an organization.

The public wrong, here, is the lack of funding for the salaries of elected legislative officials as a consequence of the line-item veto brings the state legislators to a halt. The AGA would be prevented from engaging in its necessary interactions with its legislators and staff (who support the legislators) which, in turn, prevents the AGA from achieving the organization's objectives.

Again, there is no challenge here as to the constitutional authority of the Governor to *exercise* the right of a line-item-veto. It is consequence of that *act* which has caused the harm to the AGA as an organization. Without legislative funding, the AGA's work comes to a halt.

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<sup>17</sup> Pet. for Writ Ex. A.

<sup>18</sup> *Id.* ¶ 8 and Ex. B.

**C. The AGA has no other adequate remedy at law since neither declaratory judgment nor quo warranto are available as remedies.**

The issuance of a writ a mandamus is the most efficient and effective manner to correct the public wrong that has been imposed upon the AGA. There is no other adequate remedy at law for the AGA to pursue.

For instance, Minnesota's Declaratory Judgment Act provides a remedy, but is not of itself a cause of action for which relief can be granted.<sup>19</sup> Minnesota's Uniform Declaratory Judgments Act grants courts the power to declare a party's legal "rights, status, and ... relations" through the issuance of a declaratory judgment. Minn. Stat. § 555.01. A declaratory judgment is a "procedural device" through which a party's existing legal rights may be vindicated so long as a justiciable controversy exists.<sup>20</sup> Moreover, the Minnesota Constitution is not a legal source for a private cause of action upon which relief under the Declaratory Judgment Act can be achieved. "[T]here is no private cause of action for violations of the Minnesota Constitution."<sup>21</sup>

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<sup>19</sup> *Hoelt v. Hennepin Cty.*, 754 N.W.2d 717, 722 (Minn. App.2008) ("But the UDJA cannot create a cause of action that does not otherwise exist."). Minnesota's Declaratory Judgment Act is found at Minn. Stat. § 555.01, et seq.

<sup>20</sup> *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012) *citing Luckenbach S.S. Co. v. United States*, 312 F.2d 545, 548 (2d Cir.1963); *see also McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011).

<sup>21</sup> *Eggenberger v. W. Albany Tp.*, 820 F.3d 938, 941 (8th Cir. 2016), *cert. denied sub Eggenberger v. W. Albany Tp., Minn.*, nom. 137 S. Ct. 200 (2016) *citing Guite v. Wright*, 976 F.Supp. 866, 871 (D.Minn.1997), *aff'd on other grounds*, 147 F.3d 747 (8th Cir.1998); *see also Mharik v. City of Minnetrista*, No. A09-910, 2010 WL 346402 at \*1 (Minn. App. Feb. 2, 2010) (explaining "no private cause of action for a violation of the Minnesota constitution has yet been recognized" and "[t]herefore appellant's complaint fails to state a claim"); *Danforth v. Eling*, No. A10-130, 2010 WL 4068791 at \*6 (Minn.App. Oct. 19, 2010) (noting "there is no private cause of action for violations of the Minnesota Constitution" and plaintiff's claims were properly dismissed as frivolous).

Under the facts of our Petition, we are not challenging the constitutional authority of the Governor on the line-item veto issue. The Petition's private cause of action relies solely on Chapter 586 and does not assert the existence of a "legal right to sue" for the AGA based solely on the Respondents' public duty to pay the legislators their salaries. A so-called "Declaratory Judgment act action," if one exists, is for the legislators and others to pursue. Further, the AGA has no basis for a cause of action or otherwise to claim a violation of the Minnesota Constitution when the Minnesota Constitution does not provide for a private cause of action in the first instance. Therefore, declaratory relief under the Declaratory Judgment Act is not available to the AGA.

In addition, a petition for quo warranto is unavailable to the AGA. The appellate court, in its effort to define the scope of quo warranto's application, has found that "quo warranto will now lie against unauthorized conduct that threatens a substantial public injury but is not necessarily grounds for dissolution of a corporate franchise or ouster from office."<sup>22</sup> Moreover, it would be questionable if the AGA would have standing under a quo warranto petition under the circumstances asserted in their petition for a writ of mandamus.

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<sup>22</sup> *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 319 (Minn. App. 2007) *citing e.g., Rice v. Connolly*, 488 N.W.2d 241, 242–43 (Minn.1992) (issuing quo warranto writ invalidating legislation authorizing teleracing and telephone betting and requiring discontinuance of all off-track betting); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 783 (Minn.1986) (issuing quo warranto writ invalidating statute by which legislature transferred responsibilities of state treasurer to commissioner of finance and requiring that transferred functions be returned to state treasurer); *Childs*, 66 Minn. at 529, 69 N.W. at 926 (stating that "[i]f an information in the nature of quo warranto is the proper remedy for ousting or dissolving a municipal corporation in to, we see no reason in principle why it will not lie to oust such a corporation from specific territory over which it is wrongfully exercising jurisdiction, or to dissolve it so far as it covers that territory").

For instance, the appellate court in a recent quo warranto action against the Minnesota Secretary of State in which the Secretary was found to have no authority to establish an on-line voter registration system, the court determined that “generally, absent statutory authority, taxpayer standing does not exist unless the taxpayer can show some individual injury that is special and different from injury sustained by the general public. ... But taxpayers without a personal or direct injury may still have standing to maintain an action that restrains the “unlawful disbursements of public moneys ... [or] illegal action on the part of public officials.”<sup>23</sup>

In our Petition, the AGA does not claim an unlawful disbursement of public moneys. In fact, with the veto there are no disbursements; hence, no illegalities of that type exist here. Moreover, the AGA Petition does not assert the Respondents of committing any illegal action. Again, the AGA Petition is *not challenging* the authority of the Governor’s exercise of a line-item veto, but addressing the legal issues arising from the consequences of the veto’s effect. Regardless, a petition for a quo warranto action is unavailable; such a petition does not fit the circumstances of the instant petition for a writ of mandamus.

Therefore, the only remedy available is the writ of mandamus.

**II. The justiciable controversy is ripe as there is no legislators appropriation for funding the legislators’ salaries.**

The general session of the Minnesota legislature has ended; that is a fact.

All special sessions of the Minnesota legislature have ended; that is a fact.

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<sup>23</sup> *Minnesota Voters All. v. State*, A14-1585, 2015 WL 2457010, at \*2 (Minn. App. May 26, 2015) (internal citation omitted) quoting *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn.1977) (quotation omitted).

There is no dispute that the Governor exercised a constitutional provision allowing him to exercise the right of a line-item veto; that is a fact.

The legislators' pay has been defunded as a result of the Governor's veto; that is a fact.

Likewise, as a consequence, the legislators will not receive a salary after July 1st, nine days from the date of this memorandum, June 22nd; that is a fact.

On July 1st, absent the court order requested, there will be no money for the Commissioner to redeem warrants for legislative pay; the warrants issued by the Minnesota House of Representatives Budget and Accounting Office and the Minnesota Senate Fiscal Services Department for legislators' salaries after July 1, 2017 will not be funded by the Commissioner. That is also a fact.

Based upon these facts, the issue is ripe. There is no need to wait until July 1st as the Court Order seems to suggest. Like the fiscal impasse crises of the past, the district court issued orders requiring that continuing funding be made to agencies, departments, or programs to continue their core functions.<sup>24</sup> And, that earlier litigation started *before* the end of the fiscal biennium.<sup>25</sup>

Moreover, without salaried legislators, the function of the legislature as a body will come to a halt.

Without salaried legislators to conduct the core function of the legislature, the AGA will be unable to interact with legislators or their staff to do the AGA's work.

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<sup>24</sup> See e.g., *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203 (2011).

<sup>25</sup> *Id.*

None of this is hypothetical. Injury specific to the AGA will happen. As an organization that has successfully lobbied for legislation against the illegalities of other governmental entities, and has objectives as an organization including its interaction with representatives on a wide range of issues and other matters, the AGA has cognizable interests to protect.

As discussed in the Petition, as of July 1, 2017, the legislators are to be paid \$45,000 per year set by the Legislative Salary Council under the Minnesota Constitution and state statute.<sup>26</sup>

As one of three branches of government under the Minnesota Constitution, under Article III, section 1, the legislative duties are generally outlined under Article IV. Inherent core functions include the drafting of legislation, research, meeting and conferring with constituents, to conduct limited hearings and to engage in public forums.<sup>27</sup> Without payment of legislators' salaries, the legislature function is interfered with and will cause immediate harm, here, to the AGA. There will be no interaction with staff or representatives to do research, draft legislation, hold investigative forums through limited hearings or through other public forums.

The consequence of the veto is the elimination of the funding for legislators' salaries. A court order restoring the legislators' salaries restores the core function of the legislature because the Respondents have a constitutional and state statutory duty to pay those salaries. In *State ex rel. Mattson v. Kiedrowski*, the legislature effectively stripped the office of the State

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<sup>26</sup> Minnesota Constitution, Art. IV, Section 9; Minn. Stat. § 15A.0825, Subd. 7 ("By March 31 of each odd-numbered year, the Council must prescribe salaries for legislators to take effect July 1 of that year.").

<sup>27</sup> Pet. for Writ. ¶ 31.

Treasurer of its independent core functions inherent in that executive office.<sup>28</sup> This the Minnesota Supreme Court would not allow: “To allow the legislature to abolish all such functions of an executive office is to allow it to do violence to the title the drafters afforded the office and the core functions necessarily implied therefrom.”<sup>29</sup>

Likewise here, if the Respondents fail to carry out their respective duties to pay the legislators their salaries, they will abolish the functions of the legislative branch and do violence not only to their office, but also to the state’s constitution. In short, the lack of funding salaries is to strip the legislature of its independent core function to operate as a legislative body. This Court should not suggest or presume that any legislator or his or her staff will operate at the same capacity as when salaried without pay. Without pay also means without benefits. It will not happen. No pay will mean less legislative effectiveness.

**III. Since the underlying petition for a writ of mandamus does not challenge the Governor’s veto of legislative funding, he is not an indispensable party.**

The AGA does not seek a remedy enjoining any act by the Governor. First, the AGA’s petition for a writ of mandamus does not contest the constitutional authority of the Governor exercising a line-item veto.

Second, the writ does seek a writ of mandamus requiring acts of the Minnesota House of Representatives Budget and Accounting Office, the Minnesota Senate Fiscal Services Department, and Commissioner of Management and Budget to issue and redeem warrants for legislative pay on July 1, 2017.

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<sup>28</sup> *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986).

<sup>29</sup> *Id.*

Notably, there is paucity of Minnesota case regarding this specific topic. However, in Missouri, only those officials or bodies whose duty it is to perform the act requested are necessary parties:

In a mandamus proceeding, the proper practice is to direct the writ against the officials, by name, whose acts are sought to be coerced. *State ex rel. Associated Holding Co. v. City of St. Joseph*, 237 Mo. App. 399, 169 S.W.2d 419, 420 (W.D.1943). ... The person or body whose duty it is to perform the act sought to be enforced by mandamus is therefore a necessary party respondent. *Id.*<sup>30</sup>

The Petition seeks no remedy of the Governor. In this case, there is nothing for the Governor to do. The parties who we seek action to be performed are the named Respondents.

Rule 19.01 requires that a person be joined as a party if 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.”<sup>31</sup> Again, no remedy is sought against the Governor. The AGA is the “master of its petition.”<sup>32</sup> The AGA purposefully avoided any allegation concerning the exercise of the line-item veto.<sup>33</sup> The Governor’s action is a fact, no more as alleged. Fighting the legality of the Governor’s action

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<sup>30</sup> *State ex rel. Nelson v. City of Berkeley*, 991 S.W.2d 747, 749 (Mo. App. E. Dist. 1999).

<sup>31</sup> *Hinz v. City of Lakeland*, A06-1872, 2007 WL 2481021, at \*8 (Minn. App. Aug. 31, 2007).

<sup>32</sup> A take from the “plaintiff is the master of her complaint” regarding to the allegations and jurisdiction of a well-pled complaint. *Baker v. John Morrell & Co.*, 266 F. Supp. 2d 909, 923 (N.D. Iowa 2003), *aff’d*, 382 F.3d 816 (8th Cir. 2004).

<sup>33</sup> Minn. Const., art. IV, § 23: “If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill.”

is for another lawsuit. This lawsuit is not the petition or the forum for that issue. Therefore, the Governor is not an indispensable party to this lawsuit.

### CONCLUSION

For the reasons, the writ of mandamus should issue.

Dated: June 22, 2017.

/s/Erick G. Kaardal  
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**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.211, subd. 3, to the party against whom the allegations in this pleading are asserted.

Dated: June 22, 2017

/s/Erick G. Kaardal  
Erick G. Kaardal