

**FILED**

July 25, 2017

**OFFICE OF  
APPELLATE COURTS**

**STATE OF MINNESOTA  
IN SUPREME COURT  
A17-1142**

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

Respondents,

v.

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

Appellants.

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

**JOINT PETITION FOR  
ACCELERATED REVIEW**

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**TO THE SUPREME COURT OF THE STATE OF MINNESOTA:**

All parties jointly request accelerated review by the Supreme Court on the following grounds:

**A. STATEMENT OF LEGAL ISSUE:**

Whether the Governor lawfully exercised his line-item veto power when he vetoed the appropriation to the House and to the Senate for the 2018-2019 fiscal biennium.

**B. STATEMENT OF CRITERIA FOR ACCELERATED REVIEW:**

The Supreme Court should accelerate the review of this case because it meets the criteria under MINN. R. CIV. APP. P. 117, subd. 2(a), (c) and (d)(1)-(3), and Rule 118. This dispute raises important constitutional questions at the heart of the Minnesota Constitution. Many of these same legal issues arose during the budget showdowns in 2001, 2005, and 2011, and will likely continue to recur without the Court's intervention. The Court's decision will delineate the balance of power between all three branches of government, and harmonize and clarify seemingly competing provisions of the Minnesota Constitution. Resolution of these issues will impact all Minnesotans. The parties agree that resolution is not possible without the Court's review of the issues raised by the parties.

**C. STATEMENT OF THE CASE:**

This is an action for declaratory judgment and injunctive relief challenging the constitutional authority of Governor Mark Dayton's line-item vetoes of all appropriations to the Senate and House.

The facts material to the validity of the vetoes are substantially uncontroverted. The Legislature and Governor Dayton failed to agree on a budget before the 2017 regular session ended. The Governor called a special session to allow the Legislature to finalize the budget. Several days later, the Legislature passed a comprehensive and balanced budget for fiscal years 2018 and 2019, including nine appropriation bills and a tax bill. The Legislature adjourned the 2017 special session *sine die* and presented the budget bills and Tax Bill to the Governor. The Legislature placed into the Omnibus State Government Appropriations bill a provision that would have denied appropriations to the Department of Revenue if Governor Dayton vetoed the Omnibus Tax bill. (Answer, Ex. A (First Special Session 2017, Senate File No. 1, art. 1, § 14 (“This section is not effective until the day following enactment of First Special Session 2017, House File No. 1.” [the Tax Bill])). The Governor asserted that portions of the Tax Bill would be seriously harmful to the citizens of Minnesota by impairing the State’s financial stability, and that he needed to sign the Tax Bill to preserve the appropriations for the Revenue Department. Despite these reservations, the Governor signed the Tax Bill and all nine appropriation bills into law.

The Governor then used his line-item veto authority to veto the entire appropriations to the Senate and House for fiscal years 2018 and 2019. These vetoed appropriations matched amounts included for the Legislature in the Governor’s proposed budget for fiscal years 2018 and 2019. Governor Dayton conditioned any call back into

special session upon an agreement to revisit five public policy items included in the Tax Bill and two other bills.

Plaintiffs filed this action on June 13, 2017, in the Ramsey County District Court. Two days later, the district court issued a show-cause order directing the parties to brief certain issues. Both parties briefed the issues, and meanwhile the Governor and Commissioner Frans answered and moved for judgment on the pleadings. The parties entered into a stipulation to narrow the district court's focus to the legal issue presented by Count I, whether Governor Dayton's line-item vetoes were constitutionally valid.

The district court held a hearing on June 26, 2016, and entered an order on the stipulation that same day. That order provided that Commissioner Frans must continue funding to the Senate and House at fiscal year 2017 levels and that the Senate must pay the rent due on its office building and parking garage. The June 26 order continues that funding and rent payments until appellate review is final or October 1, 2017, whichever first occurs. Then, on July 19, 2017, the district court issued an order granting the Legislature's request for declaratory judgment. That order was entered as a judgment on July 20, 2017, and Defendants filed and served a notice of appeal. The parties now jointly petition for accelerated review. Separate from this petition, the parties are jointly moving for expedited briefing and oral argument.

## **ARGUMENT**

Accelerated review is warranted in this legal dispute between the other two constitutional departments over their relative powers to influence the process of making

laws and allocating public money. The district court’s order declares that, under the circumstances of this case, Governor Dayton’s May 30, 2017 line-item vetoes violated the Separation of Powers Clause of the Minnesota Constitution. The vetoes were, therefore, declared unconstitutional, null, and void. Consequently, the court declared that the two items of appropriations to the Legislature for fiscal years 2018 and 2019 became law on May 30, 2017, along with the Omnibus State Government Appropriations bill. This case presents issues that urgently require resolution by this Court. These issues are “of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court.” *See* Minn. R. Civ. App. 118, subd. 1.

The legal issues presented are fundamental to Minnesota’s constitutional structure and democracy: the balance of powers between the Executive and the Legislature; the impact of separation of powers on the scope of judicial review of a gubernatorial veto; and the frequent need of various governmental bodies to seek funding for their critical, core functions in the absence of appropriations.<sup>1</sup>

The parties acknowledge that their conflicting views on the validity of the vetoes was a barrier to their ability to achieve any political solution to their differences.

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<sup>1</sup> *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203 (Minn. Dist. Ct. June 29, 2011) (Gearin, J.) (Executive and Legislative branches); *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, 62-CV-11-5203 (Minn. Dist. Ct. June 28, 2011) (Christopherson, J.) (Judicial branch); *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, C0-05-5928 (Minn. Dist. Ct. June 23, 2005); *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, C9-01-5725 (Minn. Dist. Ct. June 29, 2001).

## CONCLUSION

This case made statewide news before it was filed, and has kept the public's attention ever since. This case raises separation-of-powers issues that are of imminent importance and time sensitive. The parties request accelerated review by the Supreme Court, and an expedited briefing and hearing schedule.

Respectfully submitted, July 25, 2017.

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## CERTIFICATE OF DOCUMENT LENGTH

The undersigned counsel for certify that this document contains 1,097 words, including heading, footnotes and quotations, and is in compliance with the requirements of Minn. R. App. P. 118 subd. (2).

Dated: July 25, 2017

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