

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

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

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,

Defendants,

and

Association for Government
Accountability,

Putative Defendant-
in-Intervention.

Court File No. 62-CV-17-3601
Chief Judge John H. Guthmann

**PLAINTIFFS' OBJECTIONS TO
NOTICE OF INTERVENTION**

OBJECTION

Plaintiffs submit this Objection to intervention by the Association for Government Accountability ("AGA"). Under Rule 24.03, parties are afforded the right to object to an intervention application within 30 days after service of the application. "Within 30 days after service upon the party seeking to intervene of a notice of objection to intervention, the party shall serve a motion to intervene upon all parties as provided in Rule 5." Minn.

R. Civ. P. 24.03. Plaintiffs hereby object to AGA's application to intervene and will oppose any motion to intervene filed by AGA.

Plaintiffs commenced this action on June 13, 2017, seeking a declaration that Governor Dayton's line-item vetoes of the appropriations to the House of Representatives and the Senate for the 2018–2019 fiscal biennium were unconstitutional, null, and void (Count I). Plaintiffs also requested injunctive or mandamus relief directing Commissioner Frans to allot such funds as necessary to fund the Legislature (Counts II and III).

On July 17, 2017, AGA filed a notice of intervention in this case pursuant to Minn. R. Civ. P. 24.01 and 24.02.

On July 19, 2017, this Court issued an Order declaring that the Governor's line-item vetoes were unconstitutional, null, and void, and that the appropriations to the Legislature therefore became law with the rest of the Omnibus State Government Appropriations bill. The July 19 Order also stayed Counts II and III pending the outcome of appellate review. On July 20, 2017, the Court entered final judgment on Count I.

On July 24, 2017, Defendants filed their Notice of Appeal. On July 26, 2017, the Minnesota Supreme Court granted the parties' joint petitions for accelerated review, briefing, and oral argument. Defendants filed their principal brief on July 28, 2017. Plaintiffs filed their response on August 15, 2017. Defendants' reply, if any, is due by August 21, 2017. Oral argument is scheduled before the Supreme Court on August 28, 2017.

Plaintiffs object to AGA's attempted intervention under both Minn. R. Civ. P. 24.01 and 24.02. In order to intervene as of right, a non-party must establish the following: "(1)

a timely application for intervention, (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties.” See *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986) (citing Minn. R. Civ. P. 24.01; *State ex rel. Bilder v. Township of Delavan*, 334 N.W.2d 252 (Minn. 1983))

AGA’s attempted intervention does not meet the requirements of the Rules. First, AGA’s intervention is untimely because it would “unduly and adversely affect the rights of the existing parties.” *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974). The parties have already submitted their principal briefs to the Supreme Court, and oral argument is scheduled for August 28, 2017. Allowing AGA to intervene would prejudice the parties who have already submitted briefing to the Supreme Court on an expedited schedule and it would burden the Supreme Court in considering the arguments of AGA which were not presented to or ruled on by the District Court in the first instance. Second, AGA lacks standing to intervene. See *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (discussing standing requirements); *Town of Chester, N.Y. v. Laroe Estates, Inc.*, — U.S. —, 137 S. Ct. 1645 (2017) (holding that “an intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing.”)¹ Third, the court has already ruled that the appropriations were

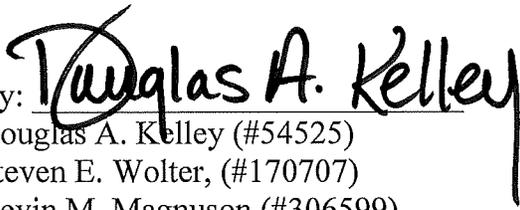
¹ In a related case, the district court dismissed AGA’s lawsuit for lack of standing. See Order Dismissing Petition for Writ of Mandamus Without Prejudice, *Ass’n Gov’t Accountability v. Frans et al.*, Ramsey Cnty. Dist. Ct. No. 62-CV-17-3396 (Minn. Dist. Ct. July 19, 2017). AGA lacks standing in this case for many of the same reasons.

enacted into law along with the rest of the Omnibus State Government Appropriations bill. No controversy remains in the District Court. Fourth, the existing parties adequately represent any interest AGA may claim in this action. AGA is not entitled to intervene and should not be allowed to do so.

Plaintiffs respectfully request that this Court deny AGA's motion to intervene. Alternatively, Plaintiffs request that the Court stay or hold AGA's motion to intervene in abeyance until the Supreme Court issues its decision on Count I.

Dated: August 15, 2017

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ACKNOWLEDGMENT

The undersigned acknowledges that costs, disbursements, and reasonable attorneys' fees and witness fees may be awarded to the opposing party pursuant to Minn. Stat. § 549.211.

/s/ Douglas A. Kelley_____