

State of Minnesota
In Supreme Court

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

vs.

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.

APPELLANTS' ADDENDUM

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ADDENDUM

1.	Order Granting Declaratory Judgment, filed July 19, 2017 [Docket #35] and Judgement, entered July 20, 2017 [Docket #34].....	Add. 1
2.	Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, In Re Temporary Funding of Core Functions of the Executive Branch of The State of Minnesota (2011 Government Shutdown; Exhibit 3 to Complaint [Docket #2]).....	Add. 23
3.	2017 State Government Appropriations, pp. 2-4, Legislative (Exhibit B to Answer [Docket #19])	Add. 33
4.	2017 State Government Appropriations, p. 14, Revenue Department (Exhibit A to Answer [Docket #19]).....	Add. 37
5.	2017 State Government Appropriations, p. 2, Line-item Vetoes (Exhibit C to Answer [Docket #19]).....	Add. 39
6.	Governor Dayton’s Veto Letters, dated May 30, 2017 (Exhibit 1 to Complaint [Docket #2])	Add. 41
7.	Minnesota Senate Budget, FY 2016-17 (Exhibit E to Answer [Docket #19]).....	Add. 48
8.	Order to Show Cause, filed on June 14, 2017 [Docket #8].....	Add. 50
9.	Defendants’ Notice of Motion and Motion for Judgment on the Pleadings, dated June 22, 2017 [Docket #20]	Add. 52
10.	Stipulation, filed June 23, 2017 [Docket #27]	Add. 54
11.	Findings of Fact, Conclusions of Law, and Order Granting Temporary Injunctive Relief [Docket #30]	Add. 58

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
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.

**ORDER GRANTING
DECLARATORY JUDGMENT**

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.

The above-captioned matter came before the Honorable John H. Guthmann, Chief Judge of the Second Judicial District on June 26, 2017, at the Ramsey County Courthouse, St. Paul, Minnesota. Douglas A. Kelley, Esq., represented plaintiffs. Sam L. Hanson, Esq., represented defendants. Based upon all of the files, records, submissions and arguments of counsel herein, the court issues the following:

STATEMENT OF UNDISPUTED FACTS

At the June 26 hearing, the parties agreed that the facts necessary to determine the instant legal dispute are undisputed. Accordingly, the court compiled the following Statement of Undisputed Facts from the party submissions:

1. The court adopts and restates by reference paragraphs 1-16 from the Statement of Undisputed Facts contained in its June 26, 2017 Order.
2. The legislative appropriations as approved in the Omnibus State Government Appropriations Bill and later vetoed by Governor Dayton were identical in amount to the

recommendations contained in Governor Dayton's budget, which was submitted to the Legislature on March 27, 2017. (Reinholdz Aff. ¶ 11; *id.*, Ex. 3.)

3. The Tax Bill passed by the Legislature during its special session contained a provision that would have defunded the Department of Revenue if Governor Dayton vetoed it. (Compl., Attach. to Ex. 1.) Governor Dayton allowed the Tax Bill to become law without signing it, despite his opposition to the bill. (*Id.*)

4. On May 30, 2017, Governor Dayton line-item vetoed the lump-sum appropriations for the Senate and House for fiscal years 2018 and 2019. (*Id.*, Ex. 1.) Governor Dayton's veto message listed the reasons for the veto. (*Id.*, Ex. 1.) In addition to referencing the Tax Bill provision, Governor Dayton cited his objection to bills eliminating the automatic indexing of tobacco taxes to inflation, an estate tax exclusion increase, the C-I property tax freeze, a provision precluding the Executive Branch from issuing driver's licenses to undocumented residents, and a provision modifying teacher licensure. (*Id.*, Attach. to Ex. 1.) The Governor offered to "allow" a Special Session only if plaintiffs agreed to pass new legislation removing these items from the bills that he signed into law or permitted to become law without his signature. (*Id.*)

5. Governor Dayton could have vetoed each bill referenced in his statement accompanying the line-item vetoes. MINN. CONST. art. IV, § 23. He chose not to do so.

6. The statement accompanying Governor Dayton's line-item vetoes expressed no objection to the level of funding the Legislature appropriated to fund the Legislative Branch.

7. At no time has Governor Dayton or his counsel suggested that the Governor vetoed the Legislature's appropriation for any reason specific to the appropriation.

8. Plaintiffs could have remained in session in anticipation of possible vetoes or line-item vetoes. Instead, on May 22, 2017, both houses entered into a written agreement with the

Governor in which they agreed to adjourn following passage of seven outstanding budget and tax bills. (Kelly Aff., Ex. 1.) Therefore, the Legislature negotiated away its constitutional right to meet in session to consider overriding vetoes or line-item vetoes. *See* MINN. CONST. art. IV, § 23.

9. Governor Dayton may call a special session at any time. MINN. CONST. art. IV, § 12.

10. But for the Order issued by this court on June 26, 2017, and with the exception of some carry-over funds, plaintiffs would have been without funding to cover the core functions of the Legislative branch starting on July 1, 2017. With carry-over funds, the House would have ceased operations by September 1, 2017 and the Senate by July 27, 2017. (Reinholdz Aff. ¶ 18; Ludeman Aff. ¶ 17.) The June 26, 2017 Order approved the parties' stipulation for an injunction requiring emergency temporary funding for the Legislature through at least October 1, 2017.

CONCLUSIONS OF LAW AND ORDER

1. The court adopts and restates by reference paragraphs 1-22 from the Conclusions of Law contained in its June 26, 2017 Order.

2. The court finds that plaintiffs are entitled to the following declaration of their legal rights pursuant to the Minnesota Declaratory Judgments Act:

- 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 of the Minnesota Constitution by impermissibly preventing the Legislature from exercising its constitutional powers and duties. MINN. CONST. art. IV, § 1; *see id.* art. III.
- c. As a result of violating the Separation of Powers clause of the Minnesota Constitution, the Governor's line-item vetoes are unconstitutional, null, and void.
- d. Because the Governor's line-item vetoes are unconstitutional, null, and void, those two items of appropriation became law with the rest of the bill.

3. The defendants' motion for judgment on the pleadings/summary judgment is denied.

4. Per the parties' Stipulation, and with the exception of the injunction already in place, any further action in connection with Counts II and III of the Complaint is stayed until all appellate review has been completed and the mandate of the appellate courts has issued, or until further Order of this court.

5. Per the parties' Stipulation, the court concludes that there is no just reason for the delay in entry of judgment on this Order and, pursuant to Minn. R. Civ. P. 54.02, the Court Administrator is directed to enter judgment forthwith and without the stay provided for by Rule 125 of the Minnesota General Rules of Practice. The issues decided in this Order are central to the disputes and relationships between the parties, and the prompt and final resolution of any appellate issues by the Minnesota Supreme Court will be in the best interests of the parties to this action and State of Minnesota and will expedite the full and complete resolution of any disputes between the parties and will advance the just, inexpensive, and efficient resolution of this case in accordance with Minn. R. Civ. P. 1.

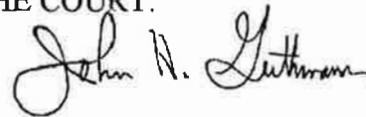
6. The following memorandum is made part of this Order.

Dated: July 19, 2017

BY THE COURT:

Judgment
I hereby certify the foregoing order
constitutes the Judgment of the Court.

Court Administrator
Linda Graske, Deputy Clerk



Guthmann, John (Judge)
Jul 19 2017 11:09 AM

John H. Guthmann
Chief Judge, Second Judicial District

Graske, Linda
Jul 20 2017 3:15 PM

M E M O R A N D U M

I. APPLICABLE LEGAL STANDARDS

The Legislature filed the instant action seeking a Chapter 555 declaratory judgment that the Governor's line-item vetoes of Legislative Branch funding are unconstitutional. (Compl. ¶¶ 31-35 (Count I).) In addition, the Legislature asks for an injunction compelling the Minnesota Management and Budget ("MMB") "to allot such funds as necessary to pay for [the] obligations

of the Legislature.” (Compl. ¶ 39 (Count II).) Finally, in Count III of the Complaint, the Legislature requests a Writ of Mandamus to compel the MMB “to allot such funds as necessary to pay for [the] obligations of the Legislature.” (Compl. ¶ 46.) In response, the Governor moves for judgment on the pleadings, arguing that his line-item vetoes were constitutional exercises of executive authority.

In a separate Order, the court issued a Temporary Injunction that provides emergency funding to the Legislature through October 1, 2017. This Order solely addresses the Count I claim.

A. Declaratory Judgments.

The purpose of a declaratory judgment action is to “declare the existence of rights in doubt or uncertainty, rather than create new rights.” *Ketterer v. Indep. Sch. Dist. No. 1 of Chippewa Cnty.*, 248 Minn. 212, 226, 79 N.W.2d 428, 439 (1956). “The main characteristic of the declaratory judgment which distinguishes it from other judgments is that, by the act authorizing it, courts are empowered to adjudicate upon disputed legal rights whether or not further relief is or could be claimed.” *Id.* at 439; *see* Minn. Stat. § 555.01 (2016); *see also* Minn. R. Civ. P. 57 (“The procedure for obtaining a declaratory judgment pursuant to [Chapter 555], shall be in accordance with these rules. . . . The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.”).

A complaint requesting declaratory relief must ordinarily present a substantive cause of action “that would be cognizable in a nondeclaratory suit.” *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012); *see McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337–39 (Minn. 2011) (a declaratory judgment action must present an actual justiciable controversy when challenging the constitutionality of a law). On repeated occasions, the Minnesota Supreme Court has held that any claim to determine the validity of a Governor’s veto must proceed by a

declaratory judgment action venued in Ramsey County District Court. *Seventy-Seventh Minnesota State Senate v. Carlson*, 472 N.W.2d 99, 99-100 (Minn. 1991) (declining to exercise original jurisdiction); *see Johnson v. Carlson*, 507 N.W.2d 232 (Minn. 1993) (challenging veto through a declaratory judgment action); *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 193 (Minn. 1991) (accepting jurisdiction even though matter proceeded by mandamus and the parties “inexplicably” failed to file the case as a declaratory judgment action).

Based upon the admonitions of the Supreme Court, the constitutionality of Governor Dayton’s veto may be reviewed only through the lens of the Legislature’s Count I request for declaratory judgment. As such, the Count II and Count III claims for injunctive relief and for a Writ of Mandamus are inapplicable to the court’s judicial review of the Governor’s vetoes.

B. Motions for Judgment on the Pleadings.

Governor Dayton moves for judgment on the pleadings in connection with the Legislature’s request for a declaration that the line-item vetoes at issue are unconstitutional. A district court may grant judgment on the pleadings if a complaint fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12.03. By rule:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Id. In deciding a motion for judgment on the pleadings, the court must treat the facts alleged in the complaint as true and draw all inferences in favor of the nonmoving party. *See, e.g., Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). “Only if the pleadings create no fact issues should a motion for judgment on the pleadings be granted.” *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. Ct. App. 1986). Here, the parties agree that there are no genuine

issues of material fact and they rely on both the pleadings and affidavits. Accordingly, it is appropriate for the court to apply the undisputed facts to the law and issue a ruling per Rule 56.

II. THE LEGISLATURE IS ENTITLED TO ITS REQUESTED DECLARATION

Ambition must be made to counteract ambition . . . It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. . . . In framing a government . . . to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself.

THE FEDERALIST NO. 51 at 322 (James Madison) (Clinton Rossiter ed., 1961) (discussing the separation of Executive and Legislative authority).

The Federalist Papers passage brings into focus the genesis of the separation of powers doctrine in this country—a system of checks and balances built into the Federal Constitution and the Constitutions of most states, including Minnesota. “The separation of powers doctrine is based on the principle that when the government’s power is concentrated in one of its branches, tyranny and corruption will result.” *Holmberg v. Holmberg*, 588 N.W.2d 720, 723 (Minn. 1999). By creating three separate but equal Legislative, Executive, and Judicial Branches of government, our founders designed a system with the greatest potential for effective governance and self-control. Of course, achieving a functional balance between the three branches of government while maintaining their separateness sometimes proves more difficult in practice than in theory.

This case presents a stark illustration of seemingly irreconcilable conflicts in the application of separation of powers principles. When the positions of the Legislative and Executive branches are examined in isolation, it is easy to see why each branch believes it should prevail. The Governor relies on the “explicit and unqualified” language of the state constitution and the “constitutional test” that was developed to interpret the validity of a line-item veto. (Mem.

in Resp. to Order to Show Cause and in Supp. of Defs.’ Mot. for J. on the Pleadings at 2, 14 [hereinafter “Governor’s Brief”].) The Legislature points to the Separation of Powers clause in the Minnesota Constitution and the Minnesota Supreme Court’s separation of powers jurisprudence, which holds that one branch of government cannot abolish or nullify another and which recognizes that the Governor’s veto authority is to be narrowly construed to prevent the Executive Branch from encroaching upon or usurping Legislative Branch powers. (Plfs.’ Mem. in Resp. to Order to Show Cause at 16-22 [hereinafter “Legislature’s Brief”].) The challenge for the court is the fact that both positions are technically correct. Resolving this issue of first impression requires moving beyond the veneer of the parties’ arguments.

A. The Governor’s Veto Authority and Separation of Powers: Placing the Parties’ Positions into their Constitutional Context.

When interpreting the Minnesota Constitution, “[t]he primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and the people in adopting the article in question.” *State v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928). Just as a statute must be construed as a whole, the constitution “must be taken by its four corners, and effect given to all its language, and the main purpose and object as thus made manifest effectuated.” *State v. Twin City Telephone Co.*, 104 Minn. 270, 285, 116 N.W. 835, 836 (1908).

According to the Minnesota Constitution: “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.” MINN. CONST. art I, § 1. The separation of powers principles implied in our Federal Constitution are imbedded expressly in the Minnesota Constitution:

The 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.

Id. art. III. The powers of the “legislative department” are set forth in Article IV of the constitution while those of the Executive Branch, including the Governor, are stated in Article V. *Id.* art. IV-V. The sole express instance in which the Governor may perform a legislative function is in the prerogative to approve or veto legislation. The Governor’s limited role in the legislative process was explained in a passage from *Brayton v. Pawlenty*, which both parties quote in their briefs:

The Legislature has the primary responsibility to establish the spending priorities for the state through the enactment of appropriation laws. The executive branch has a limited defined role in the budget process. The Governor may propose legislation, including a budget that includes appropriation amounts, which proposals the Legislature is free to accept to reject. But the only formal budgetary authority granted the Governor by the constitution is to approve or veto bills passed by the Legislature. With respect to appropriation bills, the constitution grants the Governor the more specific line-item veto authority, through which an item of appropriation can be vetoed without striking the entire bill. If the Governor exercises the veto power, the Legislature may reconsider the bill or items vetoed, and if approved by a two-thirds vote, the vetoed bill or item becomes law.

781 N.W.2d 357, 365 (Minn. 2010) (citations omitted); (*see* Governor’s Brief at 2-3; Legislature’s Brief at 15.) As noted in *Brayton*, the Governor’s legislative authority, found in Article IV, consists only of a power to veto entire bills and the power to veto “items of appropriation”, the latter being known colloquially as the “item veto” or “line-item veto”:

Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment

within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

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. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.

MINN. CONST. art. IV, § 23; *see Johnson v. Carlson*, 507 N.W.2d 232, 235 (Minn. 1993) (calling the Governor's authority to veto "items of appropriation" a "line item veto"); *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 194, 196 (Minn. 1991) (calling the Governor's authority to veto "items of appropriation" an "item veto"). *See generally Duxbury v. Donovan*, 272 Minn. 424, 426-33, 138 N.W.2d 692, 694-98 (1965) (discussing the history of the veto and its dual purpose as a check on unfettered legislative power and on "hasty and unwise legislation").

In *Johnson v. Carlson*, the court held that "veto power [is] to be narrowly construed so as not to exceed its limited function as contemplated by the constitution." 507 N.W.2d at 235. The court went on to identify the purpose of the line-item veto in state constitutions and articulate the scope of a Minnesota Governor's line-item veto authority:

Historically, the line item veto was put in state constitutions to counteract legislative "pork-barreling," the practice of adding extra items to an appropriation bill which the governor could not veto without vetoing the entire appropriation bill. *See, e.g., Rios v. Symington*, 833 P.2d 20, 23 (Ariz.1992). Our inquiry, however, is not into whether "pork-barreling" has occurred—indeed, Governor Carlson makes no claim that it has occurred in this case; rather, our focus is simply on whether Governor Carlson has vetoed an "item of appropriation of money." The state constitution, recognizing the governor's oversight responsibilities for the state's budget, provides a gubernatorial line item veto to enable the state's chief executive officer to engage in cost-containment, subject, of course, to the

possibility of the veto being overturned. In this case, for example, the governor indicated in his veto message that he was concerned with “long-term cost implications.” 3 Sen. J. 5560 (1991). It is not for this court to judge the wisdom of a veto, or the motives behind it, so long as the veto meets the constitutional test. And in this case the test is met.

Id. (upholding line-item veto of an appropriation from taconite tax revenue).

Two years before *Johnson*, the Supreme Court, in *Inter Faculty Org. v. Carlson*, discussed the limited nature of line-item veto authority in a slightly different way. 478 N.W.2d 192, 194 (Minn. 1991). Its placement in Article IV demonstrates “that the authority is not an executive function in the traditional or affirmative sense, but rather an exception to the authority granted the legislature. As an exception, the power must be narrowly construed to prevent an unwarranted usurpation by the executive of powers granted the legislature . . .” *Id.* at 194. Line-item veto power is a “negative authority, not a creative one—in its exercise the power is one to strike, not to add to or even to modify the legislative strategy.”¹ *Id.* The principles of *Johnson* and *Inter Faculty* were reaffirmed in *Brayton v. Pawlenty*. 781 N.W.2d at 366 (“we have recognized that the special line-item veto power the constitution confers on the Governor for appropriation bills must be construed narrowly to prevent usurpation of the Legislature’s proper authority”). So, the limited function of a line-item veto as contemplated by the constitution is to strike entire items of appropriation. The line-item veto may not be used to strike down pure policy enactments.

¹ In *Johnson v. Carlson*, the court distinguished this quote from *Inter Faculty* to address an argument that the Governor’s line-item veto diverted money “from a purpose determined by the legislature to some other purpose desired by the governor.” 507 N.W.2d at 234 (quoting *Interfaculty*, 478 N.W.2d at 194)). The *Johnson* court stated that plaintiffs “misconceive the role of the line item veto” and contrasted the matter under consideration with an Iowa Supreme Court decision invalidating an item veto that struck “a qualification imposed on the appropriation not the appropriation itself as an entire item.” *Id.* (citing *Rush v. Ray*, 362 N.W.2d 479 (Iowa 1985)). The court does not read *Johnson*’s discussion of *Inter Faculty* as endorsing use of a line-item veto to strike pure policy measures. Rather, in order to meet the “constitutional test,” the line-item veto must strike a whole “self-contained appropriation of a distinct sum for a specific purpose.” *Id.* Of course, if a line-item veto is validly exercised, any policy behind the appropriation of the distinct sum for a specific purpose goes with it.

Johnson references the “constitutional test” used to judge the facial validity of a line-item veto. 507 N.W.2d at 235. The two-part constitutional test is whether the Governor vetoed an item of appropriation and whether the appropriated funds were dedicated to a specific purpose. *Id.* at 233 (quoting *Inter Faculty Org. v. Carlson*, 478 N.W.2d at 195). Here, the parties agree that the Governor vetoed two items of appropriation dedicated to the specific purpose of funding each house of the Legislature. Accordingly, the vetoes meet the “constitutional test.” Governor Dayton argues that the inquiry must end once it is determined that the vetoes meet the “constitutional test.”

The difficulty with the Governor’s position, and the origin of what is a Hobson’s Choice² for any reviewing court, becomes apparent when the court obeys the mandate to construe and give effect to the entire constitution. Searching for the reasoning behind the limitations placed on the Governor’s veto authority, the court stated in *Duxbury v. Donovan*:

It is to be assumed that the framers of our constitution would not place the veto power in the governor with respect to legislative action in some cases and not in others without good reason. If exceptions were to be made to the general authority to negative legislative action reposed in the governor, the basis of such exception, one would anticipate, should be either that the exercise of such authority by the chief executive *would offend some other basic constitutional principle*; or that the matter involved would lack that degree of statewide significance making the requirement of concurrence by two-thirds of each branch of the legislature necessary or desirable.

272 Minn. at 433, 138 N.W.2d at 698 (emphasis added). In essence, the Legislature claims that the “other basic constitutional principle” is found in the Separation of Powers clause. The Separation of Powers clause imposes a “constitutional test” of its own. Just as the constitution “implicitly places a limitation on the power of the legislature” so that it may not abridge the core functions of a constitutional officer, *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782

² A Hobson’s Choice is “the necessity of accepting one of two or more equally objectionable alternatives.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/Hobson's%20choice> (last visited July 17, 2017).

(Minn. 1986), the failure to fund the core functions of the Legislative Branch arguably nullifies a branch of government, which in turn contravenes the Separation of Powers clause. As the Minnesota Supreme Court observed in *State ex rel. Birkeland v. Christianson*:

The Governor is the head of the executive department and the chief executive of the state. The three departments of state government, the legislative, executive, and judicial, are independent of each other. Neither department 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, or by valid law, involving the exercise of discretion. The Legislature cannot change our constitutional form of government by enacting laws which would destroy the independence of either department or permit one of the departments to coerce or control another department in the exercise of its constitutional powers.

179 Minn. 337, 339-46, 229 N.W. 313, 314-16 (1930).

The Supreme Court recognized the potential application of separation of powers principles to invalidate the act of another branch of government in *In re Clerk of Court's Compensation for Lyon County*, which considered whether judges could use their inherent judicial power to set the salary of the clerk of district court rather than the Legislature, as the constitution then provided:

At bottom, inherent judicial power is grounded in judicial self-preservation. Obviously, the legislature could seriously hamper the court's power to hear and decide cases or even effectively abolish the court itself through its exercise of financial and regulatory authority. If the court has no means of protecting itself from unreasonable and intrusive assertions of such authority, the separation of powers becomes a myth.

308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976) (citation omitted). Here, the Legislature's only forum to seek its "self-preservation" is by invoking the Separation of Powers clause in court.

An analogy to the instant case is found in *State ex rel. Mattson v. Kiedrowski*, which involved the judicial review of a law transferring virtually all the functions of the constitutional office of State Treasurer to the Commissioner of Finance. 391 N.W.2d at 778. Although enactment of the legislation complied with the constitutional prerequisites for passing a valid statute, including express constitutional authority to modify the duties of state executive officers,

the legislation was overturned. *Id.* at 782-83. The court held that the constitutional authority to modify the duties of state constitutional officers “does not authorize legislation . . . that strips such an office of all its independent core functions.” *Id.* at 782. Thus, “[b]y statutorily abolishing all of the independent core functions of a state executive office, the legislature, in effect, abolishes that office, and the will of the drafters . . . is thereby thwarted.” *Id.*

Abolishing an office or branch of government by starving it of funding is not materially different from abolishing the office or branch by starving it of functionality. “To permit the legislature to gut an executive office . . . is to hold that our state constitution is devoid of any meaningful limitation on legislative discretion in this area.” *Id.* at 783. The lessons from *Mattson* are clear. Meeting the “constitutional test” for passing a valid statute is not necessarily enough to survive the Separation of Powers “constitutional test.” Moreover, a separation of powers violation is not immune from judicial review simply because it involves an otherwise constitutional act of legislative or executive discretion. Examining the result of an action is an important component of judicial review. The Legislature argues that the inquiry must end once it is determined that the line-item vetoes effectively abolished the Legislative Branch by starving it of funding. The foregoing analysis frames the constitutional impasse now foisted upon the Judicial Branch.

B. Count I is Justiciable Because the Governor Effectively Abolished the Legislature.

Before reconciling the parties’ positions, is the Legislature’s premise correct? Did the vetoes effectively abolish the legislature? For several reasons, the court answers “yes.”³

³ If the answer was “no”, the Legislature would have difficulty arguing that it was injured in fact—a justiciability prerequisite. *See, e.g., Onvoy, Inc v. Allete, Inc.*, 736 N.W.2d 611, 617-18 (Minn. 2007) (citations omitted) (a justiciable controversy requires a definite and concrete assertion of right emanating from a legal source involving a genuine conflict in tangible interests between parties with adverse interests that is capable of specific resolution by judgment); *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citations omitted) (an injury-in-fact is required for a justiciable controversy to exist).

First, legislators have a constitutional right to be paid. MINN. CONST. art. IV, § 9 (providing for legislative pay). The constitutional obligation to serve once elected should be given no greater weight than the constitutional provision of legislative salaries. The Legislature also has a constitutional right to the funds necessary for the staff, supplies, and working space needed to perform its core functions. The Governor agrees. (Governor's Brief at 4-5, 17-20.) Preserving the core operations of the Legislative Branch between sessions while the current legal conflict is litigated is so important and genuine that the parties stipulated to the entry of a court injunction mandating temporary funding during the pendency of the instant litigation.⁴

Second, the Legislature cannot reconvene when it is out of session unless the Governor calls a special session. Although the Minnesota Constitution calls for the Legislature to reconvene in 2018, it is unable to conduct its between-session core business of meeting with constituents, researching and drafting legislation, and conducting hearings without funding for itself, its staff, its supplies, and its physical office space. In addition, absent funding, the Legislature likely cannot function, or function effectively, once in session. Under the present circumstances, the court is compelled to hold that the Governor effectively abolished the Legislature.

Third, absent emergency court funding, the effective abolition will exist as long as the Governor decides to veto legislative funding bills submitted to him, which the Governor's counsel conceded could occur through the remainder of the Governor's term. (Hrg. Tr. June 26, 2017 at 43-44.) The Governor argues that the availability of emergency funding eliminates any argument

⁴ Before entering into the Stipulation, which included an agreement that the issues presented are ripe for judicial review, Governor Dayton argued that the vetoes did not abolish or defund the Legislature because he did not veto funding for the Legislative Coordinating Commission and carry-over funds are available. (Governor's Brief at 4, 16-17.) However, it is undisputed that funding of the Legislative Coordinating Commission does not cover legislative salaries, staff, building rental, or office administration. It is equally undisputed that even with carry-over funds, the House would cease operations by September 1, 2017 and the Senate by July 27, 2017. (Reinholdz Aff. ¶ 18; Ludeman Aff. ¶ 17.)

that the vetoes abolished or defunded the legislature. (Governor's Brief at 17-20.) However, emergency funding is at most a temporary measure to preserve the constitutional rights of the people while the Executive and Legislative Branches resolve their differences. Emergency funding is not a remedy for arguably unconstitutional actions by one branch of government against another.

Finally, the Governor argues that the Legislature presents a non-justiciable political question because the Legislature asks the Judicial Branch to embroil itself in the politics of the two other branches. Unfortunately, the court must step in political quicksand whichever way it rules. The Legislature seeks court intervention to declare the veto unconstitutional and the Governor concedes that his veto is invalid unless the court institutionalizes the extra-constitutional remedy of emergency funding by the Judicial Branch. The fact that the legal action submitted to the court has its roots in politics neither represents a non-justiciable political question nor shields the Governor's vetoes from judicial review.⁵

C. Under the Limited and Unique Circumstances of this case, the Governor's Use of Line-Item Veto Authority Constituted a Separation of Powers Violation.

For reasons that follow, the court concludes that the Governor's vetoes violated the Separation of Powers clause of the Minnesota Constitution because they both nullified a branch of government and refashioned the line-item veto as a tool to secure the repeal or modification of policy legislation unrelated to the vetoed appropriation. Each party's description of the potentially deleterious implications of the other party's position offers an analytical framework for the court's reconciliation of line-item veto authority and the Separation of Powers clause.

⁵ Addressing the political-question issue, the United States Supreme Court stated in *Baker v. Carr*: "Deciding whether a matter has in any measure been committed by the constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as the ultimate interpreter of the Constitution." 369 U.S. 186, 211 (1962). This case involves the judicial review of action taken by another branch of government and clearly falls in the latter category.

The Governor's stance permits one branch of government to nullify another. The Governor's answer to such an outcome is emergency funding by the courts. Or, as the Governor's counsel put it: "You have a constitutional right to funding as a department of the government. You don't have a constitutional right to an appropriation." (Hrg. Tr. June 26, 2017 at 39-40; *see* Governor's Brief at 4, 17.) However, the Governor's view requires institutionalization of an extra-constitutional process whereby the Judicial Branch becomes a temporary legislature. The use of emergency funding from the Judicial Branch has heretofore been limited to funding only the government's existing core functions to temporarily protect the rights of the citizenry. Previous orders from this court speak primarily of funding programs involving agreements with the federal government, the right of citizens to a public education, the life, health and safety of citizens, or the preservation of public property. *See In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203, slip op. at 6-9 (Minn. Dist. Ct. June 29, 2011) (Gearin, J.); *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, 62-CV-11-5203, slip op. at 4-5 (Minn. Dist. Ct. June 28, 2011) (Christopherson, J.); *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, C0-05-5928, slip op. at 7-8 (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, slip op. at 7-8 (Minn. Dist. Ct. June 29, 2001). Uncomfortable as it was for the Judicial Branch to consider which functions to fund, a specific and objective standard governing the process was at least achievable. Moreover, the process involved existing programs that were currently funded and which had been the subject of legislation passed and signed into law by the executive and legislative branches.

In the case of operating funding for an entire branch of government, such as the Legislature, parsing through legislative functions to determine which constitute a "core" operation is

subjective, hypothetical, and involves judicial micromanagement of a discretionary process.⁶ It should not be for the court to determine which legislative operations get funding and which do not. Subject to executive veto authority, the Legislature determines what the government should do and what resources should be committed to those activities, not the courts. *Cf. Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 304 (Minn. 2000) (“the legislative process is complicated and the rationale for pursuing one particular process or another is not always clear”). Ironically, in the name of separation of powers, the Governor’s solution would use the courts as a substitute legislature to facilitate enlarging the executive’s line-item veto authority so it is virtually coextensive with general veto authority. Again, emergency funding is not a remedy for the unconstitutional acts by one branch of government against another—it is a remedy for citizens.

The Governor’s position also requires an expansive view of the Chief Executive’s line-item veto power as a tool permitting the use of budgetary coercion to induce policy changes that are unrelated to the vetoed appropriation. Consequently, the Governor concedes that a consistent application of his position permits “unsavory” use of the line-item veto. (Hrg. Tr. June 26, 2017 at 42.) According to the Governor’s counsel, line-item veto authority may be used to veto the Judicial Branch appropriation unless a ruling favorable to the Governor is issued in some pending litigation. (*Id.*) Similarly, the Governor concedes that he may use his item veto authority to eliminate funding for the Legislature through the end of his term if it does not pass the policy legislation he demands. (*Id.* at 43-44.) According to the Governor, the only constitutional response to this kind of coercion is emergency funding from the courts or for the Legislature to override the veto or impeach the Governor. (*Id.* at 42-43; Email from Sam Hanson, Attorney for Defendants,

⁶ Before agreeing to the Stipulation, the Governor advocated for a court-appointed special master to take evidence and make recommendations to the court regarding which activities of the Legislature should be deemed fundable “core functions.” (Governor’s Brief at 28-30.)

Briggs and Morgan, P.A. to Matt Anderson, Law Clerk to the Honorable John H. Guthmann (June 26, 2017) (contained in Court File No. 62-CV-17-3601).⁷) Yet, the Governor’s view contradicts the oft-repeated pronouncement from the Supreme Court that line-item veto power must be narrowly construed. Moreover, the Supreme Court has made it equally clear that use of the line-item veto is limited to striking appropriations—not policy measures. In the face of this blunt guidance, the court is loath to endorse such a sprawling notion of executive authority.

On the other hand, the Legislature’s position requires court intrusion upon the executive’s motives when exercising an otherwise valid veto. Minnesota Supreme Court decisions emphasize that separation of powers principles usually require the judiciary to avoid considering the motive behind a valid exercise of authority by a co-equal branch of government. *See, e.g., Johnson*, 507 N.W.2d at 235. But, it is equally clear that caution should not be thrown to the wind when the issue involves judicial review of an action that produces a constitutionally suspect result. The Governor’s argument stifles the court’s judicial review role. In *Starkweather v. Blair*, the Supreme Court discussed the circumstances under which the motive behind the exercise of authority by another branch of government, the Legislative Branch, may be considered:

We have frequently held that the motives of the legislative body in enacting any particular legislation are not the proper subject of judicial inquiry. . . . As long as the legislature does not transcend the limitations placed upon it by the constitution, its motives in passing legislation are not the subject of proper judicial inquiry. That does not mean that the legislature may use a constitutional power to accomplish an unconstitutional result, but, before it can be held that the latter has been done, it must appear that the end result of the act accomplished some purpose proscribed by the constitution.

245 Minn. 371, 379-80, 71 N.W.2d 869, 875-76 (1955). The court later repeated: “It is also true that the legislature may not use a constitutional power to accomplish an unconstitutional result.”

⁷ Between sessions, the latter two options are unavailable unless the Governor calls a special session.

Id. at 385, 71 N.W.2d at 879. The principles discussed in *Starkweather* are equally applicable to the Executive Branch's exercise of legislative authority through use of the veto.

Governor Dayton's line-item vetoes implicate the concerns raised by *Starkweather* in two ways. First, one branch of government may not effectively abolish or nullify another. Second, a line-item veto may not be used to strike policy legislation. Based on the rationale of *Starkweather*, the Governor opened the door to an examination of the reason behind his vetoes.

The motive for the vetoes are within the scope of the court's judicial review for another reason. The Governor's general and line-item veto powers cannot be exercised constitutionally unless the Governor returns the vetoes to the Legislature with a statement of objection to the legislature—the veto message. MINN. CONST. art IV, § 23. The court's judicial review function cannot be complete or meaningful unless it is permitted to consider every action the Governor took to exercise his line-item veto authority—including the veto message.⁸ Borrowing from the Rules of Evidence, consideration of the reason for a veto should go to the weight given the motivation, not its admissibility. Accordingly, the court's consideration of motive should not extend to the wisdom of the Governor's decision. Rather, motive will be considered only to the extent relevant to determining whether the veto, whatever its rationale, produced an unconstitutional result.⁹

⁸ The Governor concedes that but for the availability of extra-constitutional emergency funding from the Judicial Branch, his line-item vetoes infringe on the Legislative Branch in violation of the Separation of Powers clause. For this reason, the Governor's argument that a reviewing court's consideration of his motives represents a separation of powers violation is incongruent.

⁹ The Governor's use of *State v. Bates* as a framework for analyzing the Separation of Powers clause artificially narrows the required judicial review by excluding consideration of the result of the veto. 96 Minn. 110, 117, 104 N.W. 709, 712 (1905) (the Separation of Powers clause consists of a "distributive clause", a "prohibitive clause" and an "exception clause"). Therefore, the Governor's argument only begs the issue. The Governor asserts that exercise of his item veto was technically proper under the exception clause and therefore does not implicate the prohibitive clause. (Governor's Brief at 12-13.) However, the court is being asked by the Legislature to declare the vetoes invalid based upon their impact on the Legislature as an independent branch of government without regard to the mechanics of how those vetoes were exercised. The outcome in *Mattson* would not have been possible had the court applied *Bates* as advocated by the Governor.

Here, the Governor's veto message makes it clear that the intended "end result of the act" is to force legislation to repeal certain policy measures he signed into law that are unrelated to the vetoed appropriations, which is a use of the line-item veto proscribed by the constitution. The Governor makes no claim that his line-item vetoes were issued for purposes of cost containment. Indeed, it is undisputed that the vetoed appropriations were supported by the Governor and enacted exactly as set forth in the budget he submitted to the Legislature. Requiring a relationship between the purpose of the veto and the vetoed appropriation in no way limits the Governor's authority to influence policy legislation as contemplated by the constitution. The Governor may always use his general veto power to veto any bill that contains policy provisions to which he objects.

The Governor is justifiably concerned that prohibiting an item veto of the Legislature's appropriation under all circumstances gives the Legislature unfettered license to engage in the kind of "pork-barrel" self-indulgence the line-item veto was designed to prevent. The court's ruling is by no means intended to prevent governors from issuing a line-item veto of the Legislature's appropriation if they actually object to the manner in which the Legislature funded itself. No such concern exists in this case because the Governor concedes his vetoes had nothing to do with the Legislature's appropriation. Likewise, the court envisions no constitutional impediment to the use of item-veto authority to "coerce" policy legislation so long as vetoing the appropriation does not nullify or effectively eliminate a branch of government or a constitutional office.¹⁰

¹⁰ The Legislature suggests that one branch of government is categorically barred from coercing another. (Legislature's Brief at 16-17.) It is true that using the right constitutional procedure to line-item veto an appropriation cannot presuppose the absence of an unconstitutional encroachment upon another branch of government under the Separation of Powers clause. However, our system of checks and balances allows for a certain amount of coercion so long as the branches do not engage in unconstitutional coercion. One of the accepted uses of veto power and the veto message has always been to extract concessions from the Legislature. As such, like the Governor, some of the Legislature's arguments swing the pendulum too far.

To conclude, the court holds that Governor Dayton improperly used his line-item veto authority to gain a repeal or modification of unrelated policy legislation by effectively eliminating a co-equal branch of government. Therefore, under the unique and limited circumstances of this case, the Governor's line-item veto of the Legislature's appropriations offended the Separation of Powers clause of the Minnesota Constitution. They are null and void.

J H G



KeyCite Yellow Flag - Negative Treatment

Amended in Part by [In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota](#), Minn. Dist. Ct., June 29, 2011

2011 WL 2556036 (Minn. Dist. Ct.) (Trial Order)

District Court of Minnesota,

Second Judicial District.

Ramsey County

In re TEMPORARY FUNDING OF CORE FUNCTIONS OF
THE EXECUTIVE BRANCH OF THE STATE OF MINNESOTA.

No. 62-CV-11-5203.

June 29, 2011.

Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding[Kathleen R. Gearin](#), Judge.

Case Type: Civil

On June 15, 2011, this Court issued an Order to Show Cause setting a hearing date of June 23, 2011 on the motion of Petitioner Lori Swanson, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. Since then, various other submissions have been filed with the Court. Appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Governor motioned this Court to order mandatory mediation between the executive and legislative branches. The Court denied the motion orally and in a written order dated June 27, 2011. The Governor opposes the Attorney General's Petition for a court order directing core functions of the State of Minnesota to continue absent a budget agreement between the executive and legislative branches by June 30, 2011. The Governor asks this Court not to issue any further orders at this time arguing the issue is not justiciable. The Governor asserts that he is prepared to use his executive power without an appropriation or court order should the executive and legislative branches fail to reach a budget agreement.
2. The Court finds that the issue has "ripened" to the point where it needs to be ruled upon by the Court. [Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc.](#), 271 N.W.2d 445 (Minn. 1978).
3. The Attorney General petitioned this Court for an order directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. She also requests the Court appoint a Special Master. The Attorney General took no position on the motion for mediation but informed the Court she would participate if ordered to do so.
4. The Minnesota House opposed the request for court ordered mediation as unconstitutional. At the hearing, counsel for the House stated the House does not oppose the Attorney General's Petition or the Governor's position. The House specifically requested the Court order the Office of Management and Budget to continue issuing payments to fund the

Minnesota House in the event of a state government shutdown. The House also took the position that the issue before the Court is justiciable.

5. The Minnesota Senate concurred with the Minnesota House's position on mediation. It takes no position on the Attorney General's Petition and does not oppose the Governor or the Attorney General's requests regarding what functions should be deemed essential. The Senate concurred with the House's position regarding its request that this Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The Senate asks that this Court treat both legislative bodies the same.

6. Minnesota Senators Roger Chamberlain, Warren Limmer, Scott Newman, and Sean Nienow motioned this Court to intervene as parties. The Governor and the Attorney General both opposed the motion to intervene. The House and Senate took no position on the issue. The Court denied the motion orally on June 23, 2011. The four senators were allowed to participate as *amicus curiae* regarding the issues raised in the Attorney General's petition.

7. The Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association and Minnesota Habilitation Coalition, Inc. motioned this Court to intervene as parties. The Governor, Minnesota House, Minnesota Senate and the Attorney General had no objection. Therefore, this Court granted intervention orally.

8. The Minnesota Workforce Council Association, the Associated General Contractors of Minnesota and Hennepin County also made motions to intervene. The Attorney General had no objection to the extent that the interveners did not raise new issues. The Governor had no objection to the motions. The House and Senate took no position on the issue. The Court took the motions under advisement.

9. Petitioner Lori Swanson is the Attorney General of the State of Minnesota and in that capacity she represents the public in all legal matters involving the State of Minnesota. She also represents the people of the State in a *parens patriae* capacity.

10. The regular session of the Minnesota Legislature ended on May 23, 2011. No legislation has been enacted appropriating funds for the executive branch officers and agencies (other than the Department of Agriculture, the Board of Animal Health and the Agricultural Utilization Research Institute) for the fiscal year beginning on July 1, 2011.

11. The legislature failed to pass a "lights on" bill that would have continued funding of executive branch core functions beyond 11:59 p.m. on June 30, 2011 before it adjourned.

12. The Governor has not called the legislature into special session in order to have it attempt to pass either a "lights on" bill or funding bills that would either have a two-thirds majority or be signed by the Governor.

13. After the 2005 shutdown, the Minnesota Court of Appeals stated that, "The legislature could prevent another judicially mandated disbursement of public funds without an authorized appropriation by, for example, creating an emergency fund to keep the government functioning during a budgetary impasse or enacting a statute setting forth the procedures to be followed during a budgetary impasse." *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. App. 2007). The Court of Appeals emphasized that it is "the legislature and not the judiciary that has the institutional competency to devise a prospective plan for resolving future political impasses." In the five years since the *Sviggum* decision was issued, no plan has become law.

14. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the five executive branch constitutional officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

15. Due to the lack of appropriations, the five constitutional officers of the State of Minnesota and the executive branch agencies will not have sufficient funds to carry out then-core functions. The failure to properly fund critical core functions of the executive and legislative branches will violate the constitutional rights of the citizens of Minnesota.

16. In 2001 and 2005, the Attorney General petitioned this Court to preserve the operation of core functions of the executive branch of government after a budget was not enacted to fund state government. In those instances, this Court issued Orders providing for the continued performance of the core functions of the executive branch constitutional officers, and that the State continue to pay for such functions performed after July 1, 2001 and July 1, 2005, respectively. *See In Re Temporary Funding of Core Functions of the Executive Branch of the Slate of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C0-05-5928 (Ramsey Co. D.Ct., filed June 23, 2005); *In Re Temporary Funding of Core Functions of the Executive Branch of (he State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001). In 2001 and 2005, the Court appointed a Special Master to assist in resolving issues relating to the Orders. The constitutional analysis that resulted in the judges in those cases granting the Attorney General's petition has not been the subject of appellate review. In both the 2001 and the 2005 cases, the Governor agreed with and joined in the Attorney General's request.

17. With regard to a previous shutdown of the federal government, the Office of Management and Budget (“OMB”) and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property. OMB Memorandum, *Agency Operations in Absence of Appropriations* (Nov. 17, 1981), available at http://www.opm.gov/furlough/OMBGuidance/Attachment_A-4.pdf (hereinafter “OMB Memorandum”).

18. Pursuant to the criteria referenced in paragraph 14 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;

- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

OMB Memorandum.

19. [Minnesota Constitution Article III, Section 1](#), regarding no branch exercising the powers of another, is not found in the United States Constitution. It is found in a number of state constitutions. It is an “unusually forceful command...” [Fletcher v. Commonwealth](#), 163 S.W.3d 852 (Ky. 2005).

20. [Article I, Section 1, of the Minnesota Constitution](#) states, “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent...” Other sections of the Constitution impose a variety of core functions upon the five constitutional officers which may not be abridged. [State ex rel. Mattson vs. Kiedrowski](#), 391 N.W.2d 777 (Minn. 1986).

21. The Minnesota Constitution requires that the state provide a “general and uniform system of public schools.” [Minn. Const, art. XIII, § 1](#). This requires that the state finance an “adequate” level of education that is uniformly available to all students. This constitutional provision makes funding education a critical core function of government.

22. The Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to an intergovernmental compact agreement or congressional mandate.

23. The State of Minnesota has reserves at this time sufficient to fund core functions of the executive branch, and the executive branch could continue to operate core functions if it had access to those funds.

24. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2011, the State will violate the Supremacy clause of the U.S. Constitution. These agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens.

25. Examples of the federal programs referenced in paragraph 17 include the following: the Supplemental Nutrition Assistance Program (referred to herein as the Food Stamp Program), 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, [42 U.S.C. § 1396 *et seq.*](#) Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* [7 U.S.C. § 2020\(a\)](#); (d), (e)(2), (3) & (9); [42 U.S.C. § 602\(a\)\(1\)](#), (4); [42 U.S.C. § 1396a\(a\)\(9\)](#), (10). The State must also share in the cost of operating each program. *See* [7 U.S.C. § 2025](#), [42 U.S.C. § 609\(a\)\(7\)](#), [42 U.S.C. § 1396a\(a\)\(2\)](#). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* [7 U.S.C. § 2020\(g\)](#); [42 U.S.C. § 609](#); [42 U.S.C. § 1396c](#). The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* [Minn. Stat. §§ 245.771](#) (Food Stamp Program); 256.1.02 (TANF Program); 256.01, subd. 2 (Medicaid Program). The Attorney General also has certain obligations under federal law (as well as state law) with respect to the Medicaid Program. *See, e.g.*, [42 U.S.C. § 1396b\(q\)](#) (investigate and prosecute Medical Assistance fraud); [Minn. Stat. §](#)

256B.12 (original jurisdiction for Medicaid fraud). The Supremacy Clause of the United States Constitution requires the State of Minnesota to fulfill these agreements with the United States government requiring the State to make payments to individuals or local governmental units, or to undertake administrative duties on behalf of or in cooperation with the federal government. The duty to fulfill these agreements, et cetera, constitute core functions for state government under the United States Constitution.

26. Budget impasses in the absence of state funding appropriations do not permit a state to forego its obligation to fund certain federal programs. *Coalition for Basic Needs v. King*, 654 F.2d 838 (1st Cir. 1981). The Supremacy Clause of the United States Constitution, Article VI, clause 2, makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386 (1947).

27. The Governor requested in his pleadings that if the Court did decide to issue an order other than to mediate, said order should be based on the Governor's determination of what priority critical services must be continued. The Governor created a Statewide Contingency Response Team (SCRT) chaired by the Commissioner of the Department of Management and Budget, to establish statewide objectives in the event of a shutdown. The Court agrees with the Governor that the following critical core functions of government should continue to be funded after June 30, 2011 even if there is no resolution of the present funding dispute between the executive and legislative branches:

- 1) Basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans homes, and residential academies and other similar state-operated services.
- 2) Maintenance of public safety and immediate public health concerns.
- 3) Provision of benefit payments and medical services to individuals.
- 4) Preservation of the essential elements of the financial system of the government.
- 5) Necessary administration and supportive services, including but not limited to computer system maintenance, internet security, issuance of payments.

28. The Court has attached as Exhibit A the document entitled, "Recommended State-wide Objectives, 2001 Potential Minnesota Government Shutdown and Recommended Priority 1 and Priority 2 Critical Services." The Court has made some minimal changes in the document submitted by the Governor. The Court agrees with the Governor that the Court's order regarding continuing funding for core functions of the government should focus on the critical services discussed in Exhibit A. It agrees that those functions are critical.

29. Any order of this Court allowing the Commissioner of the Department of Management and Budget to issue checks and process funds to pay for core functions and obligations that the State has pursuant to the Supremacy Clause of the United States Constitution should limit itself to only the most critical functions of government involving the security, benefit, and protection of the people.

30. There have been numerous motions to intervene and motions to participate as amicus curiae filed because of the issues raised in this case. The briefs and letters submitted represent many programs, agencies, and contracted private businesses that will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws appropriating funds. It has been argued compellingly that many of these programs and entities are beneficial to the people of the State, provide services that may aid citizens in working their way out of poverty, may provide jobs for private industry, may improve the state infrastructure, may result in benefits that help working class people obtain and maintain employment, and provide a myriad of other benefits to the State. In light of Article XI, the Court believes that the negative impact of a government shutdown on these programs does not justify a court in over-

extending its authority. In light of Article XI of the Minnesota Constitution, the Court must construe any authority it has to order government spending to maintain critical core functions in a very narrow sense. Discretionary appropriations are the province of the legislature, not the courts.

31. Numerous Minnesota non-profit organizations have filed to either intervene in the proceedings or to participate as amicus curiae. They provide services to vulnerable clients. These clients may suffer hardships and fail to make the progress of which they are capable without the assistance of these non-profits. Some non-profit entities will not survive without state appropriations. Neither the good services they provide nor the fact that they may cease to exist without state funding is sufficient cause to deem their funding to be a critical core function of government and to overcome the constitutional mandate in Article XI.

32. The Court finds that “core functions” that are critical enough to require court-ordered funding despite Article XI are far less in number and breath than proposed by the Attorney General and those seeking amicus curiae status.

33. Except for TANF programs, the child care assistance programs discussed in the memorandum of the amici Coalition of Child Care Providers and Supporters are not critical core function programs that would justify this Court in ordering funding despite the lack of legislative appropriations as required by Article XI. Child care programs that are funded under the TANF program should continue to be funded. Not to do so would violate the Supremacy Clause of the United States Constitution. The Court is aware that not funding non-TANF child care assistance may cause extreme hardship to low income working parents, increase the public assistance rolls because some of these people will have to leave the workforce in order to care for their children, and may lessen the opportunities for low income children to succeed in school. These likely consequences can only be avoided by the exercise of legislative and executive branch discretion in settling the budget issues.

34. The Horsemen's Benevolent and Protective Association brief in support of its motion to intervene or file an amicus curiae brief argues that if they are not able to have racing after June 30, 2011, the race meet will be destroyed, and that the reputation of the Minnesota race meet will be permanently blemished, and future race meets will be jeopardized. Nothing was presented that leads the Court to believe that their assertions are anything less than true. If the Court were to order funding of regulatory activities necessary to allow future race meets to take place, it would, in effect, be ruling that the regulation of horse racing is a core function of government. Regulation of horse racing is not a core function of government. The Court is granting the motion to intervene so that the Horsemen's Benevolent and Protective Association make seek emergency review by an appellate court. The only practical and legal remedy that would save the Association from the damage caused by the failure of other branches of government to resolve their differences is obtainable only by the governor calling a special session and the legislature passing appropriations bills that are capable of becoming law.

35. The appointment of a Special Master will help promote judicial economy and efficiency. A Special Master creates an orderly process to resolve requests for, or objections to, funding, thereby preventing the necessity for multiple individual lawsuits to be filed and adjudicated. *See, e.g., Minn. R. Civ. P. 1* (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); *Minn. R. Civ. P. 53.01* (authorizing appointment of special master). *See also 9C Wright & Miller, Federal Practice and Procedure: Civil* §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims).

36. The Governor's Statewide Contingency Response Team decided to recommend that the only critical core functions of the Minnesota Zoological Gardens are feeding the animals, and keeping the animals, the exhibits, and the zoo property safe, secure, and healthy. The Court agrees with that determination and also would add that it is necessary to fund whatever staff is necessary to make sure that none of the animals can escape and become a danger to the public. The Court recognizes that this will cause significant harm to the zoo as the 4th of July weekend and the rest of the summer are the busiest times of the year. It further recognizes that this will significantly reduce the receipts of the zoo. Those concerns need to be recognized and resolved by actions of the executive and legislative branches, not by the judicial

branch. The operations of a zoo, even when in large part paid for by admission charges and other receipts, is a critical core function of government sufficient to overcome the requirements of Article XI.

37. The Minnesota Association of General Contractors takes the position that certain construction projects and activities of their members are core functions necessary for the government to continue to fund. This Association asserts the continued funding of all state construction contracts is an essential or critical government function due to the perilous economic condition of the State's construction industry and the general harm to citizens that suspension of design and construction contracts would cause. In its brief, the Association cites the Lafayette Bridge as an example of a critical core government function necessary to protect the life, health, and safety of its citizens, The Court agrees that any part of a contract which keeps the bridge from collapsing does constitute a critical core function that needs to be funded. It does not agree that replacement of the bridge constitute a critical core function necessary to protect the life, health, and safety of its citizens. A government shutdown may result in increased expenses for road projects that may be funded constitutionally in the future. The Court has no reason to disagree with the assertions of the Association that a government shutdown will significantly delay completion of present projects, increase costs and put numbers of employees out of work. The delay in construction and increased costs that will likely happen as a result of a government shutdown will be because of the executive and legislative branches failing to resolve the budget issues. Those things do not justify the Court in ordering the funding of non-critical core functions and thereby violating Article XI of the Minnesota Constitution.

38. Even though the State has promised to pay for certain projects such as road construction, that does not justify the court ordering payment under those contracts without a specific legislative appropriation. As stated in *County of Beltrami v. Marshall*, 135 N.W.2d 749 (Minn. 1965), “A legislative appropriation is always a prerequisite to state liability. The mere creation of a liability on the part of the state, or promise of the state to pay, if the statute may thus be construed, is of no force in the absence of an appropriation of funds from which the liability may be discharged.”

39. The court agrees with the position of the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the City of St Paul regarding Local Government Aid legislation. These funds have already been lawfully appropriated and should be paid on schedule. This is also true regarding previously lawfully appropriated payments to School Districts.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when she determines that the proceeding is in the interest of the State.
2. This Court has jurisdiction over this matter in accordance with Minnesota Statutes Chapter 484, and venue is proper in this Court pursuant to [Minnesota Statutes Section 542.01](#).
3. The Minnesota Constitution must be read as a whole and each provision interpreted in the context of the entire document and the provisions of the U.S. Constitution. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” However, the Minnesota Constitution also provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their offices. Article V, Section 1 “implicitly places a limitation on the power of the legislature” so that the core functions of the executive branch officers, and their performance of those functions, may not be abridged. *State ex. rel Mattson vs. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Failure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution. See [Minn. Const. art. III, § 1](#) (dividing the powers of government into three distinct departments); *Mattson*, 391 N.W.2d at 782 (holding that implicit limitation on legislative authority prevents abolishment “of the independent functions inherent in an executive office.”). See also [Clerk of Court's Compensation for](#)

Lyon County v. Lyon County Commissioners, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another).

4. The core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. All constitutional officers take an oath to support the constitutions of the United States and the State of Minnesota and to discharge faithfully the duties of their constitutional offices. Minn. Const, art. V, § 6. Core functions include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property.

5. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements, continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the [United States Constitution, Article VI, clause 2](#), mandates that any funds paid by the State as a result of participation in these federal programs must continue.

6. The Senate and House (Legislative Branch) must be funded sufficiently to allow them to carry out critical core functions necessary to draft, debate, publish, vote on and enact legislation.

ORDER

1. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for the performance of the critical core functions of government as set forth in this Order.

2. Hennepin and Ramsey Counties motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow them to participate as amicus curiae.

3. Jenni Taylor's motion to intervene is denied as her position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow her to participate as amicus curiae.

4. SEIU Local 284 Kids First MN, Sharon Born, Terry Bicknell, and Rebecca Hall's motion to intervene is granted as their position regarding programs that are not funded as part of federal pass-through funding agreements is not adequately represented by other parties. The federal pass-through funds part of the Minnesota Child Care Assistance program is adequately represented by the petitions of the Attorney General and the Governor. The issue of whether non-federal “pass-through” programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

5. The Minnesota Horsemen's Benevolent and Protective Association's motion to intervene is granted as their position is not adequately represented by existing parties.

6. Minnesota Workforce Council Association's motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow the Association to participate as amicus curiae.

7. Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association, and Minnesota Habilitation Coalition, Inc.'s motion to intervene are granted by agreement of the parties. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

8. The motion of the League of Minnesota Cities, Coalition of Greater Minnesota Cities, and the City of St. Paul to intervene is granted because their position that critical government aid (LGA) funds have already been appropriated by action of the Legislature and approval by the Governor is not adequately represented by existing parties.

9. The motion of the Minnesota Zoological Garden to intervene is granted as their position is not adequately represented by existing parties.

10. The motion of Associated General Contractors of Minnesota to intervene is granted as their interests are not adequately represented by existing parties.

11. The Commissioner of the Department of Management and Budget is also authorized to make payments necessary to carry out the critical core functions of the executive and legislative branches consistent with Exhibit A and the findings of fact and conclusions of law contained in this order. He is also ordered to fund programs where funding is mandated by the Supremacy clause of the U.S. Government and make payments such as LGA payments that have already been lawfully appropriated.

12. Any requests to participate as amicus curiae not previously addressed in this order are granted.

13. The Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, is hereby appointed as Special Master to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application of this Order. The fees and expenses of the Special Master shall be paid by the State of Minnesota, the Commissioner of the Department of Management and Budget. Expenses shall include the costs of whatever staff she deems necessary to fulfill her duties as a Special Master. Information regarding how to set up a hearing before the Special Master will be made available as soon as possible on the State Court and Second Judicial District websites

14. This Order shall be effective until the earliest of the following:

a. July 31, 2011, which may be extended by the Court;

b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or

c. Further Order of this Court.

15. Petitioner shall serve by U.S. Mail a copy of this Order on the persons and entities who were served the Order to Show Cause dated June 15, 2011 and all other persons who have filed submissions in this proceeding.

16. Nothing in this order shall be construed as prohibiting the Commissioner of OMB from funding resources necessary to respond to an unforeseen emergency that would place the public or public property in immediate danger. The governor may obtain such funds on an emergency basis. If requested by a party, the need for continuation of such emergency funding will be reviewed by the Special Master.

Dated: 6-29-11

BY THE COURT:

<<signature>>

The Honorable Kathleen R. Gearin

Chief Judge

Ramsey County District Court

Appendix not available.

End of Document

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Exhibit B

SF1 REVISOR SGS 171-S0001-1 1st Engrossment

2.1 **ARTICLE 1**
2.2 **STATE GOVERNMENT APPROPRIATIONS**

2.3 **Section 1. APPROPRIATIONS.**

2.4 The sums shown in the columns marked "Appropriations" are appropriated to the agencies
2.5 and for the purposes specified in this article. The appropriations are from the general fund,
2.6 or another named fund, and are available for the fiscal years indicated for each purpose.

2.7 The figures "2018" and "2019" used in this article mean that the appropriations listed under
2.8 them are available for the fiscal year ending June 30, 2018, or June 30, 2019, respectively.
2.9 "The first year" is fiscal year 2018. "The second year" is fiscal year 2019. "The biennium"
2.10 is fiscal years 2018 and 2019.

	<u>APPROPRIATIONS</u>	
	<u>Available for the Year</u>	
	<u>Ending June 30</u>	
	<u>2018</u>	<u>2019</u>

2.15 **Sec. 2. LEGISLATURE**

2.16 **Subdivision 1. Total Appropriation** \$ **82,193,000** \$ **82,169,000**

2.17 Appropriations by Fund

	<u>2018</u>	<u>2019</u>
2.18 <u>General</u>	<u>82,065,000</u>	<u>82,041,000</u>
2.19 <u>Health Care Access</u>	<u>128,000</u>	<u>128,000</u>

2.21 The amounts that may be spent for each
2.22 purpose are specified in the following
2.23 subdivisions.

2.24 **Subd. 2. Senate** 32,299,000 32,105,000

2.25 **Subd. 3. House of Representatives** 32,383,000 32,383,000

2.26 **Subd. 4. Legislative Coordinating Commission** 17,511,000 17,681,000

2.27 Appropriations by Fund

2.28 <u>General</u>	<u>17,383,000</u>	<u>17,553,000</u>
2.29 <u>Health Care Access</u>	<u>128,000</u>	<u>128,000</u>

2.30 Appropriations provided by this subdivision
2.31 may be used for designated staff to support
2.32 the following offices and commissions: Office
2.33 of the Legislative Auditor; Office of the

SF1 REVISOR SGS 171-S0001-1 1st Engrossment

3.1 Revisor of Statutes; Legislative Reference
 3.2 Library; Geographic Information Services;
 3.3 Legislative Budget Office; Legislative-Citizen
 3.4 Commission on Minnesota Resources;
 3.5 Legislative Commission on Pensions and
 3.6 Retirement; Legislative Water Commission;
 3.7 Mississippi River Parkway Commission;
 3.8 Legislative Energy Commission; and the
 3.9 Lessard-Sams Outdoor Heritage Council. The
 3.10 operation of all other joint offices and
 3.11 commissions must be supported by the central
 3.12 administrative staff of the Legislative
 3.13 Coordinating Commission. This appropriation
 3.14 may additionally be used for central
 3.15 administrative staff to support the work of the
 3.16 Economic Status of Women Advisory
 3.17 Committee.
 3.18 From its funds, \$10,000 each year is for
 3.19 purposes of the legislators' forum, through
 3.20 which Minnesota legislators meet with
 3.21 counterparts from South Dakota, North
 3.22 Dakota, and Manitoba to discuss issues of
 3.23 mutual concern.
 3.24 The base for the Legislative Budget Office is
 3.25 \$818,000 for fiscal year 2020 and each year
 3.26 thereafter.
 3.27 Legislative Auditor. \$6,744,000 the first year
 3.28 and \$6,564,000 the second year are for the
 3.29 Office of the Legislative Auditor.
 3.30 Of these amounts, \$130,000 the first year is
 3.31 for the transit financial activity reviews
 3.32 required by Minnesota Statutes, section 3.972,
 3.33 subdivision 4.

Exhibit A

SF1 REVISOR SGS 171-S0001-1 1st Engrossment

14.1 may be transferred to any other activity under
 14.2 this section.
 14.3 (b) \$1,165,000 the first year and \$1,172,000
 14.4 the second year are for system security and
 14.5 risk management. The base is \$922,000 in
 14.6 fiscal year 2020 and each year thereafter.

14.7 **Sec. 14. REVENUE**

14.8 **Subdivision 1. Total Appropriation** \$ **153,506,000** \$ **157,401,000**

14.9 **Appropriations by Fund**

	<u>2018</u>	<u>2019</u>
14.10 <u>General</u>	<u>149,270,000</u>	<u>153,165,000</u>
14.11 <u>Health Care Access</u>	<u>1,749,000</u>	<u>1,749,000</u>
14.12 <u>Highway User Tax</u>		
14.13 <u>Distribution</u>	<u>2,184,000</u>	<u>2,184,000</u>
14.14 <u>Environmental</u>	<u>303,000</u>	<u>303,000</u>

14.16 This appropriation includes funds for
 14.17 information technology project services and
 14.18 support subject to the provisions of Minnesota
 14.19 Statutes, section 16E.0466. Any ongoing
 14.20 information technology costs must be
 14.21 incorporated into the service level agreement
 14.22 and must be paid to the Office of MN.IT
 14.23 Services by the commissioner of revenue
 14.24 under the rates and mechanism specified in
 14.25 that agreement. This section is not effective
 14.26 until the day following enactment of First
 14.27 Special Session 2017, House File No. 1.

14.28 **Subd. 2. Tax System Management** **124,890,000** **128,785,000**

14.29 **Appropriations by Fund**

	<u>2018</u>	<u>2019</u>
14.30 <u>General</u>	<u>120,654,000</u>	<u>124,549,000</u>
14.31 <u>Health Care Access</u>	<u>1,749,000</u>	<u>1,749,000</u>
14.32 <u>Highway User Tax</u>		
14.33 <u>Distribution</u>	<u>2,184,000</u>	<u>2,184,000</u>
14.34 <u>Environmental</u>	<u>303,000</u>	<u>303,000</u>

Exhibit C

CHAPTER No. 4
S.F. No. 12.1 **ARTICLE 1**
2.2 **STATE GOVERNMENT APPROPRIATIONS**2.3 **Section 1. APPROPRIATIONS.**

2.4 The sums shown in the columns marked "Appropriations" are appropriated to the agencies
2.5 and for the purposes specified in this article. The appropriations are from the general fund,
2.6 or another named fund, and are available for the fiscal years indicated for each purpose.
2.7 The figures "2018" and "2019" used in this article mean that the appropriations listed under
2.8 them are available for the fiscal year ending June 30, 2018, or June 30, 2019, respectively.
2.9 "The first year" is fiscal year 2018. "The second year" is fiscal year 2019. "The biennium"
2.10 is fiscal years 2018 and 2019.

2.11		<u>APPROPRIATIONS</u>	
2.12		<u>Available for the Year</u>	
2.13		<u>Ending June 30</u>	
2.14		<u>2018</u>	<u>2019</u>

2.15 **Sec. 2. LEGISLATURE**

2.16	<u>Subdivision 1. Total Appropriation</u>	<u>\$</u>	<u>82,193,000</u>	<u>\$</u>	<u>82,169,000</u>
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2.17	<u>Appropriations by Fund</u>			
2.18		<u>2018</u>	<u>2019</u>	
2.19	<u>General</u>	<u>82,065,000</u>	<u>82,041,000</u>	
2.20	<u>Health Care Access</u>	<u>128,000</u>	<u>128,000</u>	

2.21 The amounts that may be spent for each
2.22 purpose are specified in the following
2.23 subdivisions.

2.24	<u>Subd. 2. Senate</u>	<u>32,299,000</u>	<u>32,105,000</u>	<i>Voted 10/20/17 5/13/17</i>
2.25	<u>Subd. 3. House of Representatives</u>	<u>32,383,000</u>	<u>32,383,000</u>	
2.26	<u>Subd. 4. Legislative Coordinating Commission</u>	<u>17,511,000</u>	<u>17,681,000</u>	

2.27	<u>Appropriations by Fund</u>			
2.28	<u>General</u>	<u>17,383,000</u>	<u>17,553,000</u>	
2.29	<u>Health Care Access</u>	<u>128,000</u>	<u>128,000</u>	

2.30 Appropriations provided by this subdivision
2.31 may be used for designated staff to support
2.32 the following offices and commissions: Office
2.33 of the Legislative Auditor; Office of the



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 30, 2017

The Honorable Michelle L. Fischbach
President of the Senate
Room 2113, Minnesota Senate Building
St. Paul, Minnesota 55155

Dear Madam President:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State, Chapter 4, Senate File 1, with the exception of the line-item vetoes listed below:

- Page 2, Line 24: “Subd. 2 Senate 32,299,000 32,105,000”
- Page 2, Line 25: “Subd. 3 House of Representatives 32,383,000 32,383,000”

At the last minute, the Legislature snuck language into the State Government bill that would hold hostage the Department of Revenue appropriation in this bill to my signature on the Taxes bill. I am unwilling to put the jobs of 1,300 Department of Revenue employees at risk. As a result of this action, I am line-item vetoing the appropriations for the Senate and House of Representatives to bring the Leaders back to the table to negotiate provisions in the Tax, Education and Public Safety bills that I cannot accept. Attached is my letter to Speaker Daudt and Majority Leader Gazelka explaining my reasoning for line-item vetoing the Senate and House of Representatives’ appropriations.

Minnesotans expect state government to provide high-quality services. SF 1 provides the needed operating adjustments for state agencies and constitutional offices to maintain these services. Providing the adjustments will help to ensure that our state can address the challenges presented with rising costs over the next biennium as well as population growth and increased demand for services.

There are other investments in this bill that will also benefit Minnesotans, such as: funding to ensure every Minnesotan is counted in the 2020 census; moving the state historic preservation office to the Department of Administration to benefit businesses, and additional funding for tuition incentives that the men and women who join our national guard can take advantage of.

However, there are provisions in this bill that cause concern. The bill intrudes upon my authority to manage the executive branch of state government. It places onerous reporting requirements on state agencies and limits the flexibility of commissioners to manage their agencies.

EXHIBIT 1

The Honorable Michelle L. Fischbach
May 30, 2017
Page 2

Minnesota has a long history of checks and balances between the executive and legislative branches and having Minnesota Management and Budget keep track of the cost of legislation has served us well. SF 1 transfers the responsibility for fiscal notes from Minnesota Management and Budget to the Legislature. Putting this work under the authority of the legislature creates redundancies and inefficiencies and unnecessarily grows government.

The bill reneges on our commitment by \$10 million each year beginning in 2020, to fund the Minneapolis Employees Retirement Fund (MERF) placing that state obligation onto the taxpayers of Minneapolis.

I am extremely disappointed by what is not in this bill. In my budget I prioritized investments in technology, specifically cyber security. I prioritized these not for the benefit of state agencies, but for the benefit of Minnesotans. We need to ensure we can protect our data and systems from cyber-attacks. And, we need to do so while still ensuring that state agencies have the operations capability to responsibly serve our state's citizens. This is not an either/or proposition and I continuously sought both. In addition, we need to ensure that the backbone of our government – how we pay our bills and keep track of our finances – is running smoothly. Critical improvements are needed to these systems to keep them operating. Our procurement systems likewise can use updating. Funding those improvements is not in this bill.

Minnesotans deserve a transparent, fiscally responsible budget. We must make investments to build a more competitive state workforce, ensure efficient and accountable outcomes in state programs, secure our IT infrastructure, and deliver the high quality of state services that Minnesotans deserve.

Sincerely,



Mark Dayton
Governor

cc: Senator Paul E. Gazelka, Senate Majority Leader
Senator Thomas M. Bakk, Senate Minority Leader
Senator Mary Kiffmeyer, Minnesota Senate
Representative Kurt Daudt, Speaker of the House
Representative Melissa Hortman, House Minority Leader
Representative Sarah Anderson, House of Representatives
The Honorable Steve Simon, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes

Attachment



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 30, 2017

The Honorable Kurt Daudt
Speaker of the House
Room 463, State Office Building
St. Paul, Minnesota 55155

The Honorable Paul E. Gazelka
Senate Majority Leader
Room 3113, Minnesota Senate Building
St. Paul, Minnesota 55155

Dear Speaker Daudt and Majority Leader Gazelka:

I am signing into law the nine so-called "Budget Bills," in order to forestall a bitter June showdown over a State Government shutdown. I have strong disagreements with certain provisions in every one of those bills. However, having been through twenty tumultuous days in July 2011, I understand the enormous uncertainties and disruptions that even the threat of another shutdown would cause for many thousands of Minnesotans. I also know from prior experience that it is extremely unrealistic for any of us to imagine we would achieve any better results from protracted budget negotiations well into June.

I will allow the tax bill to become law without my signature. I will not sign it, because of very major objections I have with certain provisions in it. However, I cannot veto it, because of the "poison pill" provision you snuck into the State Government bill, which attempts to eliminate all funding for the Minnesota Department of Revenue in Fiscal Years 2018 and 2019, if the tax bill were not enacted.

I consider this provision, snuck into the State Government bill without my knowledge, to be a reprehensible sneak attack, which shatters whatever trust we achieved during the Session. Now I understand why you made it almost impossible for my staff and me to obtain drafts of your bills' language, sometimes not until minutes before they were brought to the floor for passage.

I will not risk a legal challenge to the Department of Revenue's budget and cause uncertainty for its over 1,300 employees. Because of your action, which attempts to restrict my executive power, I am left with only the following means to raise my strong objections to your tax bill, which favors wealthy individuals, large corporations; and moneyed special interests at the expense of the State of Minnesota's fiscal stability in the years ahead.

Thus, I am line-item vetoing the appropriations for the House and Senate in FY 18/19 and FY 20/21. Your 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, which are extremely destructive to Minnesota's future:

1. Eliminate the Tobacco Tax Breaks. In 2013 I proposed, and the Legislature passed, an increase in cigarettes and other tobacco products, first to help resolve a projected \$623 million deficit in the coming biennium; and second, to discourage people from smoking; and, especially, to discourage young people from beginning to smoke. The tax increases achieved both intended results.

ATTACH. TO EX. 1

The Honorable Kurt Daudt and Paul Gazelka
May 30, 2017
Page 2

This bill's tax breaks for tobacco would cost the State Treasury an estimated \$13.8 million in the FY 18/19 biennium, \$39.7 million in FY 20/21, and even more in subsequent years.

Especially galling, and indefensible, is the tax break for premium cigars, at a cost of \$6.9 million over the next two bienniums. I am appalled that there was not enough money left after you satisfied your priorities to expand the Working Family Credit in FY 18/19 or to further increase the Child Care Tax Credit for working parents; yet, you could find room to sneak in a special tax break for premium cigars for some special, moneyed friends.

2. Cancel the Estate Tax Exclusion Increase. There is already a \$2 million tax exemption for the estates of the wealthiest Minnesotans and a \$5 million tax exemption for farmers and family-owned businesses. Increasing the regular exclusion by another \$1 million would benefit only a handful of the richest people in Minnesota at a cost to the State of \$34.8 million in FY 18/19, \$74.5 million in FY in FY 20/21, and even more in years following.

Whether the State Exclusion is \$2 million or \$3 million, those millionaires, whose preoccupations are to avoid paying taxes, will continue to find other states, who offer them better Estate Tax avoidance. It would require raising the exclusion to the federal level of \$5 million to achieve parity, and that cost would be prohibitive. Reducing state revenues by \$109.3 million from the richest Minnesotans to little public benefit is extremely ill-advised.

3. C-I Property Tax Freeze. I support excluding the first \$100,000 of business property from statewide property taxes despite its high cost of over \$85 million in the next biennium. However, freezing the levy has disastrous effects in future years, costing the State almost \$85 million in FY 20/21 and even more in years following. Over the next ten years, the total revenue loss to the State would be over \$1 billion.

Look at the attached analysis of forecast uncertainties, prepared by the Department of Management and Budget. Even a moderate national recession would reverse Minnesota's hard-earned fiscal stability. That billion dollars in revenue is essential to our State's financial security.

Tax cuts are politically appealing and much appreciated by those who receive them. However, their total cost to the State must be responsible, not just for tomorrow but also for the days, weeks, and years that will follow. This principle was violated with tax breaks in 2000 and 2001, which helped cast State Government into serious and repeated budget deficits soon thereafter.

When I became Governor in January 2011, the State faced a projected \$6.2 billion deficit over the coming biennium. Over the next four years, we went through a very difficult and often painful process to restore our fiscal integrity: to re-establish structural budget surpluses, to pay back the over \$2 billion owed our school districts, and to eliminate many shifts and other gimmicks. I refuse to allow the State's financial security to be jeopardized by excessive tax giveaways, which do not benefit most Minnesotans.

The Honorable Kurt Daudt and Paul Gazelka
May 30, 2017
Page 3

It is unfortunate that your last-minute legislative treachery has left me no other option but either to passively permit those tax provisions to become law and decimate our future financial solvency, or to take this action. However, the future well-being of our children and our grandchildren is at stake. I will not willingly allow their futures to be jeopardized.

4. Driver's License Provision. There is another provision, which I insist you agree to remove, before I will call a Special Session. The new language in HF 470, which prohibits undocumented immigrants from obtaining drivers licenses is, as I have said repeatedly, completely redundant and, therefore, unnecessary. Several different legal opinions have stated to me that current law does not allow my Administration to make such a change, without action by the Legislature.

Thus, this provision is nothing more than a strategic attack against people, many of whom have lived in this country for a long time, and most of whom are living responsible lives and contributing to our growing state economy. Your intent to further divide our evermore diverse population might be politically advantageous to you (it must be, or you wouldn't have done it); but it is destructive to the future well-being of the people of Minnesota.

5. Teacher Licensure Provision. I also insist that you re-open and re-negotiate the Teacher Licensure provisions in HF 2. The integrity of Minnesota's professional teaching standards is of paramount importance to all of our state's licensed teachers and to ensuring the quality of teachers, educating all of our children. While I support improving Minnesota's system of teacher licensure, some provisions undermine the high professional standards that have served Minnesota's schoolchildren extremely well.

I will await your response.

Sincerely,



Mark Dayton
Governor

cc: Senator Thomas M. Bakk, Senate Minority Leader
Representative Melissa Hortman, House Minority Leader
Representative Greg Davids
Senator Roger Chamberlain

Attachment



Notes on Risk and Uncertainty for Minnesota FY 2018-19 Revenues

May 15, 2017

What happens to the revenue forecast if a recession starts?

- During the last two relatively mild and short (8 months each) U.S. recessions, we lowered our revenue forecast for the current biennium on average 4.5 percent from one February to the next (so, over 12 months).
 - We lowered our revenue forecast by 0.5 percent in the 1990-91 recession and by 8.6 percent in the 2001 recession.
 - The Great Recession of 2007-09 is too much of an outlier to use as a comparison here.
- If *this year* we were to face an experience similar to the average of those two recessions, we might lower our forecast for FY 2018-19 revenues by about \$1.9 billion (4.1 percent) in November 2017, and then by another \$200 million (0.5 percent) in February 2018. That would be a \$2.1 billion (4.5 percent) forecast reduction over 12 months.
 - With significant impacts on financial income, especially capital gains, the 2001 recession was much harder on Minnesota revenues than the 1990-91 recession. If this year we were to face a similar experience to the 2001 recession, we might lower our forecast for FY 2018-19 revenues by about \$3.4 billion (7.5 percent) in November 2017, and then by another \$500 million (1.2 percent) in February 2018. That would be a \$3.9 billion (8.6 percent) forecast reduction over 12 months.
 - If this year we were to face a similar experience to the 1990-91 recession, we might lower our forecast for FY 2018-19 revenues by about \$230 million (0.5 percent) by February 2018.
 - These estimates include all sources of revenue forecast risk, including both economic risk and our own forecast error.
 - These estimates *do not include* the impact of a recession on expenditures. Demand for public services tends to increase during an economic downturn, putting pressure on state government spending.

How far off can revenues be by then end of the biennium?

- In February, we forecast total FY 2018-19 revenues to be roughly \$45.7 billion. If our February 2017 forecast is about as accurate as our average forecast, the range of closing values for FY 2018-19 total revenues is \$45.7 billion plus or minus \$2.4 billion (5.4 percent). That is, revenues



could end up as low as \$43.2 billion or as high as \$48.1 billion. (Values do not add due to rounding.)

- Our average error for 29-months-ahead forecasts is plus or minus 5.4 percent of non-dedicated revenues. We calculated the average over 13 biennia.
- More information is in our March 2017 *Revenue Forecast Uncertainty Report*:
<https://mn.gov/mmb-stat/000/az/forecast/2017/february-forecast/forecast-uncertainty-report-full.pdf>

Exhibit E

MINNESOTA SENATE BUDGET
FY 2016-17

Line Item	FY 2016 Budget Proposed	FY 2017 Budget Proposed	FY 2016-17 Budget Proposed
1 Salaries			
2 Permanent Salaries	12,198,565	12,679,372	24,877,937
3 Temporary Salaries	300,000	550,000	850,000
4 Senators Payroll	2,123,470	2,123,470	4,246,940
5 Subtotal, Salaries	14,622,035	15,352,842	29,974,877
6			
7 Benefits			
8 DCP Match	528,750	176,250	705,000
9 Child Care/Med-Dent Admin Fee	5,000	5,000	10,000
10 Insurance	3,287,279	3,287,279	6,574,558
11 MSRS Employers Share	913,781	941,194	1,854,975
12 FICA Employers Share	946,864	975,270	1,922,134
13 Medicare Employers Share	221,885	228,541	450,426
14 Unemployment Compensation	20,000	20,000	40,000
15 Workers Compensation	20,000	20,000	40,000
16 Subtotal, Benefits	5,943,559	5,653,534	11,597,093
17			
18 Services/Expenses			
19 Rentals	8,000	8,000	16,000
20 Repairs State of Minn	2,500	2,500	5,000
21 Repairs Outside Vendor	2,500	2,500	5,000
22 Maintenance Agreement	303,850	312,965	616,815
23 Printing	42,000	42,000	84,000
24 Rental-Copiers	9,600	9,600	19,200
25 Micrographics	500	500	1,000
26 Chaplains	1,500	1,500	3,000
27 Audit	25,000	0	25,000
28 Development IMB	25,000	25,000	50,000
29 Software	184,000	190,000	374,000
30 Computer Development	140,000	145,000	285,000
31 Dry Cleaning	500	500	1,000
32 Postage/Meter Stamps	100,000	100,000	200,000
33 Communication	206,000	212,000	418,000
34 Delivery Service	1,000	1,000	2,000
35 Mileage	240,000	240,000	480,000
36 Housing In-State	400,000	400,000	800,000
37 Session Per Diem In-State	575,000	775,000	1,350,000
38 Session Per Diem Out-State	1,500	1,500	3,000
39 Interim Per Diem In-State	100,000	120,000	220,000
40 Interim Per Diem Out-State	15,000	15,000	30,000
41 Travel In-State	75,000	75,000	150,000
42 Travel Out-State	100,000	100,000	200,000
43 Registration Fee In-State	5,000	5,000	10,000
44 Registration Fee Out-State	27,500	27,500	55,000
45 Fees/Notary/Summons/Admissions	2,500	2,500	5,000
46 Membership Fees	2,000	2,000	4,000
47 Tuitions/Training	20,000	20,000	40,000
48 Video/Media	58,000	0	58,000
49 Photographic	8,000	8,000	16,000
50 Office Supplies	75,000	75,000	150,000
51 Publications	15,000	15,000	30,000
52 Water Coolers	15,000	15,000	30,000
53 Furniture/Equipment	5,000	5,000	10,000
54 Construction Projects	0	0	0
55 Misc	14,646	15,264	29,910
56 Subtotal, Services/Expenses	2,806,096	2,969,829	5,775,925
57			
58 TOTAL OPERATING	23,371,690	23,976,205	47,347,895
59			
60 Senate Building			
61 Debt Service	3,502,500	6,085,000	9,587,500
62 Maintenance	1,087,810	2,224,795	3,312,605
63 Total, Senate Building	4,590,310	8,309,795	12,900,105
64			
65 GRAND TOTAL (Operating & Building)	27,962,000	32,286,000	60,248,000
66			
67 Total Appropriation	27,962,000	32,286,000	60,248,000
68 Difference: Approp Minus Total Spending	0	0	0

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

Plaintiffa,

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.

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

ORDER TO SHOW CAUSE

The above-entitled matter came before the Honorable John H. Guthmann, Judge of District Court, without a hearing, at the Ramsey County Courthouse, St. Paul, Minnesota, on plaintiffs' Complaint requesting declaratory, mandamus, and injunctive relief. Douglas A. Kelley, Esq., represents plaintiffs. Both defendants were served but neither have entered an appearance. The court, having considered the Complaint and any other documents in the record, issues the following to the parties above-named and their counsel:

ORDER TO SHOW CAUSE

WHEREAS, the Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives' Complaint Requesting declaratory, injunctive, and/or Mandamus relief is incorporated by reference;

WHEREAS, the facts alleged in the Complaint raise a concern that the controversy is not yet justiciable;

WHEREAS, it is not clear from the face of the Complaint that defendants are failing to perform “an act which the law specially enjoins as a duty resulting from an office, trust, or station” so as to entitle petitioner to issuance of a Writ of Mandamus, Minn. Stat. § 586.01 (2016);

WHEREAS, there may be a “plain, speedy, and adequate remedy in the ordinary course of law,” which precludes a mandamus remedy, *id.* § 586.02; and,

WHEREAS, a request for injunctive relief requires that the party seeking relief make a showing that supports issuance of an injunction per *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965):

NOW, THEREFORE:

1. The parties shall show cause at a court hearing that shall take place in Courtroom 1480 of the Ramsey County Courthouse on June 26, 2017 at 10:00 a.m., why the relief sought in paragraphs 35, 39, and 46 of the Complaint should or should not be so ordered.

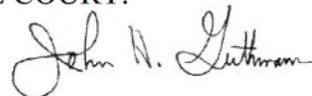
2. Additionally, on the same date and at the same time set forth in paragraph 1, the parties shall also show cause as to why the Complaint should or should not be dismissed because the alleged controversy is not justiciable as the controversy is not ripe.

3. The parties may file simultaneous briefs and affidavits supporting their positions no later than June 22, 2017 at 4:30 p.m.

4. The Ramsey County District Court, Civil Division, shall serve a copy of this Order upon the parties by personal service using the Ramsey County Sheriff and upon any counsel that has entered an appearance.

Dated: June 14, 2017

BY THE COURT:



Guthmann, John (Judge)
Jun 14 2017 2:47 PM

John H. Guthmann
Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

<p>The Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>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,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Court File No. 62-cv-17-3601 Chief Judge John H. Guthmann</p> <p style="text-align: center;">DEFENDANTS' NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS</p>
--	--

Defendants Governor Mark B. Dayton and Commissioner Myron Frans will move and hereby do move the Court for an Order for Judgment on the Pleadings pursuant to Minn. R. Civ.

P. 12.03 as follows:

1. Dismissing Count I of the Complaint with prejudice and entering judgment declaring the Governor's line-item vetoes, dated May 30, 2017, are constitutionally authorized and valid.
2. Dismissing Counts II and III of Plaintiffs' complaint with prejudice insofar as they seek an "allotment" from the vetoed appropriations.
3. To the extent Counts II and III seek funds only for critical, core functions, staying further proceedings pending appeal of the dismissal of Count I.
- 3A. Alternatively, if the Court concludes that Plaintiffs' claims in Counts II and III are justiciable and should not be stayed, establishing a process for determining the necessity for and cost of the critical, core functions of the Senate and House.

Please take notice that Defendants intend to make this motion at the court-ordered show-cause hearing in Courtroom 1480 of the Ramsey County Courthouse on June 26, 2017 at 10:00 a.m. This motion is based upon all of the files, records and proceedings herein, including the arguments of counsel.

Dated: June 22, 2017

BRIGGS AND MORGAN, P.A.

By: /s/ Sam Hanson

Sam Hanson (#41051)

Scott G. Knudson (#141987)

Scott M. Flaherty (#388354)

Emily M. Peterson (#0395218)

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

(612) 977-8400

Attorneys for Defendants

ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

/s/ Sam Hanson

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.

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

STIPULATION

The parties to this action, by and through their undersigned counsel, in an effort to assist the Court and streamline the issues for decision and appellate review, respectfully offer the following stipulation for the Court's consideration:

1. The parties believe that Count I of the Complaint is ripe for decision, given that the parties have reached an impasse in negotiations for a Second Special Session. The parties request that the Court decide the issues raised by Count I. If the Court believes it appropriate, based on its ruling on the declaratory relief requested in Count I, the parties request that the Court either grant or deny the request for injunction related to its ruling on Count I to further assure the appealability of its order.

2. If appropriate, the parties request that the Court also include in its decision a recital under Minn. R. Civ. P. 54.02 for the immediate entry of final judgment, in the form and substance of the following:

There is no just reason for the delay in entry of judgment on this Order, and pursuant to Minn. R. Civ. P. 54.02 the Administrator is directed to enter Judgment forthwith and without the stay provided for by Rule 129 of Minnesota General Rules of Practice. The issues decided in this order are central to the disputes and relationships between the parties, and the prompt and final resolution of any appellate issues by the Minnesota Supreme Court will be in the best interests of the parties to this action and State of Minnesota and will expedite the full and complete resolution of any disputes between the parties and will advance the just, inexpensive, and efficient resolution of this case in accordance with Minn. R. Civ. P. 1.

3. The parties request that the Court stay the remainder of this action, specifically Counts II and III, until all appellate review has been completed and the Mandate of the Appellate Courts has issued on Count I (the "Appeal Period"), or until further order of this Court.

4. The parties agree to jointly seek accelerated review by the Minnesota Supreme Court of the District Court's order or judgment.

5. In order to maintain the status quo pending appeal, the parties request that the Court enter a temporary injunction directing that, during the Appeal Period or until October 1, 2017, whichever first occurs (the "Injunction Period"), the Commissioner of Management and Budget shall take all steps necessary to provide continuing funding to the Senate and House not to exceed the fractional share of their fiscal year 2017 base general fund funding that corresponds with the Injunction Period. The parties agree that no bond or other security should be required for this temporary injunction.

6. If the Court issues the temporary injunction referred to in paragraph 5 above, Plaintiffs agree to pay for all of their obligations necessary to perform their official and constitutional powers and duties.

7. In order to further solidify the authority of the Commissioner to provide funding to the Senate in the amounts necessary for the Senate to pay rent due from the Senate to the Commissioner of Administration under the sublease of the Senate Office Building, the parties request that the Court issue an Order as follows:

(a) In June 2017, the Senate shall pay from its fiscal year 2017 appropriation the amount of \$683,954 to the Minnesota Department of Administration for the June 2017 rental for the Senate Office Building and debt service payments for the parking garage.

(b) The Senate shall pay the amount of \$669,332 beginning in July 2017, and monthly thereafter during the Injunction Period, to the Minnesota Department of Administration for rent for the Senate Office Building and debt service payments for the parking garage.

8. The parties agree that the Senate is authorized by Minn. Stat. § 16A.281 to use its carryforward funds to make payments for the Senate Office Building and parking garage not funded under the temporary injunction under Paragraph 5 above.

Dated: June 23, 2017

KELLEY, WOLTER & SCOTT, P.A.

By: *Douglas A. Kelley*
Douglas A. Kelley (#54525)
Centre Village Offices, Suite 2530
431 South Seventh Street
Minneapolis, MN 55415
(612) 371-9090

Attorneys for Plaintiffs

BRIGGS AND MORGAN, P.A.

By: *Sam Hanson*
Sam Hanson (#41051)
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Minneapolis, MN 55402
(612) 977-8400

Attorneys for Defendants

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
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,

Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING TEMPORARY
INJUNCTIVE RELIEF**

The above-captioned matter came before the Honorable John H. Guthmann, Chief Judge of the Second Judicial District on June 26, 2017 at the Ramsey County Courthouse, St. Paul, Minnesota. Douglas A. Kelley, Esq., represented plaintiffs. Sam L. Hanson, Esq., represented defendants Governor Mark B. Dayton and Myron Frans. This Order addresses only the parties' Stipulation for the entry of injunctive relief compelling the Commissioner of Management and Budget to allot continuing funding to the Minnesota Legislature. All remaining issues remain under advisement.

STATEMENT OF UNDISPUTED FACTS

1. Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives constitute the Ninetieth Minnesota Legislature. The Minnesota Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional

“session-only”, full-time staff. (Ludeman Aff. ¶¶ 3, 10.) The Minnesota House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional “session-only”, full-time staff. (Reinholdz Aff. ¶¶ 4, 13, 16.)

2. Elected legislators, through the two houses of the Minnesota Legislature, have the responsibility under the state constitution to pass all legislation, raise funds to support the operation of state government, and appropriate funds for the operation of state government. MINN. CONST. art IV.

3. During and between legislative sessions, elected legislators, with the assistance of their paid staff, are responsible for communicating with constituents, researching and crafting legislation, monitoring legislation introduced by other legislators, holding committee meetings, and publishing journals of meetings. (Ludeman Aff. ¶¶ 3-5; Reinholdz Aff. ¶¶ 5-8.)

4. Based on spending levels in effect through June 30, 2017, the Senate’s monthly operating expenses are approximately \$2,558,000. (Ludeman aff. ¶ 15.) The House’s monthly operating expenses are approximately \$2,700,000. (Reinholdz aff. ¶ 16.)

5. The Senate subleases the Minnesota Senate Building from the Commissioner of Administration for \$683,000 a month. (Ludeman aff. ¶ 13.) The Commissioner of Administration leases the building from the Department of Management and Budget, also known as Minnesota Management and Budget (“MMB”). The Commissioner of Administration must pay \$1,911,000 on November 14, 2017, and \$4,131,000 on May 14, 2018 to the MMB. (*Id.*) The Commissioner of Administration makes the required payments from the money received in monthly rent from the Senate. (*Id.*) MMB may

remove persons and property from the Senate Building if these payments are not made. (*Id.* ¶ 14.) Failure to make these payments could damage Minnesota’s credit rating. (Ludeman aff. ¶ 19.)

6. Mark B. Dayton is the duly elected Governor and Chief Executive Officer of the State of Minnesota. Governor Dayton heads the executive branch, which includes MMB.

7. Myron Frans is the Commissioner of 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 (2016). Defendant Frans is responsible for allotting appropriations to the Legislature for its expenditures. (Compl. ¶ 6.)

8. On May 26, 2017, in special session, the Minnesota Legislature completed passage of a comprehensive budget for fiscal years 2018 and 2019. (*See* Ludeman aff. ¶ 9.) The budget included nine appropriation bills and a tax bill. (*See id.*) After the bills were passed, the Legislature adjourned the 2017 special session *sine die* and the budget bills were presented to Governor Dayton. (*Id.*); *see* MINN. CONST. art IV, § 23.

9. The Omnibus State Government Appropriations Bill included funding for the Minnesota House and the Minnesota Senate for fiscal years 2018 and 2019. (*See* Reinholdz Aff., Ex. 1.) The appropriations were not itemized. Rather, the appropriation for each house for each fiscal year was stated in a single lump sum. (Hallstrom Aff., ¶ 4.) On May 30, 2017, Governor Dayton line-item vetoed the lump-sum appropriations for the Senate and House for each fiscal year. (*See* Reinholdz Aff., ¶ 11.)

10. To date, the Governor has not called a special session to seek passage of a “lights on” bill or a new bill that funds the Legislature during the next biennium.¹

11. Plaintiffs’ suit seeking declaratory, injunctive, and mandamus relief was filed on June 13, 2017. (Compl., Counts I-III.) On June 14, 2017, the court issued an Order to Show Cause, directing the parties to submit written briefs and to attend a hearing at 10:00 a.m. on June 26, 2017. In the meantime, defendants filed an answer and a motion for judgment on the pleadings.

12. On June 23, 2017, the parties filed a Stipulation requesting, *inter alia*, 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.

13. The parties June 23, 2017 Stipulation is adopted by the court and incorporated by reference herein.²

14. The court views the Stipulation as a petition by the parties to fund the Minnesota Legislature on a temporary basis because the Legislature is an independent branch of government that provides core governmental functions that must be performed in accordance with Minnesota’s Constitution. MINN. CONST. art IV.

¹ In *State ex rel. Sviggum v. Hanson*, the Court of Appeals noted that the Legislature could prevent the need for “another judicially mandated disbursement of public funds without an authorized appropriation” by establishing statutory standards or by creating an emergency fund. 732 N.W.2d 312, 323 (Minn. Ct. App. 2007). During the ten years since *Sviggum*, no such plan has been enacted into law.

² Not every agreement reached in the Stipulation is addressed in this Order. Several of the agreements reached by the parties apply to those portions of the litigation remaining under advisement. Thus, the fact that the court did not include or address every paragraph of the Stipulation in this Order should not be viewed as a decision by the court to reject those provisions.

15. Absent funding, Minnesota's legislative branch cannot perform all of the core functions envisioned by the Minnesota Constitution.

16. On three occasions since 2000, this court was asked to ensure the continued operation of state government after a budget funding its core functions was not enacted. In 2001 and 2005 this court issued orders providing for the continued performance of the core functions of the executive 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). In 2011, this court and a retired judge appointed by the Minnesota Supreme Court ordered the continued performance of the core functions of all three branches of government. *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). The validity of these orders has never been considered by a Minnesota appellate court. *See Limmer v. Swanson*, 806 N.W.2d 838, 841-42 (Minn. 2011) (Page, J., dissenting); *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. Ct. App. 2007).

CONCLUSIONS OF LAW

1. The court has jurisdiction over the instant litigation and venue in Ramsey County is proper. Minn. Stat. §§ 484.01; 542.01 (2016).

2. Plaintiffs have standing to bring the instant action because the injury to individual legislators caused by the inability to carry out their constitutional duties are “personal, particularized, concrete, and otherwise judicially cognizable.” *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 150 (Minn. 1997) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 (1997)). See generally *id.* at 146-50.

3. In addition to the parties’ Stipulation that Count I of the Complaint is ripe for decision, the court also finds that the issues presented to the court in Count I of the Complaint are ripe and require a ruling from the court. See *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc.*, 271 N.W.2d 445, 447-49 (Minn. 1978).

4. In their Stipulation, the parties “request that the Court” issue an injunction compelling the temporary funding of the Legislature. (Stipulation, June 23, 2017, ¶ 5.) 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, this court concludes that it is authorized to grant the relief requested by the parties.

5. When interpreting the Minnesota Constitution, “[t]he primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and the people in adopting the article in question.” *State v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928). Just as a statute must be construed as a whole, the constitution “must be taken by its four corners, and effect given to all its language, and the main purpose and object as thus made manifest effectuated.” *State v. Twin City Telephone Co.*, 104 Minn. 270, 285, 116 N.W. 835, 836 (1908).

6. According to the Minnesota Constitution: “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.” MINN. CONST. art I, § 1.

7. The separation of powers principle is imbedded in the Minnesota Constitution:

The 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.

Id. art. III.

8. The Minnesota Constitution prescribes a variety of core functions that are the responsibility of the three branches of government, and the elected officials within each branch, to perform. *Id.* art. IV-VI.

9. The Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” MINN. CONST. art XI, § 1. However, Article IV of the Minnesota Constitution also provides that the Legislative Branch has and must perform certain core functions.

10. If the Legislative Branch is not funded, it cannot carry out its core functions, which include those functions necessary to draft, debate, publish, vote on, and enact legislation.

11. Just as the Minnesota Constitution “implicitly places a limitation on the power of the legislature” so that it may not abridge the core functions of the Executive Branch, *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986), the failure to fund

the core functions of the Legislative Branch nullifies a branch of government, which in turn contravenes the Minnesota Constitution. *See In re Clerk of Court's Compensation for Lyon County*, 308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976) (if one branch of government could “effectively abolish” another, “separation of powers becomes a myth”).

12. While it may be argued that a literal reading of Article XI of the Minnesota Constitution prohibits the relief requested by the parties, it is the duty of the courts to interpret constitutional provisions that appear to be irreconcilable and attempt to reconcile and harmonize them. *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, 62-CV-11-5203, slip. op. at 6 (Minn. Dist. Ct. June 28, 2011). The continuing operation of the Minnesota Legislature is a constitutional right of Minnesota citizens.³ Therefore, “when the traditional processes of government have failed”, “the rigidity of Article XI” must temporarily yield in favor of the broader constitutional rights of Minnesota’s citizenry. *Id.*

13. In their Stipulation, the parties seek injunctive relief. The procedure for obtaining a temporary injunction is set forth in Rule 65 of the Minnesota Rules of Civil Procedure. The purpose of a temporary injunction is to preserve the rights of the parties pending determination of the litigation. *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214, 220 (Minn. Ct. App.), *rev. denied* (Minn. 2002). Here, the parties wish to insure continuing operation of the Minnesota Legislature

³ Before entering into the Stipulation, Governor Dayton noted, among other things, that he did not veto \$17 million in annual funding for the Legislative Coordinating Commission, thereby eliminating any constitutional concern about the Legislative branch being shut down. (Mem. in Resp. to Order to Show Cause and in Supp. of Def.s’ Motion for Judgment on the Pleadings, at 16-20.) However, the enacted appropriation does not fund any activity by elected legislators or their staffs.

past June 30, 2017 while they litigate whether Governor Dayton's line-item veto of legislative funding is valid.

14. Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Cherne Industrial, Inc., v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). In previous paragraphs, this court already expressed its conclusion that operation of the Legislature is a constitutional right of all Minnesota citizens. The failure to fund the core functions of the Legislative Branch nullifies a branch of government, contravenes the Minnesota Constitution, and causes irreparable harm to all Minnesota citizens, including the parties to this case.

15. Once the court finds irreparable harm, the court must consider five factors when determining the propriety of granting a motion for a temporary injunction. *E.g., Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). These factors have become known as the "Dahlberg Factors." *State by Ulland v. International Ass'n. of Entrepreneurs*, 527 N.W.2d 133, 136 (Minn. Ct. App.), *review denied*, (Minn. 1995). The applicant for injunctive relief has the burden of proving all five *Dahlberg* factors. *North Central Public Service Co. v. Village of Circle Pines*, 302 Minn. 53, 60, 224 N.W.2d 741, 746 (1974). "Injunctive relief should be awarded only in clear cases reasonably free from doubt." *Sunny Fresh Foods Inc. v. MicroFresh Foods Corp.*, 424 N.W.2d 309, 310 (Minn. Ct. App. 1988).

16. The first factor is the relationship of the parties. The parties are two co-equal branches of government that share a constitutional responsibility to fund the core functions

of government. The relationship of the parties favors injunctive relief so the Legislature may continue to perform its constitutional functions while litigating the instant dispute.

17. The second factor is the likelihood of success on the merits. If the applicant shows no likelihood of prevailing on the merits, the court cannot grant injunctive relief. *Metropolitan Sports Facilities Comm'n*, 638 N.W.2d at 226. Of the *Dahlberg* factors, the likelihood of succeeding on the merits is the “primary factor.” *Minneapolis Federation of Teachers, AFL-CIO Local 59 v. Minneapolis Public School Special District 1*, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994), *rev. denied* (Minn. Mar. 31, 1994). However, “if a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits.” *Metropolitan Sports Facilities Comm'n*, 638 N.W.2d at 226 (citation omitted). Here, both parties, through their Stipulation, apply for injunctive relief. One of them must necessarily prevail. The second factor favors issuance of an injunction.

18. The next *Dahlberg* factor examines the public policy implications if injunctive relief is granted. On three occasions during the past seventeen years, this court has provided for the temporary funding of core government operations during an impasse between the Legislative and Executive Branches of state government. In each case, the constitutional right of our citizenry to a functional government was preserved while the Legislative and Executive Branches successfully worked out their differences. This history demonstrates that the injunctive relief sought by the parties represents sound public policy. Moreover, the injunction does not impose funding at the fiscal 2018 and 2019 levels appropriated by the 2017 Legislature, which was vetoed by the Governor. By continuing

existing funding previously approved by both the Legislature and the Governor, the Judicial Branch is acting with an appropriate level of restraint as the litigation unfolds. *See generally Limmer v. Swanson*, 806 N.W.2d 838, 840-41 (Minn. 2011) (Anderson, J., concurring) (discussing the principle of judicial restraint in a separation of powers context).

19. *Dahlberg* also requires the court to examine the relative harm if relief is denied compared to the harm inflicted if relief is granted. Absent injunctive relief, the public would be irreparably harmed through the deprivation of a basic constitutional right—a fully functioning Legislative Branch. The state’s credit rating would also be at risk. Should funding be ordered at the fiscal-year 2017 levels requested by the parties, the court is aware of no negative financial impact on the state treasury.

20. Finally, the court must weigh any administrative burdens involved in judicial supervision and enforcement of an injunction. The court concludes enforcing an injunction in this case interposes no greater burden on the court than the enforcement of any court order. Little or no court supervision should be necessary.

21. Consideration of the *Dahlberg* factors strongly favors issuance of the injunctive relief requested by the parties in their Stipulation.

ORDER

1. The court issues a mandatory injunction requiring the Commissioner of Management and Budget to take all steps necessary to provide continuing funding to the Minnesota Senate and the Minnesota House of Representatives, not to exceed the fractional share of their fiscal year 2017 base general fund funding that corresponds to the period that

this injunction is in effect. In addition, plaintiffs shall pay for all of their obligations as necessary to continue performing their official and constitutional powers and duties.

2. Before midnight on June 30, 2017, the Minnesota Senate shall pay from its fiscal year 2017 appropriation the amount of \$683,954 to the Minnesota Department of Administration. This sum represents June 2017 rent for the Senate Office Building and debt service payments for the parking garage.

3. Beginning in July 2017, and monthly thereafter while this injunction is in effect, the Minnesota Senate shall pay the amount of \$669,332 to the Minnesota Department of Administration for rent for the Senate Office Building and debt service payments for the parking garage.

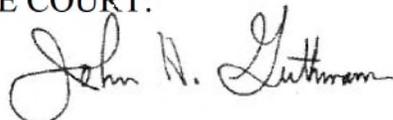
4. In accordance with the parties' Stipulation, and to the extent the funding is not included as part of the injunction set forth in paragraph 1 of this Order, the Senate is authorized by Minn. Stat. § 16A.281 to use its carryforward funds to make payments for the Senate Office Building and parking garage.

5. No bond or other security is required while this injunction is in effect.

6. This injunction shall remain in effect until the court issues its final decision and all appellate review has been completed or until October 1, 2017, whichever first occurs and subject to further order of this court.

Dated: June 26, 2017

BY THE COURT:



Guthmann, John (Judge)
Jun 26 2017 3:50 PM

John H. Guthmann
Chief Judge, Second Judicial District