

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Association for Government
Accountability,

Petitioner,
v.

Myron Frans in his Official Capacity as
Commissioner of Management and
Budget as a agency of the Executive
Branch of the State of Minnesota;
Minnesota House of Representatives
Budget and Accounting Office, and
Minnesota Senate Fiscal Services
Department,

Respondents.

ORDER TO SHOW CAUSE

The above-entitled ex parte petition for an alternative writ of mandamus came before the Honorable John H. Guthmann, Judge of District Court, without a hearing, at the Ramsey County Courthouse, St. Paul, Minnesota. Erick G. Kaardal, Esq., represents petitioner. All respondents were served but none have entered an appearance. The court, having considered the petition and all supporting documents, along with the entire record submitted, issues the following:

TO THE ABOVE-NAMED RESPONDENTS AND THEIR COUNSEL:

WHEREAS, the Association for Government Accountability's Petition for a Writ of Mandamus is incorporated by reference;

Case Type: Mandamus
File No.: 62-CV-17-3396
Judge: John H. Guthmann

WHEREAS, the facts alleged in the Petition raise a concern that petitioner lacks standing, the controversy is not yet justiciable, and an indispensable party has not been named; and,

WHEREAS, it is not clear from the face of the Petition that respondents have an “obligation . . . to perform [an] act, and the [respondent’s] omission so to do,” so as to entitle petitioner to issuance of an Alternative Writ of Mandamus, Minn. Stat. § 586.03 (2016):

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

NOW, THEREFORE:

1. The parties shall show cause at a court hearing that shall take place in Courtroom 1480 of the Ramsey County Courthouse on June 26, 2017 at 9:00 a.m., why the relief set forth in paragraph 2 of the Petition for a Writ of Mandamus should or should not be so ordered.

2. Additionally, on the same date and at the same time set forth in paragraph 1, the parties shall also show cause as to why the Petition should or should not be dismissed for the following reasons:

- a. Petitioner lacks standing to bring the present action.
- b. The alleged controversy is not justiciable as the controversy is not ripe.
- c. To the extent petitioner challenges Governor Mark Dayton’s veto of funding for the legislature during the next biennium, petitioner failed to name an indispensable party.

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

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

5. The following Memorandum is made part of this Order.

Dated: June 12, 2017

BY THE COURT:

John H. Guthmann
Judge of District Court

M E M O R A N D U M

Although it has common-law origins, the mandamus remedy in Minnesota is presently statutory. *State v. Wilson*, 632 N.W.2d 225, 227 (Minn. 2001). Minnesota's district courts have "exclusive original jurisdiction in all cases of mandamus." Minn. Stat. § 586.01 (2012).¹ According to the legislature:

The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions, but it cannot control judicial discretion.

Id. § 586.01. A writ of mandamus "shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate

¹ The statutory exceptions to the district court's original jurisdiction are inapplicable in this case. See Minn. Stat. § 586.11 (2012).

remedy in the ordinary course of law.” *Id.* § 586.02.

There are two forms of mandamus. *Id.* § 586.03. A peremptory writ of mandamus is available “[w]hen the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given.” *Id.* § 586.04. The preemptory writ statute clearly anticipates the possibility of ex parte action by the court based solely on the information provided by the party interested in issuance of the writ.

Here, paragraph 1 of the Prayer for Relief requests an “order to show cause” hearing. Accordingly, petitioner seeks the second type of mandamus remedy—an alternative writ of mandamus. An alternative writ of mandamus is similar to an order to show cause and provides for a return day. *Id.* § 586.03. An alternative writ:

shall state concisely the facts showing the obligation of the defendant to perform the act, and the defendant's omission so to do, and command the defendant that immediately after the receipt of a copy of the writ, or at some other specified time, the defendant do the required act, or show cause before the court out of which the writ issued, at a specified time and place, why the defendant has not done so, and that the defendant then and there make a return to the writ, with a certificate thereon of having done as commanded.

Id. On the return day or other day permitted by the court, the respondent “may show cause by answer made in the same manner as an answer to a complaint in a civil action.” *Id.* § 586.06. Once an answer is filed, alternative writ of mandamus cases proceed like any other civil action. *See id.* § 586.12.

In the instant case, it is not entirely clear to the court whether the Petition, on its face, supports a conclusion that a named respondent has a legal obligation to perform an act, that any named defendant failed to perform such a legal obligation, or that there does not exist a “plain, speedy, and adequate remedy in the ordinary course of law.” *Id.* §

586.02. The court also has concerns about standing, ripeness, and whether an indispensable party was not sued. Accordingly, it is premature for the court to issue an Alternative Writ of Mandamus.

Even if the court had issued an alternative writ, no action is required by any respondent that files an Answer by the return day set forth in the writ. At that point, the case would proceed like any other civil action. Minn. Stat. § 586.06 (2016).

J H G