

STATE OF MINNESOTA
IN SUPREME COURT
A17-1142

FILED

August 1, 2017

**OFFICE OF
APPELLATE COURTS**

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.

**RESPONDENTS'
STATEMENT OF THE CASE**

1. Court or agency of case origination and name of judge or hearing officer who presided.

Respondents are satisfied with Appellants' statement of the case.

2. Jurisdictional statement.

Respondents are satisfied with Appellants' statement of the case with one addition: the parties filed a Joint Petition for Accelerated Review by the Supreme Court on July 25, 2017.

3. State type of litigation and designate any statutes at issue.

This appeal is from a declaratory judgment brought by the Minnesota Senate and Minnesota House of Representatives against Governor Dayton and Commissioner Frans,

challenging the Governor's line-item vetoes of all appropriations to the Senate and House for fiscal years 2018 and 2019 under Minn. Const. art. III, § 1, and art. IV, § 23.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

The Legislature and Governor failed to agree on a budget before the 2017 regular session ended on May 22, 2017. The Legislature adjourned to February 20, 2018 as required by Minn. Const. art. III, § 12. Shortly before the regular session ended, the Legislature and Governor reached a tentative agreement on the state budget for fiscal years 2018 and 2019. The Governor and legislative leaders signed an agreement calling for a special session to finalize the budget. This agreement restricted the scope of the special session to certain outstanding budget bills and the tax bill. The agreement also required that the Legislature adjourn the special session *sine die* no later than 7:00 a.m. on May 24, 2017. By May 26, 2017, the Legislature had passed a comprehensive and balanced budget for fiscal years 2018 and 2019. The Legislature immediately adjourned *sine die* and presented the budget bills and tax bill to Governor Dayton. In one of the budget bills, the Omnibus State Government Appropriations bill, the Legislature included a provision that would have denied appropriations to the Department of Revenue if the Governor vetoed the Omnibus Tax bill.

On May 30, 2017, Governor Dayton signed all the budget bills and the tax bill into law despite any reservations he had. However, the Governor vetoed two items of appropriation in the Omnibus State Government Appropriations bill, the entire operating budget for the Senate and House for the 2018 and 2019 biennium. These vetoed

appropriations matched the amounts Governor Dayton had recommended to the Legislature in January 2017 and again in March 2017. In his constitutionally-mandated veto letter, the Governor said he vetoed the appropriations to the Senate and House to bring them back to the table to renegotiate five public policy items contained in the tax bill and two other bills already enacted into law. The Governor explicitly conditioned any call back into special session upon an agreement that the Legislature “remove” these five public policy items.

Respondents brought an action in district court seeking a declaration that the vetoes were unconstitutional, null, and void. The district court agreed and granted the requested declaration. Specifically, the Legislature claimed the vetoes were unconstitutional in two significant ways. First, the Legislature claimed the Governor’s vetoes violate the Separation of Powers Clause by effectively abolishing the Legislature after it adjourned *sine die*. Minn. Const. art. III, § 1. The district court agreed. Appellants claimed the vetoes did not effectively abolish the Legislature because it could seek emergency funding from the judiciary. The court rejected this argument. Appellants also claimed this action presented a non-justiciable political question. The court rejected this argument as well.

Second, the Legislature claimed the Governor exceeded his limited line-item veto authority because he did not “object to” the appropriations he vetoed as required by Minn. Const. art. IV, § 23. The district court agreed. The court concluded the Governor improperly used his line-item veto authority to coerce the Legislature into repealing or modifying unrelated policy legislation. In other terms, as the court stated, the Governor used his constitutional power to accomplish an unconstitutional result.

In their Statement of the Case, Appellants make two assertions the Legislature would like to clarify for the Court. First, Appellants assert the Legislature “attempted to suppress the Governor’s constitutional veto authority” by presenting him with a “Hobson’s choice:” sign a bill containing public policy provisions he disliked, or veto the bill which would effectively deny appropriations to the Department of Revenue. The district court rejected this argument. If Governor Dayton wanted to “renegotiate” public policy provisions in the bills presented to him, other options were available. For example, he could have vetoed the bill or bills, called the Legislature back into special session, and proceeded in accordance with the Minnesota Constitution. Instead, as the district court opined, the Governor chose to use his line-item veto power to effectively abolish the Legislature unless it agrees to repeal or modify public policy legislation already enacted into law.

Second, Appellants assert the courts cannot examine the Governor’s motives underlying his vetoes because the Governor’s line-item veto power is unlimited and unqualified. In the Governor’s view, he can line-item veto any and all appropriations to the Legislature or Judiciary for whatever reason he sees fit. The court rejected this argument. The court only examined the Governor’s motives to determine whether he used his line-item veto power to accomplish an unconstitutional result. Based on the Governor’s undisputed reasoning for the vetoes, the court concluded the Governor clearly intended to force the Legislature to repeal or modify public policy items he already signed into law. The court also found that the Governor never objected to the amounts of the vetoed appropriations or suggested any motive specific to the appropriations. The court’s ruling does not, however, prevent the Governor from line-item vetoing appropriations to the

Legislature under other circumstances. The court opined that the Governor could line-item veto appropriations to the Legislature if he actually objected to the manner in which it funded itself. Under the limited and unique circumstances of this case, the court concluded the Governor's line-item vetoes violated the Separation of Powers Clause.

5. List specific issues proposed to be raised on appeal.

Did the district court err in declaring Governor Dayton's line-item vetoes of all appropriations to the Senate and House for fiscal years 2018 and 2019 violated the Separation of Powers Clause of the Minnesota Constitution and were therefore unconstitutional, null, and void?

6. Related appeals.

Respondents are satisfied with Appellants' statement of the case.

7. Contents of record.

Respondents are satisfied with Appellants' statement of the case.

8. Is oral argument requested?

Respondents are satisfied with Appellants' statement of the case.

9. Identify the type of brief to be filed.

Respondents are satisfied with Appellants' statement of the case with one addition: the parties filed a Joint Motion for Expedited Briefing and Oral Argument on July 25, 2017.

10. Names, addresses, zip codes and telephone numbers of attorneys for Appellants and Respondents.

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