

FILED

September 6, 2017

**OFFICE OF
APPELLATE COURTS**

**State of Minnesota
In Supreme Court**

A17-1142

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

Respondents,

v.

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

Appellants,

and

Association for Government Accountability,

Appellant-in-Intervenor.

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

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

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that the Association for Government Accountability (“AGA”) moves for leave to intervene as a defendant in the instant action under Rule 24.01 (intervention of right) and Rule 24.02 (permissive intervention) of the Minnesota Rules of Civil Procedure and seeks the relaxation of time limits for briefing and adjudication on the motion. The motion before this Court is made under Rule 127 of the Minnesota Rules of Civil Appellate Procedure.

Allowing the AGA to intervene will allow it to assert the defenses alleged in the AGA’s Amended-Answer, namely that the district court did not have subject matter jurisdiction to issue a decision in the instant matter in the first instance. The issues and arguments were not pursued by the parties to this action, nor otherwise addressed by this Court.

Meanwhile, this Court was informed by letter of the AGA’s filed motion in district court on August 25, 2017. The presiding district court judge has since informed counsel for the AGA—today—that it does not believe it has jurisdiction to rule on the pending motion to intervene since the State Supreme Court has a decision pending on the underlying merits of Claim I of the initial complaint. The AGA thus has no option but to file the motion in this Court and request an expedited decision as the time for the AGA to file an appeal expires on September 17, 2017.

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

Therefore, the AGA requests an expedited briefing and determination before September 17th as we had previously requested before the Honorable John H. Guthmann of the Ramsey County District Court.

ARGUMENT

There are essentially two issues that arise from the facts and law that neither of the parties have fully expressed, analyzed, or otherwise failed to accept their legitimacy. Issues of which cannot be waived *at any time*. Association for Government Accountability ("AGA") asserts lack of subject matter jurisdiction of the district court. The AGA filed a timely Notice of Intervention under Rule 24.01. This is notable as the AGA's position would have been helpful to the Appellants (Governor Mark Dayton and Commissioner Myron Frans) position who, like the Respondents, the Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives (the "Ninetieth Legislature"), filed a last-minute objection to the AGA's notice of intervention.

Both the Appellants and the Respondents failed to bring to this Court's attention critical legal arguments as demonstrated by the legal issues presented below which reveal the district court nor this Court *have subject matter jurisdiction*. Notably, the district court, *from the start of the underlying lawsuit* did not have subject matter jurisdiction. The lack of jurisdiction is based in part upon the existing factual posture wherein the legislature, by its own volition, ended the special session *sine die* in mid-session of the biennium Ninetieth Legislature and the improper use of Minnesota's Declaratory Judgment Act:

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

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

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

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

None of the parties revealed to the district court nor this Court of the uninhibited authority of the Governor and the Legislature to resolve policy differences that presently exist in which no judicial intervention is necessary. Instead, the Legislature unnecessarily adjourned the special session before the Governor exercised his line-item veto authority relating to passed bills. Both the Governor and the Legislature created their respective political conundrum wherein the Governor refuses to call another special session to resolve the issue, and, as stated, the Legislature adjourned before it could have exercised its authority to override the Governor's line-item vetoes.

Moreover, the ability to overturn those vetoes *remains intact* as the adjourned session is only the first year of the legislative biennium. Thus, for the Legislature to embroil the judiciary under the facts and circumstances of this case, when the court has no subject matter jurisdiction, is to open the doors to use the judiciary as a default process for line item vetoes the Legislature dislikes over hotly contested policy matters—an judicial embroilment that is unconscionable under the Minnesota Constitution.

Furthermore, neither the district court nor this Court can exercise subject

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

In addition, there was no common law right at the time of the enactment of the Minnesota Constitution that allowed for the suing of the government, by any entity, person, or another branch of government. The Declaratory Judgment Act does not provide for the process or procedure. No subject matter jurisdiction exists for the district court nor the Supreme Court. The petition for quo warranto is the only process for which the district court would have proper subject matter jurisdiction. In short, because the Ninetieth Legislature failed to engage the proper procedure by a petition for quo warranto, the district court did not have subject matter jurisdiction in the first instance to adjudicate the claims of the Respondents in the first instance.

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

Dated: September 6, 2017

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