

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**

---

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

Case Type: Civil Other  
File No. 62-CV-17-3601  
Chief Judge John H. Guthmann

Plaintiffs,

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,

**NOTICE OF MOTION AND  
MOTION FOR THE  
INTERVENTION OF THE  
ASSOCIATION FOR GOVERNMENT  
ACCOUNTABILITY and  
RELAXATION OF TIME LIMITS  
UNDER RULE 115.07**

Defendants,

and

Association for Government Accountability,

Defendant-in-Intervention.

---

**TO:** The above-named parties via e-file/e-serve.

**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that the Association for Government Accountability (“AGA”) moves for leave to intervene as a defendant in the instant action under Rule 24.01 (intervention of right) and Rule 24.02 (permissive intervention) of the Minnesota Rules of Civil Procedure and seeks the relaxation of time limits under Rule 115.07 of the Minnesota

General Rules of Civil Procedure. Allowing the AGA to intervene will allow it to assert the defenses as set forth in the proposed answer which is simultaneously filed with this Court.

In addition, the AGA seeks this Court to grant leave for the relaxation of time limits relating to the hearing date and briefing schedule. Once intervention is granted, it is the AGA's intention to appeal the underlying decision of this Court which granted partial declaratory judgment to the Plaintiffs, the Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives. The time to appeal ends on September 17, 2017.

Therefore, the AGA requests a scheduled hearing before the Honorable John H. Guthmann, as soon as possible to allow for a decision to be rendered within the period for a timely appeal of the underlying order in this case. The hearing would be held at the Ramsey County Courthouse, 15 Kellogg Boulevard West, Saint Paul, Minnesota in a courtroom to be announced by Judge Guthmann at a time convenient to the Court for a hearing on the motion.

### **ARGUMENT**

There are essentially two issues that arise from the facts and law that neither of the parties have fully expressed, analyzed, or otherwise failed to accept their legitimacy. Issues of which cannot be waived *at any time*. Petitioner asserts lack of subject matter jurisdiction of the district court. This is notable and substantiated as the AGA's position would have been helpful to the Defendants' position who, also filed an objection with the Plaintiffs' expected objection to the AGA's notice of intervention. Moreover, the AGA has standing despite this Court's previous order in *Ass'n Gov't Accountability v. Frans, et al.*, No. 62-CV-17-3396

(Ramsey Cty. Dist. Ct. July 10, 2017) as noted in the Plaintiffs objection to the AGA's notice of intervention found in footnote 1 of their objection memorandum.

Both the Plaintiffs and Defendants failed to bring to this Court's attention (and failed to do so before the Minnesota Supreme Court), critical legal arguments as demonstrated by the legal issues presented below which reveal this Court *did not have subject matter jurisdiction from the start of the underlying lawsuit*. The lack of district court jurisdiction is based in part upon the existing factual posture wherein the legislature, by its own volition, ended the special session *sine die* and the improper use of Minnesota's Declaratory Judgment Act:

- A. Article IV, § 24 of the Minnesota Constitution provides for the presentation of bills passed by both houses of the legislature to the governor for his consideration and "is subject top his veto as prescribed in case of a bill." If a veto occurs, by two-thirds vote of each house of the legislature, the veto can be overridden. Likewise, a line-item veto can be overridden, despite the legislature's *sine die* adjournment of a special session commenced after the first biennium year of the legislature. *See State v. Hoppe*, 298 Minn. 386, 215 N.W.2d 797 (1973).

Whether the district court had subject matter jurisdiction to determine a political question involving the approval of and line-item veto authority exercised concerning appropriations when the legislature continues to have the authority to override the line-item veto of an appropriation bill by the governor.

- B. The Minnesota Declaratory Judgment Act "cannot create a cause of action that does not otherwise exist." And the Minnesota Constitution does not provide for a private cause of action for violations of the Minnesota Constitution.

Whether the district court had subject matter jurisdiction over a declaratory judgment action complaint when the Minnesota Constitution provides no private cause of action or common law right to resolve issues between the legislative

and executive branches of government over the enactment of law.

None of the parties revealed to the district court of the uninhibited authority of the Governor and the Legislature to resolve policy differences that presently exists to which no judicial intervention is necessary. Instead, the Legislature unnecessarily adjourned the special session before the Governor exercised his line-item veto authority relating to passed bills. Both the Governor and the Legislature created their respective political conundrum wherein the Governor refuses to call another special session to resolve the issue; and, as stated, the Legislature adjourned before it could have exercised its authority to override the Governor's line-item vetoes. Moreover, the ability to overturn those vetoes *remains intact* as the adjourned session is only the first year of the legislative biennium. Thus, for the Legislature to embroil the judiciary under the facts and circumstances of this case, when the court has no subject matter jurisdiction, is to open the doors to use the judiciary as a default process for line item vetoes the Legislature dislikes over hotly contested policy matters—an judicial embroilment that is unconscionable under the Minnesota Constitution.

Furthermore, this Court does not have subject matter jurisdiction under the Declaratory Judgment Act. None of the parties have identified the specific private cause of action—as the Minnesota Constitution itself does not create one—for which the parties may bring a claim in the first instance. The Declaratory Judgment Act itself does not provide for a person, entity, or a branch of government the basis for suing the government. Only the legislature can grant that authority. No statute allows for such under the circumstances of this case.

In addition, there was no common law right at the time of the enactment of the Minnesota Constitution that allowed for the suing of the government, by any entity, person, or another branch of government. The Declaratory Judgment Act does not provide for the process or procedure. No subject matter jurisdiction exists for the district court. The petition for quo warranto is the only process for which the district court would have proper subject matter jurisdiction. In short, because the Plaintiffs failed to engage the proper procedure by a petition for quo warranto, the district court did not have subject matter jurisdiction to adjudicate the claims of the Plaintiff in the first instance.

This motion challenging the jurisdiction of the district court is proper and ripe for adjudication regardless of the current posture of this case because subject matter jurisdiction cannot be waived and can be challenged *at any time during the proceedings*.

Dated: August 25, 2017.

/s/ Erick G. Kaardal

Erick G. Kaardal, 229647

James V. F. Dickey, 393613

Mohrman, Kaardal & Erickson, P.A.

150 South Fifth Street, Suite 3100

Minneapolis, Minnesota 55402

Telephone: 612-341-1074

Facsimile: 612-341-1076

Email: kaardal@mklaw.com

*Attorneys for the AGA*

**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: August 25, 2017

/s/ Erick G. Kaardal

Erick G. Kaardal

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

---

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

Case Type: Civil Other  
File No. 62-CV-17-3601  
Judge John H. Guthmann

Plaintiffs,

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,

**[PROPOSED] ANSWER IN  
INTERVENTION**

Defendants,

and

Association for Government Accountability,

Defendant-in-Intervention.

---

EXHIBIT A

In the general election of 2016, the people of Minnesota approved a constitutional amendment to Article IV, section 9 that requires that the Commissioner of the Minnesota Department of Management and Budget (“Commissioner”) fund legislative pay as set forth by the Legislative Salary Council (“LSC”) on July 1 of odd-numbered years regardless of the Governor’s veto, as explained in more detail in AGA’s Petition for a Writ of Mandamus in a related case.<sup>1</sup> On March 21, 2017, exercising its constitutional authority and the authority set forth in Minnesota Statutes section 15A.0825, the LSC prescribed \$45,000 as the legislator salary effective July 1, 2017. The Commissioner must fund these salaries regardless of the Governor’s veto.

Despite this new constitutional requirement, the Commissioner continues to ignore the mandate of the Minnesota Constitution and Minnesota Statutes and has instead signed on to a Stipulation, adopted by this Court in its Order Granting Temporary Injunctive Relief (“Order”), which fails to fund the Legislature as required by the constitution, related statutory provisions, and the salary-setting decision of the LSC. Instead, the Stipulation agreed to by the existing parties to this case and the Court’s Order ignores Article IV, section 9 and also violates the express terms of Article XI, section 1 and Minnesota Statutes section 16A.281, which prohibit the payment of money from the treasury for a legislative appropriation except in certain circumstances, which circumstances do not exist here.

Specifically, Under Article XI, Section 1 of the Minnesota Constitution, “No money shall be paid out of the treasury of this state except in pursuance of an appropriation by

---

<sup>1</sup> See *Association for Government Accountability v. Frans*, Petition for Writ of Mandamus, Case No. 62-CV-17-3396 (Minn. Dist. Ct. June 5, 2017), available at [http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/62cv173396\\_PetitionforWrit\\_6-5-17.pdf](http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/62cv173396_PetitionforWrit_6-5-17.pdf).

law.” Under the Minnesota Statutes, section 16A.281, with respect to appropriations to the State Legislature, any “unexpended balance not carried forward and remaining unexpended and unencumbered at the end of a biennium lapses and shall be returned to the fund from which appropriated.” The carry-forward exceptions to the “return-the-money” rule quoted above from section 16A.281 are “only as follows: (1) for nonrecurring expenditures on investments that enhance efficiency or improve effectiveness; (2) to pay expenses associated with sessions, interim activities, public hearings, or other public outreach efforts and related activities; and (3) to pay severance costs of involuntary terminations.”

However, the Order authorized the payment of monies from the fiscal year 2017 base general fund for items not encompassed by these exceptions and not otherwise authorized by Minnesota Statutes section 16A.281, the Minnesota Constitution, or any other law. Indeed, the Court stated in the Order that it “adopted” a stipulation between the Plaintiffs and Defendants (“Stipulation”). The Court relied on the Stipulation in making the Order instead of relying on a law even though the Minnesota Constitution only allows money to be paid out of the State treasury “in pursuance of an appropriation by law.” The Court further stated in the Order that the Stipulation requested that “the court enter a temporary injunction directing the Commissioner of Management and Budget to provide continuing funding to the Legislature pending resolution of the instant litigation through appeal or until October 1, 2017, whichever occurs first.”

The Court ordered that relief, yet the Stipulation was not an appropriation by law. The Court also stated that its authority to make the Order was based on “its review of temporary funding orders issued by this court in 2001, 2005, and 2011, along with its review

of the Minnesota Constitution and case law interpreting the Minnesota Constitution”—but these sources identified by the Court in the Order are not appropriations by law.

Further, the Order granting the temporary injunction invades political questions to be decided by the will of the people. The Commissioner had no authority to enter into the Stipulation, and the Court’s Order violates the Minnesota Constitution and the Minnesota Statutes.

Consequently, Plaintiffs’ Complaint is deficient and should be dismissed because its legal argument for funding legislative pay is incorrect and thus fails to state a claim for relief, and, more importantly, the Defendants here are not adequately protecting the interests of the Minnesota taxpayers who approved the new constitutional amendment last November. AGA has respectfully requested that the Court grant it intervention in this case so that AGA can appeal the Court’s Order and move for judgment on the pleadings related to the Plaintiffs’ Complaint.

Therefore, Defendant-in-Intervention Association for Government Accountability (“AGA”), as and for its Answer in Intervention to the Complaint in the above-captioned action, responds to the allegations in the Complaint below.

### **ANSWERS (RESPONSES) IN INTERVENTION**

The Association for Government Accountability (“AGA”) denies each and every allegation, matter or thing contained in Plaintiffs’ Complaint unless specifically admitted.

#### **ALLEGATIONS ASSERTED BY NUMERIC NUMBER:**

1. This is a declaratory judgment action initiated pursuant to Minnesota Statutes, Chapter 555, seeking a declaration that Governor Dayton's May 30, 2017 line-item vetoes of

the Minnesota Legislature's funding for fiscal years 2018 and 2019 violate the Separation of Powers Clause of the Minnesota Constitution. Plaintiffs further seek injunctive relief or mandamus, directing the Commissioner of the Department of Management and Budget to allot funds that were appropriated to the Legislature for the 2018-2019 fiscal biennium. Without such relief, Plaintiffs are unable to fulfill their constitutional obligations, will not be able to properly represent their constituents, and the People of the State of Minnesota are deprived of a constitutionally-mandated voice in the administration of their government.

**RESPONSE:** The AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. Nevertheless, it is essential that Minnesota's legislators are paid according to the new constitutional referendum passed in November 2016, through which authority the Legislative Salary Council has prescribed the amount of salary that must be paid to the legislators for the biennium beginning on July 1, 2017 at \$45,000 per year. AGA further alleges that without the legislators being paid according to the LSC, the Commissioner of the Department of Management and Budget is ignoring the Minnesota Constitution and the express will of the people of Minnesota and denying the people of Minnesota their right to communicate with legislators. To the extent the allegations contained in paragraph 1 of Plaintiffs'

Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny.

2. By May 26, 2017, the Minnesota Legislature passed a comprehensive and balanced budget for fiscal years 2018 and 2019. This budget included nine appropriation bills and a tax bill. The legislature adjourned the 2017 special session sine die and the budget bills that were passed during the regular and special sessions were presented to Governor Mark Dayton as provided by Minnesota Constitution art. IV, § 23.

**RESPONSE:** Admit that the Legislature passed budget bills, which included appropriations and tax bills, which were presented to Governor Dayton. Deny as to every inconsistent allegation in paragraph 2, if any.

3. On May 30, 2017, Governor Dayton signed all of the appropriation bills and the tax bill into law. However, Governor Dayton vetoed two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, the appropriations to the Senate and House of Representatives:

	<u>2018</u>	<u>2019</u>
2.24: Subd. 2. Senate	\$32,299,000	\$32,105,000
2.25: Subd. 3. House of Representatives	\$32,383,000	\$32,383,000

(Ex. 1, Governor Dayton's Letter to President of the Senate Fischbach at 1, May 30, 2017.)

These two items, totaling over \$129 million, funded the Senate and House for fiscal years 2018 and 2019. Because the special and regular sessions have ended, Plaintiffs cannot

override the veto. Plaintiffs will be without funding starting on July 1, 2017 as a result of the Governor's line-item vetoes.

**RESPONSE:** Admit.

### **Parties**

4. Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives constitute the Ninetieth Minnesota Legislature. This action was authorized by the Legislative Coordinating Commission (LCC) by Resolution LCC-2, and adopted by the LCC on June 2, 2017. (Ex. 2, LCC Resolution relating to legal counsel, June 2, 2017.)

**RESPONSE:** Admit.

5. Mark B. Dayton is the duly elected Governor and Chief Executive Officer of the State of Minnesota. Governor Dayton's May 30, 2017 line-item vetoes gave rise to this action. Additionally, Governor Dayton heads the executive branch which includes the Department of Management and Budget. Governor Dayton is named as a defendant herein in his official capacity as Governor of the State of Minnesota.

**RESPONSE:** Admit.

6. Defendant Myron Frans is the Commissioner of the Department of Management and Budget, also known as Minnesota Management and Budget (MMB). The Commissioner manages the State's financial affairs and is the State's controller and chief accounting and financial officer, appointed by the Governor with the consent of the Senate.

Minn. Stat. §§ 15.06, 16A.01. Defendant Frans is responsible for allotting appropriations to the Legislature for its expenditures. Defendant Frans is named as a defendant herein in his official capacity as the Commissioner of MMB.

**RESPONSE:** Admit except to allege that the allotment system does not apply to appropriations for the legislature.

### **Jurisdiction and Venue**

7. Plaintiffs bring this action pursuant to Minnesota Constitution, art. III, § 1, and the United States Constitution, art. IV, § 4. Accordingly, this Court has jurisdiction under Minn. Stat. §§ 484.01, 586.11.

**RESPONSE:** Deny. The AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

8. Venue is proper in this district under Minnesota Statutes, Chapter 542 because this cause of action arose in Ramsey County, and each defendant maintains his official office in Ramsey County.

**RESPONSE:** Deny. The AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted

under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

9. The Minnesota Legislature consists of the Senate and House of Representatives.

**RESPONSE:** Admit.

10. The Minnesota Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional "session-only", full-time staff.

**RESPONSE:** Admit.

11. The Minnesota House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional "session-only", full-time staff.

**RESPONSE:** Admit.

12. Legislators are elected to represent constituents within their districts. Communicating with constituents is a core function of the Legislature. Constituents legitimately expect that they can contact their legislators with questions about pending legislation, to propose future legislation, and to alert their respective legislators to issues and concerns with the operation of existing laws. Legislative staff facilitates communication between constituents and legislators. Constituent communication occurs year-round. During

the interim between regular sessions, legislators depend even more heavily on staff to facilitate constituent communication. A legislator cannot represent the will of the People without the unabridged ability to communicate with his or her constituency.

**RESPONSE:** AGA affirmatively alleges that it is essential that Minnesota's legislators are paid according to the LSC so that the people of Minnesota can effectively communicate with legislators, and is irresponsible to allege in response to Plaintiffs' allegation in paragraph 12 that people can still communicate with legislators if those legislators are not being paid to do their work. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. To the extent the allegations contained in paragraph 12 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny.

13. Another core function of the Legislature is to craft legislation for consideration for passage by the Legislature. Crafting legislation is complex and time-consuming. Legislators depend heavily on partisan and nonpartisan staff, including attorneys, research analysts, and fiscal analysts. During the interim between regular sessions, legislative staff prepares bills for consideration when the Legislature is in session. This includes holding

committee hearings to gather evidence on issues of interest for possible legislation. No legislator could craft legislation without the aid of legislative staff.

**RESPONSE:** Admit.

14. The Senate and the House are constitutionally obligated to publish journals of their respective proceedings. Minn. Const. art. IV, § 15. Senate and House staff prepare and review their journals for publication. This is a time-consuming task. In a typical biennium, for instance, the Senate Journal may exceed 10,000 pages in length, plus indexes.

**RESPONSE:** The AGA is without sufficient information to form a belief as to the truth of the allegations in paragraph 14 and therefore deny the same.

15. During the interim between regular sessions, most legislators are employed outside the Legislature. Legislative activities occur year-round. In addition to the functions described in Paragraphs 9 through 14, legislative committees are empowered to meet during the interim to review legislation and conduct oversight of the executive department. The Governor may call a special session at any time, and a special session may run for an indefinite period of time. Legislative staff spends considerable time preparing for each special session, including preparation and review of legislation. Legislative staff also spends considerable time in advance of the regular session ensuring administrative tasks are completed, including recruiting, hiring, and training staff.

**RESPONSE:** Admit.

16. The Senate's monthly operating expenses are approximately \$2,500,000.

**RESPONSE:** The AGA is without sufficient information to form a belief as to the truth of the allegations of paragraph 16 and therefore denies the same.

17. The House's monthly operating expenses are approximately \$2,700,000.

**RESPONSE:** The AGA is without sufficient information to form a belief as to the truth of the allegations of paragraph 17 and therefore denies the same.

18. The Senate subleases the Minnesota Senate Building from the Commissioner of Administration. The Senate must pay monthly lease payments for the Minnesota Senate Building to the Commissioner of Administration in the amount of \$683,000. This includes \$589,000 due under the lease for the Minnesota Senate Building, plus \$94,000 in costs for the senate parking garage. The Commissioner of Administration leases the Minnesota Senate Building from the Commissioner of MMB. On November 14, 2017, the Commissioner of Administration must make a semi-annual rent payment of \$1,911,000 to the Commissioner of MMB, for the funds paid by the Senate under its sublease. On May 14, 2018, the Commissioner of Administration must make another rent payment of \$4,131,000 to the Commissioner of MMB. If the Commissioner of Administration fails to make these payments, the Commissioner of MMB is authorized under the terms of the lease to remove persons and property from the Minnesota Senate Building.

**RESPONSE:** The AGA is without sufficient information to form a belief as to the truth of the allegations of paragraph 18 and therefore denies the same.

19. On May 30, 2017, Governor Dayton sent a letter to President of the Senate Michelle Fischbach, as required by Minn. Const. alt. IV, § 23, stating the two items of

appropriation he vetoed. (See Ex. 1.) Governor Dayton also sent a letter to Speaker of the House Kurt Daudt and Senate Majority Leader Paul Gazelka, dated May 30, 2017, explaining the Governor's rationale for the line-item vetoes. (Ex. 1 at Attach 1-3., Governor Dayton's Letter to Speaker Daudt and Majority Leader Gazelka.) As justification for his line-item vetoes, Governor Dayton stated "[y]our job has not been satisfactorily completed, so I am calling on you to finish your work. However, I will allow a Special Session only if you agree to remove the following provisions": (1) the tobacco tax breaks, (2) the estate tax exclusion increase, (3) the C-I property tax freeze, (4) the driver's license provision, and (5) the teacher licensure provision. (Id.)

**RESPONSE:** Admit.

20. Plaintiffs cannot meet in session and therefore cannot override Governor Dayton's line-item vetoes because the special session was adjourned sine die. The regular session was adjourned until February 20, 2018. The Minnesota Constitution prohibits reconvening the regular session before 2018. Minn. Const. art. IV, § 12.

**RESPONSE:** Admit, however, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

21. Beginning on July 1, 2017, the Senate and House will not have operating appropriations for fiscal years 2018 and 2019.

**RESPONSE:** AGA affirmatively alleges that the Legislative Salary Council has prescribed the amount of salary that must be paid to the legislators for the biennium beginning on July 1, 2017 at \$45,000 per year, that it is constitutionally mandated that this salary be paid by the Commissioner of the Department of Management and Budget, that said Commissioner is ignoring the Minnesota Constitution and the express will of the people of Minnesota and denying the people of Minnesota their right to communicate with legislators by failing to pay legislators according to the LSC's prescription. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. To the extent the allegations contained in paragraph 21 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny.

22. LCC has authority to and did authorize this action on behalf of Plaintiffs on June 2, 2017. (Ex. 2.)

**RESPONSE:** The AGA is without sufficient information to form a belief as to the truth of the allegations of paragraph 22 and therefore denies the same

23. The Legislature is required to perform certain duties, which have been defined as "core functions," and which cannot be abridged.

**RESPONSE:** The AGA admits only that the Legislature does have core functions. Otherwise, deny.

24. The core functions of the Legislature include, among other things, drafting, debating, publishing, voting on, and enacting legislation. (See Ex. 3, In re Temp. Funding of Core Functions of the Executive Branch of the State of Minnesota, No. 62-CV-11-5203, 2011WL 2556036, at \*8, Findings of Fact, Conclusions of Law, and Order Granting Mot. Temp. Funding (Minn. Dist. Ct. June 29, 2011)).

**RESPONSE:** The AGA admits only that the Legislature has legislative functions. Otherwise, deny.

25. No request by the Minnesota Legislature of the Defendants to fund the core functions of the Minnesota Legislature is required because the duties at issue are public and not private. In the event a request is required, such request is futile.

**RESPONSE:** The AGA affirmatively alleges that any unspent appropriations to the Legislature must be returned to the fund from which appropriated at the end of each biennium as demanded under Minnesota Statute § 16A.281: "An unexpended balance not carried forward and remaining unexpended and unencumbered at the end of a biennium lapses and shall be returned to the fund from which appropriated." Although the Senate and House of Representative members are entitled to and under the requirement of Minnesota Constitution Article IV, section 9, a prescribed salary

increase to \$45,000 each, only by an appropriation by law can any salary of any amount be paid. The Stipulation entered into between the Governor and the Legislature for continued funding without an appropriation by law is contrary to the Minnesota Constitution and is an illegal act. The district court's subsequent Order also has no basis in law as the issue is a political question since legislating appropriations is the responsibility of the legislative and executive branches of government. Here, the Governor can call a special session and the Legislature can pass an appropriation bill. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. To the extent the allegations contained in paragraph 25 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny.

26. Due to Governor Dayton's line-item vetoes, the Legislature will have insufficient funds to exercise its official and constitutional powers and duties beginning on July 1, 2017.

**RESPONSE:** The AGA affirmatively alleges that the Minnesota Constitution and the laws of Minnesota require that absent an appropriation the Legislature be funded according to Minnesota Constitution Article IV, section 9 and Minnesota Statutes,

section 15A.0825. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. To the extent the allegations contained in paragraph 26 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny.

27. The Minnesota Constitution provides that "[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." Minn. Const. art. III, § 1.

**RESPONSE:** Admit.

28. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed the Minnesota Legislature's funding for the 2018-2019 fiscal biennium. The vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations

asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

29. The Governor's line-item vetoes are unconstitutional, null, and void.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

30. As a result of Governor Dayton's line-item veto of the Minnesota Legislature's funding for the 2018-2019 fiscal biennium, the Minnesota Legislature has suffered a public wrong that is specifically injurious to the Minnesota Legislature.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative

session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

### Count I (Declaratory Judgment)

31. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

**RESPONSE:** The AGA incorporates and realleges its responses to paragraphs 1-30 as if fully set forth herein.

32. Minnesota courts have "recognized that where the constitution commits a matter to one branch of government, the constitution prohibits the other branches from . . . interfering with the coordinate branch's exercise of its authority." *In re Civil Commitment of Giem*, 742 N.W.2d 422,429 (Minn. 2007); accord *Limmer v. Ritchie*, 819 N.W.2d 622,627 (Minn. 2012); see also *State ex rei. Birkeland v. Christianson*, 229 N.W. 313,314 (1930) (explaining that no branch of government "can control, coerce or restrain the action or nonaction of either of the others in the exercise of any official power or duty conferred by the constitution").

**RESPONSE:** Admit. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative

session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

33. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed funding for Plaintiffs for the next biennium. These vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties. The Governor's veto message made clear he did not disagree with the amounts or character of the appropriations for the Senate and House. In fact, the vetoed appropriations matched amounts recommended in the Governor's budget for the Senate and House of Representatives. The message demonstrated the Governor's intent was to coerce the Senate and House to revisit bills that had become law.

**RESPONSE:** Deny. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

34. A justiciable controversy exists between the parties in this matter, and the controversy is ripe for adjudication.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

35. Plaintiffs are entitled to a declaratory judgment that:
- a. The Omnibus State Government Appropriations bill became law when Governor Dayton signed it on May 30, 2017;
  - b. The Governor's vetoes of the two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, violate the Separation of Powers Clause, Minn. Const. art. III, § 1, by impermissibly controlling, coercing, and restraining the action of the Legislature in the exercise of its official and constitutional powers and duties;
  - c. As a result of violating the Separation of Powers Clause, the Governor's line-item vetoes are unconstitutional, null, and void; and
  - d. Because the Governor's line-item vetoes are unconstitutional, null, and void, those two items of appropriations became law with the rest of the bill.

**RESPONSE:** Deny, and the AGA further affirmatively alleges that any relief afforded by this Court, such as the Order Granting Temporary Injunctive Relief based on the Stipulation between the existing parties, that would act as though the Governor did not line-item veto the appropriations at issue would invade political questions in violation of the separation of powers provided for by Minnesota law.

Further, the three branches of government have taken actions which have resulted in the 2016 Constitutional Amendment and Minnesota Statute § 15A.0825 regarding legislative pay being violated. Minnesota Statute § 15A.0825 states “By March 31 of each odd-numbered year, the council must prescribe salaries for legislators to take effect July 1 of that year.” The Legislative Pay Council prescribed \$45,000 in March. Now, in July of 2016, pursuant to the Court’s temporary funding order, the Senate members receive the legally-required \$45,000 and the House members receiving \$31,140 – a significant legal inequity.

The Court Order for temporary funding based on the June 26, 2017 stipulation agreed to by the Governor, Commissioner and state legislature filed in and relied upon by the Court violates Minnesota Statute § 16A.281 which states, “An unexpended balance not carried forward and remaining unexpended and unencumbered at the end of a biennium lapses and shall be returned to the fund from which appropriated.” No exceptions in Minnesota Statute § 16A.281 apply.

The June 26, 2017, stipulation agreed to by the Governor and state legislature authorizing spending is violative of the Minnesota’s Constitutional requirements that the legislature pass bills and present them to the Governor for his signature for veto.

The Governor and the state legislature by introducing such a stipulation to the Court invited the Court into political questions where the Court has no subject matter jurisdiction since legislating appropriations is the responsibility of the legislative and executive branches of government, not the judiciary.

Thus, the act of the Governor and the Legislature by entering the Stipulation is contrary to the Minnesota Constitution and is an illegal action of public officials who are spending taxpayers moneys illegally — that is, without an appropriation by law. The action of the district court to issue an Order to Temporary Injunctive Relief is violative of the principle of the separation of powers to which the Court has no subject matter jurisdiction to approve the spending of taxpayers moneys for continued legislative funding without an appropriation by law where the Constitution provides a speedy, adequate legal remedy through the Governor calling a special session and the Legislature passing an appropriation bill. Moreover, any appropriation bill relating to legislative salary must abide by the 2016 Minnesota constitutional amendment wherein, the Legislative Pay Council prescribed amount of \$45,000 per member is to be advanced. Further, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

## Count II (Injunctive Relief)

36. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

**RESPONSE:** The AGA incorporates and realleges its responses to paragraphs 1-30 as if fully set forth herein.

37. Plaintiffs will suffer immediate and irreparable harm on and after July 1, 2017 without injunctive relief.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

38. The Legislature must be allowed to exercise its official and constitutional powers and duties.

**RESPONSE:** Admit because it has. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium

legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes. As to all other allegations implicit or explicit, the AGA denies.

39. Plaintiffs seek injunctive relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

**RESPONSE:** The AGA affirmatively alleges that the Legislative Salary Council has prescribed the amount of salary that must be paid to the legislators for the biennium beginning on July 1, 2017 at \$45,000 per year, that it is constitutionally mandated that this salary be paid by the Commissioner of the Department of Management and Budget, that said Commissioner is ignoring the Minnesota Constitution and the express will of the people of Minnesota and denying the people of Minnesota their right to communicate with legislators by failing to pay legislators according to the LSC's prescription. To the extent the allegations contained in paragraph 39 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny. Moreover, by entering into a Stipulation such as that dated June 23, 2017 and the district court's subsequent Order is contrary to the Minnesota Constitution and thus, is an illegal act by public officials, using taxpayer funds without an appropriation by law thus, an illegal use of taxpayer funds. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs

Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

**Count III (Mandamus Relief Under Minn. Stat. §§ 586.01-586.12)**

40. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

**RESPONSE:** The AGA incorporates and realleges its responses to paragraphs 1-30 as if fully set forth herein.

41. A "writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions[.]" Minn. Stat. § 586.01.

**RESPONSE:** Admit.

42. Plaintiffs have no other plain, speedy, and adequate remedy at law.

**RESPONSE:** Deny. Moreover, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override

the Governor's line-item vetoes. A writ of mandamus maybe a proper course of action to ensure the Senate and House Representatives are entitled to the Legislative Pay Council's prescribed salary amount of \$45,000, as required under the Minnesota Constitution. To the extent the allegations contained in paragraph 42 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny. Furthermore, there exists a plain, speedy, and adequate remedy at law. For instance, the Governor has the constitutional authority to call a special session and members of the Legislature have the constitutional authority to pass an appropriation bill to fund those moneys the Governor vetoed. Thus, the Stipulation entered into by the Governor and the Legislature and the subsequent Order of the district court is contrary to the principle of the separation of powers embodied within the Minnesota Constitution. The district court has no subject matter jurisdiction since legislating appropriations is the sole responsibility of the legislative and executive branches of government. By entering into a Stipulation such as that dated June 23, 2017 and the district court's subsequent Order is contrary to the Minnesota Constitution and thus, is an illegal act by public officials, using taxpayer funds without an appropriation by law thus, an illegal use of taxpayer funds.

43. The Legislature must be allowed to exercise its official and constitutional powers and duties.

**RESPONSE:** Admit.

44. The Court is permitted to issue a writ of mandamus to compel a person, including the Commissioner of MMB, to take action to avoid arbitrary and capricious results.

**RESPONSE:** Admit. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

45. The Court also has equitable authority to issue a mandatory injunction directing the MMB to take action to comply with the Minnesota Constitution.

**RESPONSE:** Admit. However, the district court does not have subject matter jurisdiction in matters of political questions since legislating appropriations is the responsibility of the legislative and executive branches of government. By entering into a Stipulation such as that dated June 23, 2017 and the district court's subsequent Order is contrary to the Minnesota Constitution and as such, is an illegal act by public officials, using taxpayer funds without an appropriation by law thus, an illegal use of taxpayer funds.

46. Plaintiffs seek mandamus relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

**RESPONSE:** The AGA affirmatively alleges that the Legislative Salary Council has prescribed the amount of salary that must be paid to the legislators for the biennium beginning on July 1, 2017 at \$45,000 per year, that it is constitutionally mandated that this salary be paid by the Commissioner of the Department of Management and Budget, that said Commissioner is ignoring the Minnesota Constitution and the express will of the people of Minnesota and denying the people of Minnesota their right to communicate with legislators by failing to pay legislators according to the LSC's prescription. To the extent the allegations contained in paragraph 46 of Plaintiffs' Complaint are inconsistent with, contradictory to, or not addressed by the affirmative allegations set forth above, deny. Moreover, By entering into a Stipulation such as that dated June 23, 2017 and the district court's subsequent Order is contrary to the Minnesota Constitution and thus, is an illegal act by public officials, using taxpayer funds without an appropriation by law thus, an illegal use of taxpayer funds. However, the AGA affirmatively alleges that the district court does not have subject matter jurisdiction to adjudicate the claims and allegations asserted under Minnesota Chapter 555, Minnesota's Declaratory Judgment Act. Moreover, the Plaintiffs Ninetieth Minnesota Senate and the Ninetieth Minnesota House of Representatives are in mid-session of their respective biennium legislative session. Hence, the Legislature does retain its constitutional mechanism to override the Governor's line-item vetoes.

#### **AFFIRMATIVE DEFENSES**

Defendants, as and for their affirmative defenses to Plaintiff's Amended Complaint,

state and allege as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. The district court does not have subject matter jurisdiction over the claims asserted by the Plaintiffs.
3. With regard to the claims against Defendant Dayton, Plaintiffs' claims are barred because Defendant Dayton's actions were authorized by law.

### **PRAYER FOR RELIEF**

AGA prays for the following relief:

1. Dismissal of the Plaintiffs' Complaint, or
2. Reconsideration of the Court's Order Granting Temporary Injunctive Relief and revocation of that Order; and
3. Award attorney's fees, costs, disbursements and expenses to AGA available under the Minnesota Equal Access to Justice Act, Minnesota Statute § 15.472, and other applicable law; and
4. Award other relief that the Court may deem just and equitable.

Dated: August \_\_\_\_, 2017.

\_\_\_\_\_  
/s/

Erick G. Kaardal, 229647  
Mohrman, Kaardal & Erickson, P.A.  
150 South Fifth Street, Suite 3100  
Minneapolis, Minnesota 55402  
Telephone: 612-341-1074  
Facsimile: 612-341-1076  
Email: kaardal@mklaw.com  
Email: dickey@mklaw.com

*Attorneys for the AGA*

**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: August \_\_\_\_, 2017

/s/ \_\_\_\_\_  
Erick G. Kaardal