No. A17-1142

State of Minnesota

In Supreme Court

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

Respondents,

and

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.

BRIEF OF RESPONDENTS

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Statement of Legal Issue

Did the district court err in declaring that 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?

No. The district court correctly concluded Governor Dayton's line-item vetoes violated the Separation of Powers Clause by effectively abolishing the Legislature for the unconstitutional purpose of coercing the Legislature into repealing unrelated policy legislation. The district court properly declared the Governor's line-item vetoes unconstitutional, null, and void.

Authorities:

MINN. CONST. art. III, § 1

MINN. CONST. art. IV, § 23

State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777 (Minn. 1986)

Inter Faculty Organization v. Carlson, 478 N.W.2d 192 (Minn. 1991)

Starkweather v. Blair, 71 N.W.2d 869 (Minn. 1955)

Baker v. Carr, 369 U.S. 186 (1962)

Statement of the Case

On May 30, 2017, the Governor signed the tax bill into law, although he objected to three provisions in the bill. The Governor also signed the Education and Public Safety bills into law, although he objected to a provision in each of those bills. On the same day, the Governor signed the Omnibus State Government Appropriations bill into law. He line-item vetoed the entire appropriations to the Senate and House of Representatives for the 2018–2019 fiscal biennium even though he did not object to the appropriations. The Governor acknowledged in writing that he vetoed their appropriations to coerce the Legislature into agreeing to change portions of the other bills he had signed into law. His actual words were:

> 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.

Add. 41.[1] The Governor understood this would put the Legislature out of business for the next two years unless it bent to his will. Faced with its imminent elimination by the Executive Branch, the Legislature has been forced to come to the Judiciary to protect its indisputable right and obligation to perform its constitutionally-mandated duties.

The district court fully analyzed the facts, made proper conclusions of law, and declared the following:

a. The Omnibus State Government Appropriations bill became law when Governor Dayton signed it on May 30, 2017.

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[1] Appellants' Addendum will be referenced as "Add. xx." Respondents' Addendum will be referenced as "R.Add. xx." Respondents will reference documents in the Record as "ROA" followed by the document's identification number from the district court's Register of Actions (Doc ID#), and a pincite to the document's internal page number. Thus, "ROA 25 ¶9" refers to paragraph 9 of the Ludeman Affidavit.

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.

Add. 3 at Order 2.

Statement of Facts

The material facts in this case are undisputed. *Add. 1*; *Tr. 52:23–53:8*; *Apps.' Br. 10.* The Legislature is compelled to restate the facts because Appellants' version is incomplete, misstates material facts, lacks sufficient citations to the Record, and introduces facts not in the Record.

The Legislature and Governor failed to agree on a budget before the 2017 regular session ended on May 22, 2017. *ROA 25* ¶*9*. The Legislature adjourned to February 20, 2018. *ROA 25* ¶*9*. Shortly before the regular session ended, the Legislature and Governor reached a tentative agreement on the state budget for fiscal years 2018 and 2019. R.*Add. 3 ("Special Session Agreement")*. The Governor and legislative leaders signed an agreement calling for a special session to pass legislation to enact the remainder of the budget. R.*Add. 3*. This agreement restricted the scope of the special session to certain outstanding budget bills and the tax bill. R.*Add. 3*. The Special Session Agreement also required that the Legislature adjourn the special session *sine die* no later than 7:00 a.m. on May 24, 2017. R.*Add. 3*. The special session began at 12:01 a.m. on May 23, 2017. R.*Add. 3*.

By May 26, 2017, the Legislature had passed a comprehensive and balanced budget for fiscal years 2018 and 2019. *Add. 60* ¶*8*; *ROA 25* ¶*9*. As required by the Special Session Agreement with the Governor, the Legislature immediately adjourned *sine die* and presented the budget bills and tax bill to Governor Dayton.[2] *Add. 60* ¶*8*; *ROA 25* ¶*9*. In the Omnibus State Government Appropriations bill, the Legislature included a provision that made appropriations to the Department of Revenue contingent on the Omnibus Tax bill taking effect.[3] *Add. 2* ¶*3*; *Add. 41*.

On May 30, 2017, Governor Dayton signed all the budget bills and the tax bill into law despite any reservations he had regarding the bills' provisions or content. *Add. 60* ¶*8*; *Add. 2* ¶*3*; *ROA 25* ¶*9*.[4] In doing so, however, the Governor line-item vetoed four items of appropriation in the Omnibus State Government Appropriations bill: the entire operating budget for the Senate and House for the 2018–2019 fiscal biennium. *Add. 2* ¶*4*; *ROA 25* ¶*10*; *ROA 26* ¶*11*. The vetoed appropriations were identical to the amounts Governor Dayton

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[2] Although the parties agreed the Legislature would adjourn the special session after roughly one day, it took the Legislature almost three days to pass the approximately $46 billion budget for the 2018–2019 fiscal biennium. *Add. 2* ¶*8*; R.*Add. 3*; *ROA 25* ¶*9*. Despite the Governor's new assertions that the Special Session Agreement was breached, the Record does not include any complaint or objection by the Governor to the extra time, nor any suggestion the Governor treated the agreement as inoperative.

[3] The district court mistakenly found that this provision was in the tax bill. *Add. 2* ¶*3*. The provision is instead in the Omnibus State Government Appropriations bill. *Add. 43–44*.

[4] The district court mistakenly found that the Governor allowed the tax bill to become law without his signature. *Add. 2* ¶*3 (citing Add. 43)*. Apparently, the district court relied on the Governor's statement in his veto message that he would "allow the tax bill to become law without [his] signature." *Add. 43*. Instead, the Governor signed the tax bill into law. *ROA 26* ¶*9*; *Apps.' Br. 5 n.3*.

recommended in his budget proposal to the Legislature in January 2017 and again in March 2017. *Add. 1 ¶2*; *ROA 26 ¶11, Ex. 3 at 11, 14.*

In his constitutionally-mandated veto letter, the Governor admitted he vetoed the appropriations to the Senate and House to force the Legislature back to the table to renegotiate five tax and policy items contained in the tax bill and two other bills already enacted into law. *Add. 2 ¶4*; *Add. 41–45.* The Governor explicitly conditioned his sole authority to call a special session upon an agreement that the Legislature "remove" these five policy and tax provisions he had just signed into law. *Add. 2 ¶4*; *Add. 43.* None of these provisions contained an item of appropriation. *Add. 2 ¶4*; *Add. 43–45.* The district court found that the Governor's veto message "expressed no objection to the level of funding the Legislature appropriated to fund the Legislative branch." *Add. 2 ¶6*; *Add. 41.* The district court also found that the Governor has never suggested he vetoed the appropriations to the Legislature for any reason specifically related to those appropriations. *Add. 2 ¶7*; *Add. 43.*

The Governor's line-item vetoes would have denied funding necessary for the Legislature to perform its core functions starting on July 1, 2017, but for the parties' stipulations and the district court's June 26 and July 31, 2017 Orders requiring emergency temporary funding. *Add. 3 ¶ 10*; *Add. 58*; *ROA 27*; *ROA 41.* The Legislature cannot attempt to override the Governor's line-item vetoes because it is not in session. *Add. 2 ¶8 (citing MINN. CONST. art. IV, § 23).* Only the Governor may call a special session and, true to his threat in the veto message, he has refused to do so. *Add. 3 ¶9 (citing MINN. CONST. art. IV, § 12)*; *Add. 61 ¶10.* The parties are at an impasse. *Tr. 5:15–6:2, 32:13–17, 33:11–24, 34:25–35:16, 50:21–51:1.*

Appellants allege that the district court's Findings 7 and 8 misstate the facts. *Apps.' Br. 6–8.* These allegations are incorrect and contrary to the Record. Finding 7 of the district court's Order states: "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." *Add. 2* ¶*7.* Appellants claim the district court misstated the facts underlying this finding. *Apps.' Br. 6–7.* Appellants cite the Governor's veto message in support of their claim. *See Add. 41–45.* The district court squarely rejected this assertion. *Add. 19–22.* The Governor's veto message is explicitly clear. He line-item vetoed the appropriations to the Legislature to coerce the Legislature to repeal unrelated policy legislation the Governor disliked but signed nonetheless. *Add. 43–45.* The district court found this was in no way specific to the appropriations. *Add. 2* ¶*7.* The district court's finding is supported in the Record.

Appellants challenge Finding 8 of the district court's Order, claiming the Legislature "chose" to adjourn *sine die* after presenting the budget bills and tax bill to the Governor.[5] *Apps.' Br. 6 (citing Add. 2–3).* Appellants' claim is misleading. The district court found that:

> [The Legislature] 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.*** Therefore, the Legislature negotiated away its constitutional right to meet in session to consider overriding vetoes or line-item vetoes.

Add. 2–3 ¶*8 (emphasis added)*; R.*Add. 3.* In other words, the Legislature *chose* to enter into an agreement which *required* that it adjourn after passing the outstanding bills. As the district court

[5] Appellants do not claim the district court erred in making Finding 8.

found, the Legislature adjourned *sine die* immediately after passing the outstanding bills. *Add. 60 ¶8*. This finding is fully supported by the Record. *See ROA 25 ¶9*.

Appellants make three additional misleading assertions regarding Finding 8. First, Appellants assert the Legislature violated the Special Session Agreement because it did not adjourn by 7:00 a.m. on May 24, 2017. *Apps.' Br. 7–8*. Second, Appellants assert the "Legislature was . . . not bound to adjourn *sine die* after passage of the bills, but chose to do so for its own political purposes." *Apps.' Br. 8*. Appellants provide no citation to the Record for either claim. Both claims are contrary to the district court's findings and the Record. The district court found that the Legislature agreed to adjourn after passing the outstanding budget bills and tax bill, and that is precisely what the Legislature did. *Add. 2 ¶8*; *Add. 60 ¶8*.

Third, Appellants claim the budget bills and tax bill presented to the Governor contained "numerous policy matters that were not listed in this so-called agreement." *Apps.' Br. 7 (citing Add. 41 (Governor's veto message))*. This assertion is misleading at best. The Special Session Agreement confined the special session to certain outstanding budget bills and the tax bill, and prohibited the Legislature from voting on or passing any other bills. *R.Add. 3*. In his veto message, the Governor expressed "strong disagreements with certain provisions in every one of [the] bills [presented to him]." *Add. 43*. All of the provisions he disagreed with were contained in bills specifically listed in the Special Session Agreement. *See R.Add. 3*. Furthermore, there is nothing in the Record showing the Legislature voted on or passed any bills beyond the confines of the Special Session Agreement. Each of these challenges to the district court's findings should be rejected.

Summary of Argument

The Minnesota Constitution prohibits the Governor from abolishing another branch of government. MINN. CONST. art. III, § 1. Governor Dayton effectively abolished the Legislature with his line-item veto power by starving it of funding necessary to perform its constitutionally-mandated core functions. *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Both history and Minnesota precedent recognize the line-item veto power is a limited exception to the Legislature's authority that must be "narrowly construed to prevent an unwarranted usurpation by the executive of powers granted the legislature in the first instance." *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 194 (Minn. 1991); *Johnson v. Carlson*, 507 N.W.2d 232, 235 (Minn. 1993). The Governor exceeded his limited line-item veto power by using it to abolish the Legislature to coerce the Legislature into repealing unrelated policy legislation he already signed into law. *Starkweather v. Blair*, 71 N.W.2d 869, 876 (Minn. 1955) (one branch of government "may not use a constitutional power to accomplish an unconstitutional result."). Governor Dayton's veto message is explicit in this purpose. *Add. 41–45.*

The Governor's veto message also demonstrates that his line-item vetoes fail the express constitutional requirement that he actually "object to" the items of appropriation he purports to veto. MINN. CONST. art. IV, § 23. In fact, the vetoed appropriations are identical to amounts the Governor proposed to the Legislature. *Add. 1* ¶2; *ROA 26* ¶*11*. As the district court found, the Governor has never expressed that he vetoed the appropriations for any reason related to the appropriations. His veto message makes clear that he disagreed with unrelated policy provisions he signed into law, not the appropriations to the Legislature.

Governor Dayton could have used his general veto to strike the policy legislation he disagreed with. Instead, he used his limited line-item veto authority in an impermissible manner to accomplish an unconstitutional result.

The Governor alleges his line-item veto power is unlimited and unqualified so long as he applies it to an item of appropriation. *Apps.' Br. 11.* He believes he can exercise his line-item veto power to coerce the coordinate branches of government into repealing policy legislation and reversing decisions he dislikes. *Add. 18*; *Tr. 41:20–45:10.* The Governor's expansive view of the limited line-item veto authority contravenes the constitution and our democratic system of government. Contrary to the Governor's argument, the political question doctrine cannot shield his unconstitutional actions from judicial review. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194–95 (2012). For the following reasons, Respondents respectfully request that this Court affirm the district court's decision and hold the Governor's line-item vetoes unconstitutional, null, and void.

Argument

I. Standard of Review

Appellants seek review of the district court's Order granting Respondents' request for declaratory judgment. When reviewing a declaratory judgment, appellate courts apply the clearly erroneous standard to factual findings, and review the district court's determination of legal questions de novo. *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007).

II. The Governor's line-item vetoes violate the Separation of Powers Clause of the Minnesota Constitution.

"The separation of powers doctrine, as set out in the constitutions of both the United States and Minnesota has roots deep in the history of Anglo-American political philosophy."

Wulff v. Tax Court of Appeals, 288 N.W.2d 221, 222 (Minn. 1979) (footnotes omitted). It is "rooted in the philosophies of Locke and Montesquieu," and "has foundations that have been traced to the ancient Greek and Roman theories of mixed government." Jim Rossi, *Institutional Design and the Lingering Legacy of Antifederalist Separation of Powers Ideals in the States*, 52 VAND. L. REV. 1167, 1174–75 (1999) (footnotes omitted) (discussing the evolution of separation of powers across the United States); *see also* THE FEDERALIST NO. 51 (James Madison), in THE FEDERALIST PAPERS at 322 (C. Rossiter ed., 1961) (discussing the separation of powers between the executive and legislative branches). "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) (citing *Wulff*, 288 N.W.2d at 222–23).

Minnesota's Separation of Powers Clause is found in Article III of the Minnesota Constitution, which provides:

> 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.

MINN. CONST. art. III, § 1.

Governor Dayton contends that his power to veto items of appropriation is unlimited and unqualified, including the power to eliminate all funding to the Legislature and Judiciary. *Add. 18*; *Apps.' Br. 11*; *Tr. 41:20–45:10*. The Governor's expansive view of the line-item veto authority runs afoul of the Minnesota Constitution, and stands contrary to time-honored practice. As the district court concluded, the Separation of Powers Clause prohibits the

Governor from using his limited line-item veto power to abolish the Legislature for the unconstitutional purpose of repealing unrelated policy legislation he already signed into law. *Add. 22.* The district court properly concluded that, under the "limited and unique" circumstances of this case, the Governor's line-item vetoes exceeded the limits placed upon his line-item veto power. *Add. 22.*

A. The history of the line-item veto and the constitutional roles of the Legislature and Governor in the budget process.

The historical background of the Governor's line-item veto power delineates the power's constitutional boundaries, and shows how Governor Dayton exceeded those boundaries. *Add. 8–10.* At present, the Governor's only formal role in the budget process is limited to approving or vetoing legislation. *Brayton v. Pawlenty*, 781 N.W.2d 357, 365 (Minn. 2010); MINN. CONST. art. IV, § 23. Historically, the Governor had a more limited role in the budget process.

Under the Minnesota Constitution of 1857, the Governor possessed no authority to line-item veto items of appropriation. Joel Michael, Minnesota House of Representatives Research Department, *History of the Line Item Veto in Minnesota* 2 (Sept. 2016). In fact, no state's constitution conferred line-item veto power on its governor at that time. Roger H. Wells, *The Item Veto and State Budget Reform*, 18 AM. POL. SCI. REV. 782, 783 (1924) (included at R.*Add. 14 & 15*); *see also* Richard Briffault, *The Item Veto in State Courts*, 66 TEMP. L. REV. 1171, 1176–77 (1993) (explaining the adoption and evolution of the line-item veto power in the states). The line-item veto was originally conceived for two reasons:

> In the first place, the ordinary veto had proved inadequate when applied to appropriation bills. Since such measures had to be considered as a whole, improper expenditures could not be separated from those which were necessary, nor was it usually feasible to negative an entire appropriation act because of a few objectionable items. Secondly, the item veto was introduced as part of a plan to adapt English budget principles to American conditions in order to secure greater harmony between the executive and the legislature.

Wells, *supra* at 782 (included at R.*Add. 14*).

"States first began to amend their constitutions to provide for an item veto of appropriation bills in the immediate aftermath of the Civil War." Briffault, *supra* at 1177.[6] The line-item veto power was intended as a tool to control "logrolling,"[7] reduce state spending, and balance state budgets. *Id.* at 1177–80. In 1876, Minnesotans ratified a constitutional amendment providing the Governor with the line-item veto power:

> If any bill presented to the governor contain[s] several items of appropriation of money, he may object to one or more of such items, while approving of the other portion of the bill. In such case, he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the appropriation so objected to shall not take effect.

MINN. LAWS 1876, ch. 1, § 1.

By the early twentieth century, the line-item veto proved insufficient to manage the increasing costs of state government. Briffault, *supra* at 1180–81. This led to a "budget reform movement which swept the country and led to the enactment of budgetary legislation in forty-seven states." Wells, *supra* at 786 (included at R.*Add. 18*). The modern "executive budget" was

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[6] Georgia was the first state to adopt the line-item veto power in 1865 followed by Texas in 1866. Wells, *supra* at 783 (included at R.*Add. 15*).

[7] Logrolling is "the practice of adding together in a single bill provisions supported by various legislators in order to create a legislative majority." Briffault, *supra* at 1177.

born whereby the governor became "responsible for submitting a budget to the legislature, and for carrying out budgetary goals once the budget is adopted." Briffault, *supra* at 1180. Minnesota enacted such a budget reform law in 1913, which created the biennial budget system we have today. MINN. LAWS 1913, ch. 140; *see generally* Peter Wattson, Minnesota State Senate Counsel, *Power of the Purse in Minnesota* 8 (July 17, 2007) (detailing the history of the power of the purse since Magna Carta). Under the current system, the line-item veto "makes it more difficult for the legislature to depart from the governor's spending plan." Briffault, *supra* at 1180.

This Court recently summarized the Governor's limited role in the budget creation process as it stands today:

> The Legislature has the primary responsibility to establish the spending priorities for the state through the enactment of appropriation laws. MINN. CONST. art. IV, § 22; *id.* art. XI, § 1. ***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 or reject. But the only formal budgetary authority granted the Governor by the constitution is to approve or veto bills passed by the Legislature. *See* MINN. CONST. art. IV, § 23. 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. *Id.* 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. *Id.*

Brayton, 781 N.W.2d at 365 (emphasis added). If this process fails to produce a balanced budget within the regular session, "the Governor has the authority to call the Legislature into special session." *Id.* (citing MINN. CONST. art. IV, § 12).

This historical context demonstrates that the line-item veto was intended to function only as a negative check on legislative spending, not as a creative tool to help the Governor

achieve policy goals unrelated to the budget. This Court's prior analysis of the line-item veto power confirms the power's constitutional limitations. *See Inter Faculty Organization v. Carlson*, 478 N.W.2d 192 (Minn. 1991) (invalidating line-item veto of portion of larger appropriation, and articulating the definition of an "item of appropriation"); *see also Johnson v. Carlson*, 507 N.W.2d 232 (Minn. 1993) (upholding line-item veto of identifiable item of appropriation).

Prior to this matter, there have only been five court cases challenging the Governor's use of his line-item veto power. Michael, *supra* at 18–23. Three were decided on the merits. Two were reviewed by appellate courts. *Johnson v. Carlson*, 507 N.W.2d 232; *Inter Faculty Organization*, 478 N.W.2d 192.[8] The issue in both *Inter Faculty Organization* and *Johnson v. Carlson* was whether the Governor applied the line-item veto to an actual item of appropriation. Neither case involved a violation of the separation-of-powers doctrine at issue here. Even so, the interpretation of the line-item veto power in those cases offers helpful guidance to this dispute.

In *Inter Faculty Organization*, this Court made two observations regarding the line-item veto power. "First, the power is located in Article 4, the Legislative Department Article, demonstrating that the authority is not an executive function in the traditional or affirmative sense[.]" 478 N.W.2d at 194. The power is therefore an exception to the Legislature's authority. *Id.* "As an exception, the power must be narrowly construed to prevent an unwarranted

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[8] The third case is *Kahn v. Carlson*, Ramsey Cnty. No. C8-95-10131 (Minn. Dist. Ct. Jan. 26, 1996) (Monahan, J.) (included at R.*Add. 4*). Like *Inter Faculty Organization* and *Johnson v. Carlson*, the issue in *Kahn v. Carlson* was whether the vetoed item was an item of appropriation. The district court invalidated the line-item veto, concluding the vetoed provision was not an item of appropriation. C8-95-10131 at *9–10 (included at R.*Add. 12–13*). The Governor did not appeal.

usurpation by the executive of powers granted the legislature in the first instance." *Id.*; *accord Brayton*, 781 N.W.2d at 366; *Johnson v. Carlson*, 507 N.W.2d at 235. "Second, the language of the provision itself limits the authority to the veto of 'items of appropriations,' not of a part or parts of an item." *Inter Faculty Organization*, 478 N.W.2d at 194. The line-item veto power is therefore "a negative authority, not a creative one." *Id.* Accordingly, the Governor may only use the line-item veto power to "strike, not to add to or even to modify the legislative strategy." *Id.* The district court understood this limitation, concluding that the Governor may not use the line-item veto to strike policy legislation. *Add. 11.*

The Minnesota Constitution provides the Governor with general veto power to strike policy legislation. MINN. CONST. art. IV, § 23. Governor Dayton could have exercised his general veto power to return the bills containing the policy provisions he disliked, but he did not. Instead, the Governor signed those bills into law and exercised his line-item veto on an unrelated bill effectively abolishing the Legislature for the stated purpose of coercing the Legislature into repealing the very same policy provisions he had just signed into law. The Governor employed his line-item veto power to accomplish indirectly what he could not do directly. This violates the Separation of Powers Clause of the Minnesota Constitution. Therefore, the district court properly concluded the Governor exercised his line-item veto power in an impermissible manner to accomplish an unconstitutional result.

Appellants rely on *State ex rel. Greive v. Martin*, 385 P.2d 846 (Wash. 1963), for the proposition that the Governor may line-item veto any item of appropriation without exception. *Apps.' Br. 13–14.* Appellants' reliance on *Greive* is misplaced for several reasons. First and most importantly, the governor in *Greive* did not veto the appropriations to the actual

legislative branch. 385 P.2d at 849. Rather, he vetoed the appropriations to the legislative council. *Id.* The Washington legislative council is not a constitutional office.[9] *Id.* at 848. Thus, the governor's elimination of the legislative council's funding raised no separation-of-powers concerns.[10] *Id.* at 848. The inverse occurred in this case. Here, Governor Dayton line-item vetoed the entire appropriations to the Legislature, but did not veto the appropriations to Minnesota's legislative council. Unlike *Greive*, Governor Dayton eliminated the appropriations for a constitutional body. This distinction alone renders *Greive* inapplicable to the facts of this case.

Greive is further distinguishable due to significant differences between the Minnesota and Washington Constitutions. The Washington Constitution provides its governor with expansive veto authority far beyond that conferred on Minnesota governors. *See* Briffault, *supra* at 1175–76, 1176 n.15; WASH. CONST. art. III, § 12.[11] The Washington governor "enjoys the power of partial veto with respect to all legislation." Briffault, *supra* at 1175–76. In Minnesota, as in the overwhelming majority of states, the line-item veto power is limited strictly to items of appropriation. *Id.* at 1178–79. Washington's constitution also contains no separation-of-powers clause. Instead, Washington follows the common law doctrine of separation of

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[9] Minnesota's Legislative Coordinating Commission is equivalent to Washington's legislative council. *See* MINN. STAT. § 3.303. Neither are constitutional bodies.

[10] In *Greive*, the legislature argued the elimination of the legislative council violated the separation-of-powers doctrine, which the court flatly rejected because the council was not a constitutional body. 385 P.2d at 129–130.

[11] *See* Briffault, *supra* at 1173 n.6, 1176 n.15 (discussing Washington's "section veto" power and litigation over that power after *Greive* was decided).

powers. *See, e.g., Cornelius v. Washington Dep't of Ecology*, 344 P.3d 199, 206 (Wash. 2015) *In re Estate of Hambleton*, 335 P.3d 398, 406 (Wash. 2014). The court in *Greive* upheld the veto on grounds the governor had express power to veto any legislation, and that he strictly complied with the constitutional veto requirements. *Id.* at 850, 853. Governor Dayton enjoys no such expansive power. Given the significant differences between the facts of the cases and the variance between the Washington and Minnesota Constitutions, *Greive* is wholly inapplicable to this case.

B. The Governor violated the Separation of Powers Clause by using the line-item veto power to abolish another branch of government.

This Court has "long recognized that where the constitution commits a matter to one branch of government, the constitution prohibits the other branches from invading that sphere or interfering with the coordinate branch's exercise of its authority." *In re Civil Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007) (citing *Bloom v. Am. Exp. Co.*, 23 N.W.2d 570, 575 (Minn. 1946) ("A constitutional grant of power to one of the three departments of government . . . is a denial to the others."); *State ex rel. Decker v. Montague*, 262 N.W. 684, 689 (Minn. 1935) ("The constitutional separation of authority (MINN. CONST. art. 3, § 1) forbids . . . interference with the exercise of the powers which that instrument places" in the other branches of government)); *accord State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (Minn. 1930) ("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."); *In re Application of Senate*, 10 Minn. 78, 80–81 (10 Gil. 56) (Minn. 1865). The Separation of Powers Clause of the Minnesota Constitution expressly prohibits one branch from usurping or diminishing the role

of another. *Brayton*, 781 N.W.2d at 365. It is therefore "the duty of each [branch] to abstain from and to oppose encroachments on either. Any departure from these important principles must be attended with evil." *In re Application of Senate*, 10 Minn. at 81 (internal quotation marks omitted).

All three branches of government must be allowed to perform their constitutionally-mandated core functions. MINN. CONST. art. III, § 1. Appellants concede this point, as they must. *Add. 15*; *Tr. 38:9–16, 42:25–43:7*; *Apps.' Br. 9, 21–22, 31–34.* The district court properly concluded that one branch cannot prevent another from performing its core functions by depriving it of funding. *Add. 12–13* (citing *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986)). *Mattson* is analogous to this case. In *Mattson*, this Court held that the Legislature had effectively abolished the Office of the State Treasurer, a constitutional office, by passing legislation that transferred the state treasurer's core functions to the Commissioner of Finance, a statutory position. 391 N.W.2d at 783. Although the Legislature left the Office of the State Treasurer nominally intact, it could not perform its constitutionally-mandated core functions in light of the bill. This Court struck down the legislation, reasoning: "[t]o 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.*

The clear import of *Mattson* is that no branch may eliminate the ability of another branch to perform its core functions. Recognizing this truth, the district court observed that "[a]bolishing an office or branch of government by starving it of funding is not materially different from starving it of functionality." *Add. 14*; *see also State ex rel. Brotherton v. Blankenship*, 207 S.E.2d 421, 433–34 (W. Va. 1973) (invalidating line-item vetoes that effectively abolished

the offices of state treasurer and secretary of state by reducing their appropriations to zero).[12] That is precisely what occurred here. Governor Dayton used his line-item veto power to eliminate all funding to the Legislature for the 2018–2019 fiscal biennium. By depriving the Legislature of funding, the Governor has prevented the Legislature from performing its core functions. *Add. 15.*

Brotherton is the most analogous non-Minnesota precedent pertinent to this case. In *Brotherton*, the governor line-item vetoed portions of the judiciary's appropriation.[13] 207 S.E.2d at 424. He also zeroed out the operating appropriations for the offices of the treasurer and secretary of state, while leaving their personal salaries intact. *Id.* at 431–32. Both the treasurer and secretary of state are constitutional offices. *Id.* at 433. The court analyzed the separation-of-powers clause of the West Virginia Constitution, quoting Alexander Hamilton in Essay No. 78 of The Federalist Papers. *Id.* at 430. The court noted that the executive holds the sword, and the legislature commands the purse and prescribes the rights of citizens. *Id.*

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[12] A line of cases from West Virginia interpreting the separation-of-powers doctrine and the line-item veto are instructive to resolving the present dispute. *Jones v. Rockefeller*, 303 S.E.2d 668 (W. Va. 1983) (invalidating line-item vetoes because governor's veto message did not contain sufficient objection to vetoed or reduced amounts as required by the constitution); *State ex rel. Brotherton v. Blankenship*, 214 S.E.2d 467 (W. Va. 1975) (follow-up case to *Brotherton v. Blankenship,* 207 S.E.2d 421 (W. Va. 1973)); *State ex rel. Browning v. Blankenship*, 175 S.E.2d 172 (1970) (invalidating line-item vetoes because governor's veto message did not contain sufficient objection to vetoed or reduced amounts as required by the constitution). Although differences exist between the constitutions and laws of Minnesota and West Virginia, the states' separation of powers and line-item veto clauses are remarkably similar. *Compare* MINN. CONST. art. III, § 1, *and* MINN. CONST. art. IV, § 23, *with* W. VA. CONST. art. V, § 1 (separation of powers), *and* W. VA. CONST. art. VI, § 51, sub. D(11) (line-item veto) (providing governor with the power to veto or reduce items of appropriation in whole or in part).

[13] Interestingly, West Virginia's Budget Act provided that neither the legislature nor the executive branch could reduce the budget of the judiciary. *Brotherton*, 207 S.E.2d at 428.

> The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

THE FEDERALIST NO. 78 (Alexander Hamilton), in THE FEDERALIST PAPERS at 465 (C. Rossiter ed. 1961).

The governor argued that his line-item veto power was "without limitation." *Brotherton*, 207 S.E.2d at 430. He also argued it was "ridiculous" to even consider that he would render a department inoperative. *Id.* The court rejected the governor's assertions: "To adopt the view of the [the Governor], a Governor could effectively curtail or even eliminate the legislative and judicial branches. Though such action by a Governor is most unlikely, we cannot subscribe to an interpretation of the Modern Budget Amendment under which that contingency is a possibility." *Id.* at 431. The court stated that zeroing out the budgets for the offices of the treasurer and secretary of state "effectively abolished the functions of such offices." *Id.* at 433.

The governor asserted that his actions were not subject to judicial control or review. *Brotherton*, 207 S.E.2d at 433. The court likewise rejected this argument:

> [I]t must be noted in addition thereto that executive actions of a Governor are not subject to judicial interference so long as such actions fall within the sphere of his lawful authority. However, when a Governor clearly abuses his discretion or when he refuses to perform a purely ministerial duty, the above principle becomes inoperative and it becomes the duty of the courts to define the safeguards against the abuse of power as provided in our Constitution.

Id. at 433. Ultimately, the court declared that the governor's reductions of the appropriations to the treasurer and secretary of state were "void," and restored the amounts enacted by the legislature. *Id. Brotherton* provides persuasive authority for the instant case. Both *Mattson* and

Brotherton illustrate how clearly unconstitutional Governor Dayton's actions were in this case. The Governor effectively abolished the Legislature by depriving it of funding.

The Governor concedes his line-item vetoes effectively abolished the Legislature unless this Court "institutionalizes the extra-constitutional remedy of emergency funding by the Judicial Branch." *Add. 16*; *Apps.' Br. 18*. This argument is illogical. In rejecting the Governor's argument, the district court stated "[e]mergency funding is not a remedy for arguably unconstitutional actions by one branch of government against another." *Add. 16*. Persistent court-ordered funding of the Legislature's core functions contravenes the Separation of Powers Clause and imposes an inappropriate burden on the Judiciary.[14]

A further flaw in the Governor's argument about the availability of temporary emergency funding rests on the premise that temporary funding is available because such funding has been periodically ordered in past situations. It is certainly true that the Ramsey County District Court ordered temporary emergency funding in 2001, 2005, and 2011.[15] *See*

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[14] In essence, the Governor argues his use of the line-item veto power does not violate the Separation of Powers Clause because the courts will order funding to preserve basic constitutionally-mandated functions. His argument excuses one admitted violation of the Separation of Powers Clause (defunding the Legislature), by relying on another (i.e. the Judiciary usurping the appropriation function to preserve constitutionally-mandated functions and interests). This should give the Court pause. If the Governor's view of his line-item veto power prevails, it could have the effect of conscripting the Judiciary as a super-appropriator with unclear effects on future executive-legislative budget negotiations. It may also encourage stalemates in the budget process by providing one of the three parties (the Governor, Senate, and House) with a *de facto* veto over any budget decision for any variety of reasons, relying on court ordered funding of constitutional-mandated functions.

[15] *Add.* 23–32, Findings of Fact, Conclusions of Law and Order, *In re Temp. Funding of Core Functions of the Exec. Branch*, Ramsey Cnty. No. 62-CV-11-5203, 2011 WL 2556036 (Minn. Dist. Ct. June 29, 2011) (Gearin, C.J.); *see also* Findings of Fact, Conclusions of Law and Order, *In re Temp. Funding of Core Functions of the Exec. Branch*, Ramsey Cnty. No. 62-C0-05-6928, 2005 WL 6716704 (Minn. Dist. Ct. June 23, 2005) (Johnson, C.J.); Findings of Fact, Conclusions of

Wattson, *supra* at 12–15 (discussing the 2001 near-shutdown and the 2005 shutdown). However, none of these orders was accorded appellate review. The Governor assumes this Court would have upheld those temporary funding orders.[16] The district court, for its part, questioned its constitutional authority to order temporary emergency funding in this case. *Add. 17–18.* The district court is not alone in questioning the propriety of temporary funding orders. In 2011, members of the Legislature filed suit challenging the district court's authority to authorize expenditures in the absence of appropriations by the Legislature. *Limmer v. Swanson*, 806 N.W.2d 838, 841 (Minn. 2011). This Court dismissed the case as moot since the Legislature had enacted necessary appropriations that superseded and replaced court ordered funding. *Id.* at 838, 840. The lack of judicial guidance respecting the availability of temporary funding for core functions renders the Governor's confidence in the availability of temporary emergency funding seriously overstated under the circumstances of this case.

Furthermore, the circumstances of this case are markedly different from the 2001, 2005, and 2011 cases. In all three prior instances, the courts were asked to intervene because the Legislature failed to enact necessary appropriations for the operation of state government

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Law and Order, *In re Temp. Core Funding of Core Functions of the Exec. Branch*, Ramsey Cnty. No. 62-C9-01-5725 (Minn. Dist. Ct. June 29, 2001) (Cohen, C.J.).

[16] Appellants misrepresent this Court's holding in *In re Clerk of Lyon Cnty. Courts' Comp.*, 241 N.W.2d 781 (Minn. 1976). Appellants claim it stands for the proposition that "when the political process fails to provide sufficient funding for one branch to perform its critical, core functions, the district court may order such funding on an emergency basis to allow the political process to play out." *Apps.' Br. 13. Lyon County* is about inherent judicial power. *Id.* at 784–786. It is not about core function funding of the other branches, and it certainly does not hold that such funding is available to the other branches under the circumstances of this case.

shortly before the beginning of the next fiscal year.[17] The courts ordered temporary emergency funding of the government's core functions to "protect the rights of the citizenry" while the Governor and Legislature finalized the budget. *Add. 17.* Importantly, there was never any claim the Legislature's failure to enact appropriations was unconstitutional. The courts' intervention in those cases was not a response to the unconstitutional act of another branch. Here, the Legislature passed a comprehensive and balanced budget which Governor Dayton signed into law. The Governor then used his line-item veto power to abolish the Legislature to coerce it into repealing policy legislation. Unlike 2001, 2005, and 2011, the Judiciary must intervene here to save one branch from the unconstitutional acts of another. As the district court properly concluded, "emergency funding is not a remedy for the unconstitutional acts by one branch of government against another—it is a remedy for citizens." *Add. 18.*

The Governor used his line-item veto power as a sword to "gut" the Legislature. *See Mattson*, 391 N.W.2d at 783. He believes his line-item veto power is unlimited and unqualified so long as it is applied to an item of appropriation. *Apps.' Br. 11*; *Tr. 40:1–24.* In his view, the line-item veto power grants him broad authority to strike policy legislation and reverse the decisions of this Court. *Add. 18*; *Tr. 41:20–45:10.* If the Governor's view were adopted, it would dramatically shift the balance of power from the Legislature and Judiciary to the Executive Branch. This Court should reject the Governor's misguided view to preserve the balance of power in the State of Minnesota and protect the rights of its citizens against the

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[17] In 2001, Governor Ventura called a special session and the Legislature enacted all necessary appropriations to fund the Executive Branch before the temporary funding order went into effect. Wattson, *supra* at 13. The court's order was therefore moot. *Id.*

tyranny of the Executive Branch. The district court did not err in concluding the Governor's line-item vetoes violated the Separation of Powers Clause by effectively abolishing the Legislature.

C. The Governor violated the Minnesota Constitution by using the line-item veto power in an impermissible manner to accomplish an unconstitutional result.

The district court also concluded that the Governor violated the Separation of Powers Clause of the Minnesota Constitution by using his line-item veto in an impermissible manner to accomplish an unconstitutional result. *Add. 21*; MINN. CONST. art. III, § 1. One branch of government "may not use a constitutional power to accomplish an unconstitutional result." *Starkweather v. Blair*, 71 N.W.2d 869, 876 (Minn. 1955) (upholding legislative act abolishing a statutory officer). The Governor is prohibited from using the line-item veto power to strike, add to, or modify policy legislation. *See Inter Faculty Organization*, 478 N.W.2d at 194. Governor Dayton used his line-item veto power in an impermissible manner by attempting to transform the line-item veto power into a back-door policy veto. This exceeded the limits placed on the Governor's line-item veto authority by the constitution and this Court. His veto message makes his intent to do this clear.

Appellants contend this Court is prohibited from considering the Governor's motives as expressed in his veto message. *Apps.' Br. 23–29.* This argument is unavailing. There is no need to peer into the Governor's mind or question his wisdom. Governor Dayton clearly expressed his intent and motives in his veto message which was published for all the world to read. *Add. 41–45.* The Governor subjected his intent and motives to judicial review when he

used his line-item vetoes to effectively abolish the Legislature, an act proscribed by the constitution. MINN. CONST. art. III, § 1; *Starkweather*, 71 N.W.2d at 876.

In *Starkweather*, this Court discussed the circumstances where the Judiciary may consider the motives of another branch of government. 71 N.W.2d at 875–76. "We have frequently held that the motives of the legislative body in enacting any particular legislation are not the proper subject of judicial inquiry." *Id.* (footnote omitted). This Court stated that there is an "obvious difference" between examining legislative journals to determine "what the legislature intended by the language it used, and in seeking to determine the motives of the legislature in passing an act." *Id.* at 876. The Legislature's motives in passing legislation are not subject to judicial review "[*a*]***s long as the legislature does not transcend the limitations placed upon it by the constitution***[.]" *Id.* (emphasis added). The Court clarified that this "does not mean the legislature may use a constitutional power to accomplish an unconstitutional result[.]" *Id.* This Court concluded that the Legislature's motives become subject to judicial review if it "appear[s] the end result of the act accomplished some purpose proscribed by the constitution." *Id.* Here, the end result of Governor Dayton's line-item vetoes was the effective abolishment of the Legislature which violates the Separation of Powers Clause. The Governor used a constitutional power to accomplish an unconstitutional result. Thus, the end result of the Governor's vetoes and his intent and motives in accomplishing that result are subject to judicial review. The district court properly applied the principles in *Starkweather* to the circumstances of this case. *Add. 19–21.*

Discerning the Governor's motives requires no speculation. His constitutionally-mandated veto message is abundantly clear. *Add. 41.* He vetoed the entire appropriations to

the Legislature to coerce it into repealing unrelated policy legislation. This fact is undisputed. *Add. 41–45.* The stated goal of the Governor's line-item vetoes is to force repeal of policy legislation completely unrelated to the vetoed appropriations. The constitution clearly limits the line-item veto to striking items of appropriation. MINN. CONST. art. IV, § 23. The limited line-item veto power may not be used to strike policy legislation. The Governor could have exercised his general veto power to prevent the policy provisions he dislikes from taking effect. *Id.* Instead, he improperly used his line-item veto to abolish the Legislature to accomplish an unconstitutional result. In finding the Governor acted contrary to the constitution, the district court properly limited its judicial review of the Governor's motives to his veto message.

The Governor relies on *Johnson v. Carlson*, 507 N.W.2d 232, to argue that his motives are not subject to judicial review. The Governor maintains that a line-item veto is valid so long as it is applied to an item of appropriation, and claims the line-item veto power is not subject to any other provision of the Minnesota Constitution. *Apps.' Br. 9, 24.* First, the Governor ignores the prohibition against one branch of government abolishing another imposed by the Separation of Powers Clause. Second, the Governor's reliance on *Johnson v. Carlson* is misplaced. In *Johnson v. Carlson*, this Court said "[i]t 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.***" 507 N.W.2d at 235. The issue in both *Johnson v. Carlson* and *Inter Faculty Organization* was whether the vetoed items were in fact items of appropriation subject to the line-item veto power. This Court did not hold that the Governor's intent or motive behind a line-item veto is immune from judicial review if it has the effect of violating other provisions of the constitution. The Governor's argument also ignores this Court's interpretation that the line-item veto power is

a limited exception to the Legislature's authority that must be "narrowly construed so as not to exceed its limited function as contemplated by the constitution." *Inter Faculty Organization*, 478 N.W.2d at 194. The district court properly considered the Governor's motives as expressed in his veto message in concluding that the Governor used his line-item veto in an impermissible manner to accomplish an unconstitutional result. In addition to abolishing the Legislature, the manner in which the Governor exercised his line-item veto power violated the Separation of Powers Clause.

III. The Governor's line-item vetoes failed to satisfy the requirement of the text of the constitution that he "*object to*" the vetoed items of appropriation.

The original language of the line-item veto power explicitly requires that the Governor "object" to the vetoed item of appropriation. The 1876 amendment granting the Governor the line-item veto power provides:

> If any bill presented to the governor contain[s] several items of appropriation of money, he may ***object to*** one or more of such items, while approving of the other portion of the bill. In such case, he shall append to the bill at the time of signing it, a statement of the items to which he ***objects***, and the appropriation so ***objected to*** shall not take effect.

MINN. LAWS 1876, ch. 1, § 1 (emphasis added).

In 1974, Minnesota's voters adopted a constitutional amendment that restructured and rewrote much of the constitution. MINN. LAWS 1974, ch. 409. The 1974 amendment modified the text of the line-item veto provision by substituting the term "veto" for "object" throughout the constitutional text. Appellants assert "object to" and "veto" are synonymous, and therefore the simple act of vetoing an item appropriation qualifies as an objection to the appropriation. *Apps.' Br. 23 n.14.* Their claim is contrary to the original language of the 1876

amendment, the express language of the 1974 amendment, and this Court's precedent.[18] *See City of Golden Valley v. Wiebesick*, ___ N.W.2d ___, No. A15-1795, 2017 WL 3045553, at *5 (Minn. July 19, 2017); *Butler Taconite v. Roemer*, 282 N.W.2d 867, 868 n.1 (Minn. 1979).

The 1974 amendment was intended only to reform the constitution's "structure, style and form." *Id.* at § 1 (expressed in its title). The 1974 amendment was not intended to effect substantive change:

> If a change included in the proposed amendment is found to be . . . ***other than inconsequential*** by litigation before or after the submission of the amendment to the people the change shall be without effect and severed from the other changes. The other changes shall be submitted or remain in effect as though the improper changes were not included.

MINN. LAWS 1974, ch. 409, § 2 (emphasis added).[19] This Court has held the 1974 amendment did not change the legal effect of the constitutional provisions that it modified. *See City of Golden Valley v. Wiebesick*, 2017 WL 3045553, at *5 (rejecting the contention that the 1974 amendment "reaffirmed" a pre-existing typographical error in punctuation); *Butler Taconite*, 282 N.W.2d at 868 n.1 (the 1974 amendment "was not intended to change the interpretation of the section . . . only to make the Constitution more readable and stylistically correct."); *Inter*

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[18] Alternatively, Appellants' claim means that the Court should interpret "veto" in the current version of the constitution as also to mean and include "object to" or "disapprove."

[19] This is confirmed by the question submitted to the voters, which provided:

> Shall the Minnesota Constitution be amended in all its articles to improve its clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, but without making any consequential changes in its legal effect?

Act. of Apr. 10, 1974, ch. 409, 1974 Minn. Laws 787, 819–20.

Faculty Organization, 478 N.W.2d at 194 n.2. The line-item veto power should therefore be read as originally intended by continuing to limit the Governor's use of the power to veto items of appropriation to which he actually "objects."

The Governor's veto message does not satisfy the requirement of the constitution that he "object to" the appropriations he sought to veto. The common meaning of the verb "object to" is "to express disagreement or disapproval of something." *American Heritage Dictionary of Phrasal Verbs* (2005 ed.). This common meaning is confirmed by the original 1876 clause, which provided that the Governor "may object to one or more of such items while ***approving*** of the other portion of the bill." MINN. LAWS 1876, ch. 1, § 1 (emphasis added). This illustrates that the Governor must "disapprove" of an item of appropriation in order to object to it. Other jurisdictions require similar disapproval. *Browning v. Blankenship*, 175 S.E.2d at 177 (requiring a "statement of a reason or reasons" for a line-item veto); *Jones v. Rockefeller*, 303 S.E.2d at 678 (discussing objection requirement in governor's veto message);[20] *Arnett v. Meredith*, 121 S.W.2d 36, 38 (Ky. 1938) (line-item veto requires the "Governor to state reasons and objections for his opposing the enactment, so that both the Legislature and the people might know whether or not he was motivated by conscientious convictions in recording his disapproval.").

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[20] "The objections, to satisfy the requirements of the Modern Budget Amendment, need communicate in a rational manner to the public and current or future legislatures a statement of an adverse reason in opposition to a budget bill, or its items or parts, as to why the budget bill, or an item or part of an item within the budget bill, has been disapproved or reduced by the governor." *Jones v. Rockefeller*, 303 S.E.2d at 678.

Furthermore, the disapproval or objection must relate to the appropriation itself. "Object to" is a transitive verb and its object in the original 1876 clause is obviously the appropriation itself. At a minimum, "object to" must mean that the Governor disagrees with and disapproves of the substance or content of the appropriation. Contrary to Governor Dayton's view, "object to" does not mean a temporary delay of an appropriation to secure repeal of unrelated policy provisions.

It is undisputed that Governor Dayton does not disapprove of or object to the amounts of the appropriations he purports to veto. In fact, he approved the very same amounts of the vetoed appropriations in his budget proposals. *Add. 2* ¶*4*. His veto message is explicitly clear that he line-item vetoed the appropriations to the Legislature solely as a means to coerce the Legislature to repeal policy legislation. While the Governor may object to the unrelated policy legislation, he has no objection to the vetoed legislative appropriations. Thus, it is clear that the provisions the Governor actually objects to or disagrees with are in other bills and are not appropriations subject to the line-item veto. Governor Dayton's line-item vetoes exceeded the constitutional limits of the power and must be voided by this Court.

IV. Because the Governor's line-item vetoes are unconstitutional, the vetoes are null and void, and the appropriations to the Legislature therefore became law with the rest of the Omnibus State Government Appropriations bill.

After concluding Governor Dayton's line-items vetoes were unconstitutional, the district court declared that the vetoes were "null and void" and that the appropriations to the Legislature therefore became law with the rest of the Omnibus State Government Appropriations bill. *Add. 3 at Order 2*. Minnesota jurisprudence supports this outcome. In *Inter*

Faculty Organization, this Court invalidated Governor Carlson's line-item vetoes and "declare[d] that the three purported vetoes [were] null and void and without legal effect." *Id.* In *Brayton*, this Court held that Governor Pawlenty's use of his unallotment power exceeded his statutory authority, and therefore declared the Governor's actions "unlawful and void." 781 N.W.2d at 368. Other jurisdictions also support the conclusion that Governor Dayton's line-item vetoes are null, void, and of no legal effect. *Brotherton v. Blankenship*, 207 S.E.2d at 434 (declaring invalid line-item vetoes "void" and restoring the vetoed items as enacted by the legislature); *Browning v. Blankenship*, 175 S.E.2d at 179 (invalidating line-items vetoes and declaring them "null and void and of no force or effect."); *Fergus v. Russel*, 110 N.E. 130, 148 (Ill. 1915) (invaliding line-item vetoes and holding that "[t]hose items remained valid enactments just as though the Governor had expressly approved of them or had allowed them to become a law without his approval.").

Analogous to *Brayton* and in line with *Inter Faculty Organization*, Governor Dayton's line-item vetoes exceeded his constitutional authority, and are therefore null and void. *Add. 22.* Consequently, the appropriations to the Legislature became law along with the rest of the Omnibus State Government Appropriations bill.

V. The political question doctrine cannot save Governor Dayton's line-item vetoes from judicial review.

The Governor makes the ironic argument that the political question doctrine bars the Judiciary's intervention into his dispute with the Legislature. He argues that judicial review of his line-item vetoes would impermissibly intrude upon the Executive Branch while simultaneously demanding that the Judiciary intrude upon the Legislature by determining which of its functions are necessary and then ordering funding out of the treasury without an

appropriation. This case hardly presents the situation of an over-aggressive Judiciary seeking to decide questions where it should sit back and observe the political process play out. The Governor has thrust this issue into this Court's jurisdiction.

"[T]he Judiciary has a responsibility to decide cases properly before it, even those it 'would gladly avoid.' " *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194–95 (2012) (quoting *Cohens v. Virginia*, 19 U.S. 264, 404 (1821)). There is a narrow exception to this rule known as the "political question" doctrine. *Id.* at 195. A political question may arise "where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.' " *Nixon v. United States*, 506 U.S. 224, 228 (1993) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). But the political question doctrine "is one of 'political questions,' not one of 'political cases.' " *Baker v. Carr*, 369 U.S. at 217. And "[t]he courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority." *Id.* Where, as here, a properly filed lawsuit alleges that one branch of government exceeds its constitutional authority, the court is duty bound to review relevant facts and invalidate executive action repugnant to the constitution. *Id.* The very nature of this case is based on the Governor's self-admitted political actions—not political questions. *Add. 16 at n.5.* The district court properly concluded the legal dispute over Count I (the Legislature's cause of action for declaratory relief) is justiciable. *Add. 16*; *Add. 63 ¶3 (concluding Count I is ripe).*

The Governor argues Count I presents a non-justiciable political question for several flawed reasons. First, he argues the line-item veto is "textually committed" to him. *Apps.' Br.*

30. The Governor continues to ignore this Court's consistent interpretation of the limited nature of the line-item veto power. The line-item veto is neither an executive function nor a grant of affirmative authority to the Governor. *See* Section II.A; *see also Inter Faculty Organization*, 478 N.W.2d at 194. It is an exception to the Legislature's authority that "must be narrowly construed to prevent unwarranted usurpation by the executive powers granted the legislature in the first instance." *Id.* The Supreme Court instructed in *Baker v. Carr* that "[d]eciding 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. at 211 (emphasis added). As the district court concluded in the proceeding below, the Governor exceeded his limited constitutional authority when he abolished the Legislature to accomplish an unconstitutional result. The Governor's limited grant of authority does not shield his unconstitutional acts from judicial review.

Second, the Governor argues there are no judicially manageable standards for resolving this dispute. *Apps.' Br. 30*. This legal dispute implicates the Separation of Powers Clause of the Minnesota Constitution. This Court has been resolving separation of powers disputes between and against the branches for well over 100 years. *In re Application of Senate*, 10 Minn. 78 (10 Gil. 56) (Minn. 1865); *see also Limmer v. Ritchie*, 819 N.W.2d 622 (Minn. 2012); *Limmer v. Swanson*, 806 N.W.2d 838 (Minn. 2011); *Brayton*, 781 N.W.2d 357 (Minn. 2010); *Decker v. Montague*, 262 N.W. 684 (Minn. 1935); *Birkeland v. Christianson*, 229 N.W. 313 (Minn. 1930). Most of the separation-of-powers cases in Minnesota have been against the Legislature, but the Separation

of Powers Clause applies with equal force to the Executive Branch. Although this case presents an issue of first impression for the Court, longstanding Minnesota jurisprudence provides the framework to resolve it.

Third, the Governor argues resolution of Count I requires that this Court interfere with the Executive Branch by "prob[ing] the subjective intent of the Governor."[21] *Apps.' Br. 30.* As previously stated, this Court need not speculate as to the Governor's subjective intent. His motives are explicit and undisputed. This Court need only read his veto message.

Finally, the Governor inexplicably argues that judicial review is prohibited because it would require this Court to determine "the proper appropriation for the Senate and the House" which intrudes upon the constitutional roles of the Legislature and Executive Branch in the budget process. *Apps.' Br. 30.* The only issue before this Court is whether the district court erred in concluding the Governor's line-item vetoes were unconstitutional. This does not in any way require this Court to determine what level of funding the Legislature is entitled to or deserves. If this Court affirms the district court, the vetoed appropriations will be reinstated retroactive to July 1, 2017. The Governor's argument is also inconsistent. He argues this Court should not be determining the appropriations to the Legislature while at the same time directing the Judiciary to dismiss Count I and provide core function funding to the Legislature. This inconsistency was not lost on the district court. *Add. 18.* Furthermore, the Governor has never disagreed with the amounts of the vetoed appropriations. He

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[21] As the district court aptly observed, it is ironic that the Governor argues Count I involves a non-justiciable political question because it intrudes upon his motives while he simultaneously directs the Judiciary to determine the Legislature's core functions and order funding out of the treasury. *Add. 18.*

recommended identical amounts to the Legislature in January and March 2017. There is no disagreement over the amount or character of the appropriations to the Legislature.

For these reasons, the district court appropriately concluded Count I presents a judiciable controversy. The political question doctrine cannot shield Governor Dayton's unconstitutional actions from judicial review.

Conclusion

Politics can be a rough and tumble endeavor. Our nation's jurisprudence is replete with cases involving one branch of government pushing the boundaries of the separation of powers among the other branches. Usually these disputes can be settled in the political arena. This one cannot. Because of the unique circumstances of this case, where the Legislature has adjourned pursuant to its agreement with the Executive, its only choices in the political realm are either to bend to the will of the Governor or commence shutdown procedures. That is not how government should work, and that is why this Court must step into the fray.

The line-item veto was added to the Minnesota Constitution in 1876. In the ensuing 141 years, no Governor has done what Governor Mark Dayton did in this case. We respectfully request that this Court reject the Governor's expansive assertion of executive authority by issuing an opinion that unequivocally reiterates there are limits to the line-item veto power, there are rules the Governor must follow when exercising it, and one branch of government may not abolish another branch. This Court should affirm the judgment of the district court.

Dated: August 15, 2017

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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 10,704 words. This brief was prepared using Microsoft Word 2016.

Dated: August 15, 2017

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