Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

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.

ORDER GRANTING DECLARATORY JUDGMENT

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

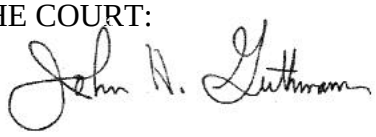
4. Per the parties' Stipulation, and with the exception of the injunction already in place, any further action in connection with Counts II and III of the Complaint is stayed until all appellate review has been completed and the mandate of the appellate courts has issued, or until further Order of this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



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John H. Guthmann
Chief Judge, Second Judicial District

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

> 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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

> 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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

> 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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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 Choice[2] 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).

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

(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,

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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. <u>Count I is Justiciable Because the Governor Effectively Abolished the Legislature</u>.

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).

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.)

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.)

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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.

Filed in Second Judicial District Court
7/19/2017 11:11 AM
Ramsey County, MN

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