

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

Court File No. \_\_\_\_\_

Plaintiffs,

v.

**COMPLAINT**

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.

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Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of  
Representatives, for their Complaint against the above-named defendants, state and allege as  
follows:

**Introduction**

1. This is a declaratory judgment action initiated pursuant to Minnesota Statutes, Chapter 555, seeking a declaration that Governor Dayton's May 30, 2017 line-item vetoes of the Minnesota Legislature's funding for fiscal years 2018 and 2019 violate the Separation of Powers Clause of the Minnesota Constitution. Plaintiffs further seek injunctive relief or mandamus, directing the Commissioner of the Department of Management and Budget to allot funds that were appropriated to the Legislature for the 2018-2019 fiscal biennium. Without such relief, Plaintiffs are unable to fulfill their constitutional obligations, will not be able to properly

represent their constituents, and the People of the State of Minnesota are deprived of a constitutionally-mandated voice in the administration of their government.

2. By May 26, 2017, the Minnesota Legislature passed a comprehensive and balanced budget for fiscal years 2018 and 2019. This budget included nine appropriation bills and a tax bill. The legislature adjourned the 2017 special session *sine die* and the budget bills that were passed during the regular and special sessions were presented to Governor Mark Dayton as provided by Minnesota Constitution art. IV, § 23.

3. On May 30, 2017, Governor Dayton signed all of the appropriation bills and the tax bill into law. However, Governor Dayton vetoed two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, the appropriations to the Senate and House of Representatives:

	<u>2018</u>	<u>2019</u>
2.24: <u>Subd. 2. Senate</u>	\$32,299,000	\$32,105,000
2.25: <u>Subd. 3. House of Representatives</u>	\$32,383,000	\$32,383,000

(Ex. 1, Governor Dayton's Letter to President of the Senate Fischbach at 1, May 30, 2017.)

These two items, totaling over \$129 million, funded the Senate and House for fiscal years 2018 and 2019. Because the special and regular sessions have ended, Plaintiffs cannot override the veto. Plaintiffs will be without funding starting on July 1, 2017 as a result of the Governor's line-item vetoes.

#### Parties

4. Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives constitute the Ninetieth Minnesota Legislature. This action was authorized by the Legislative Coordinating Commission (LCC) by Resolution LCC-2, and adopted by the LCC on June 2, 2017. (Ex. 2, LCC Resolution relating to legal counsel, June 2, 2017.)

5. Mark B. Dayton is the duly elected Governor and Chief Executive Officer of the State of Minnesota. Governor Dayton's May 30, 2017 line-item vetoes gave rise to this action. Additionally, Governor Dayton heads the executive branch which includes the Department of Management and Budget. Governor Dayton is named as a defendant herein in his official capacity as Governor of the State of Minnesota.

6. Defendant Myron Frans is the Commissioner of the Department of Management and Budget, also known as Minnesota Management and Budget (MMB). The Commissioner manages the State's financial affairs and is the State's controller and chief accounting and financial officer, appointed by the Governor with the consent of the Senate. Minn. Stat. §§ 15.06, 16A.01. Defendant Frans is responsible for allotting appropriations to the Legislature for its expenditures. Defendant Frans is named as a defendant herein in his official capacity as the Commissioner of MMB.

### **Jurisdiction and Venue**

7. Plaintiffs bring this action pursuant to Minnesota Constitution, art. III, § 1, and the United States Constitution, art. IV, § 4. Accordingly, this Court has jurisdiction under Minn. Stat. §§ 484.01, 586.11.

8. Venue is proper in this district under Minnesota Statutes, Chapter 542 because this cause of action arose in Ramsey County, and each defendant maintains his official office in Ramsey County.

### **Facts**

9. The Minnesota Legislature consists of the Senate and House of Representatives.

10. The Minnesota Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional "session-only", full-time staff.

11. The Minnesota House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional “session-only”, full-time staff.

12. Legislators are elected to represent constituents within their districts. Communicating with constituents is a core function of the Legislature. Constituents legitimately expect that they can contact their legislators with questions about pending legislation, to propose future legislation, and to alert their respective legislators to issues and concerns with the operation of existing laws. Legislative staff facilitates communication between constituents and legislators. Constituent communication occurs year-round. During the interim between regular sessions, legislators depend even more heavily on staff to facilitate constituent communication. A legislator cannot represent the will of the People without the unabridged ability to communicate with his or her constituency.

13. Another core function of the Legislature is to craft legislation for consideration for passage by the Legislature. Crafting legislation is complex and time-consuming. Legislators depend heavily on partisan and nonpartisan staff, including attorneys, research analysts, and fiscal analysts. During the interim between regular sessions, legislative staff prepares bills for consideration when the Legislature is in session. This includes holding committee hearings to gather evidence on issues of interest for possible legislation. No legislator could craft legislation without the aid of legislative staff.

14. The Senate and the House are constitutionally obligated to publish journals of their respective proceedings. Minn. Const. art. IV, § 15. Senate and House staff prepare and review their journals for publication. This is a time-consuming task. In a typical biennium, for instance, the Senate Journal may exceed 10,000 pages in length, plus indexes.

15. During the interim between regular sessions, most legislators are employed outside the Legislature. Legislative activities occur year-round. In addition to the functions described in Paragraphs 9 through 14, legislative committees are empowered to meet during the interim to review legislation and conduct oversight of the executive department. The Governor may call a special session at any time, and a special session may run for an indefinite period of time. Legislative staff spends considerable time preparing for each special session, including preparation and review of legislation. Legislative staff also spends considerable time in advance of the regular session ensuring administrative tasks are completed, including recruiting, hiring, and training staff.

16. The Senate's monthly operating expenses are approximately \$2,500,000.

17. The House's monthly operating expenses are approximately \$2,700,000.

18. The Senate subleases the Minnesota Senate Building from the Commissioner of Administration. The Senate must pay monthly lease payments for the Minnesota Senate Building to the Commissioner of Administration in the amount of \$683,000. This includes \$589,000 due under the lease for the Minnesota Senate Building, plus \$94,000 in costs for the senate parking garage. The Commissioner of Administration leases the Minnesota Senate Building from the Commissioner of MMB. On November 14, 2017, the Commissioner of Administration must make a semi-annual rent payment of \$1,911,000 to the Commissioner of MMB, for the funds paid by the Senate under its sublease. On May 14, 2018, the Commissioner of Administration must make another rent payment of \$4,131,000 to the Commissioner of MMB. If the Commissioner of Administration fails to make these payments, the Commissioner of MMB is authorized under the terms of the lease to remove persons and property from the Minnesota Senate Building.

19. On May 30, 2017, Governor Dayton sent a letter to President of the Senate Michelle Fischbach, as required by Minn. Const. art. IV, § 23, stating the two items of appropriation he vetoed. (*See* Ex. 1.) Governor Dayton also sent a letter to Speaker of the House Kurt Daudt and Senate Majority Leader Paul Gazelka, dated May 30, 2017, explaining the Governor’s rationale for the line-item vetoes. (Ex. 1 at Attach 1-3., Governor Dayton’s Letter to Speaker Daudt and Majority Leader Gazelka.) As justification for his line-item vetoes, Governor Dayton stated “[y]our job has not been satisfactorily completed, so I am calling on you to finish your work. However, I will allow a Special Session only if you agree to remove the following provisions”: (1) the tobacco tax breaks, (2) the estate tax exclusion increase, (3) the C-I property tax freeze, (4) the driver’s license provision, and (5) the teacher licensure provision. (*Id.*)

20. Plaintiffs cannot meet in session and therefore cannot override Governor Dayton’s line-item vetoes because the special session was adjourned *sine die*. The regular session was adjourned until February 20, 2018. The Minnesota Constitution prohibits reconvening the regular session before 2018. Minn. Const. art. IV, § 12.

21. Beginning on July 1, 2017, the Senate and House will not have operating appropriations for fiscal years 2018 and 2019.

22. LCC has authority to and did authorize this action on behalf of Plaintiffs on June 2, 2017. (Ex. 2.)

23. The Legislature is required to perform certain duties, which have been defined as “core functions,” and which cannot be abridged.

24. The core functions of the Legislature include, among other things, drafting, debating, publishing, voting on, and enacting legislation. (*See* Ex. 3, *In re Temp. Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. 62-CV-11-5203, 2011

WL 2556036, at \*8, Findings of Fact, Conclusions of Law, and Order Granting Mot. Temp. Funding (Minn. Dist. Ct. June 29, 2011)).

25. No request by the Minnesota Legislature of the Defendants to fund the core functions of the Minnesota Legislature is required because the duties at issue are public and not private. In the event a request is required, such request is futile.

26. Due to Governor Dayton's line-item vetoes, the Legislature will have insufficient funds to exercise its official and constitutional powers and duties beginning on July 1, 2017.

27. The Minnesota Constitution provides that "[t]he 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.

28. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed the Minnesota Legislature's funding for the 2018-2019 fiscal biennium. The vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties.

29. The Governor's line-item vetoes are unconstitutional, null, and void.

30. As a result of Governor Dayton's line-item veto of the Minnesota Legislature's funding for the 2018-2019 fiscal biennium, the Minnesota Legislature has suffered a public wrong that is specifically injurious to the Minnesota Legislature.

**Count I (Declaratory Judgment)**

31. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

32. Minnesota courts have “recognized that where the constitution commits a matter to one branch of government, the constitution prohibits the other branches from . . . interfering with the coordinate branch's exercise of its authority.” *In re Civil Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007); *accord Limmer v. Ritchie*, 819 N.W.2d 622, 627 (Minn. 2012); *see also State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (1930) (explaining that no branch of government “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”).

33. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed funding for Plaintiffs for the next biennium. These vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties. The Governor’s veto message made clear he did not disagree with the amounts or character of the appropriations for the Senate and House. In fact, the vetoed appropriations matched amounts recommended in the Governor’s budget for the Senate and House of Representatives. The message demonstrated the Governor’s intent was to coerce the Senate and House to revisit bills that had become law.

34. A justiciable controversy exists between the parties in this matter, and the controversy is ripe for adjudication.

35. Plaintiffs are entitled to a declaratory judgment that:

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, Minn. Const. art. III, § 1, by impermissibly controlling, coercing, and restraining the action of the Legislature in the exercise of its official and constitutional powers and duties;

c. As a result of violating the Separation of Powers Clause, the Governor's line-item vetoes are unconstitutional, null, and void; and

d. Because the Governor's line-item vetoes are unconstitutional, null, and void, those two items of appropriations became law with the rest of the bill.

### **Count II (Injunctive Relief)**

36. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

37. Plaintiffs will suffer immediate and irreparable harm on and after July 1, 2017 without injunctive relief.

38. The Legislature must be allowed to exercise its official and constitutional powers and duties.

39. Plaintiffs seek injunctive relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

### **Count III (Mandamus Relief Under Minn. Stat. §§ 586.01-586.12)**

40. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

41. A "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[.]” Minn. Stat. § 586.01.

42. Plaintiffs have no other plain, speedy, and adequate remedy at law.

43. The Legislature must be allowed to exercise its official and constitutional powers and duties.

44. The Court is permitted to issue a writ of mandamus to compel a person, including the Commissioner of MMB, to take action to avoid arbitrary and capricious results.

45. The Court also has equitable authority to issue a mandatory injunction directing the MMB to take action to comply with the Minnesota Constitution.

46. Plaintiffs seek mandamus relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

#### **Prayer for Relief**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

1. Enter judgment declaring the Governor’s line-item vetoes, dated May 30, 2017, which denied funding to the Legislature, to be unconstitutional, null, and void;

2. Enter an order reinstating the two items of appropriations vetoed by the Governor, that is the appropriations for the Senate and House, in their entirety;

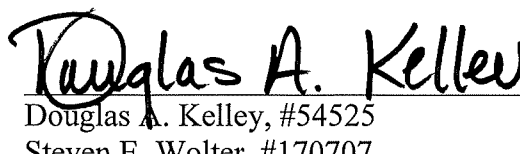
3. Alternatively, directing that, pursuant to the Separation of Powers Clause of the Minnesota Constitution, the Legislature must be allowed to exercise its official and constitutional powers and duties, and the State of Minnesota must fully fund such functions;

4. An order directing Defendant Frans, in his official capacity as the Commissioner of the MMB, to allot such funds as necessary to pay for such obligations of the Legislature; and

5. Granting Plaintiffs such other and further relief as the Court deems appropriate.

Dated: June 13, 2017

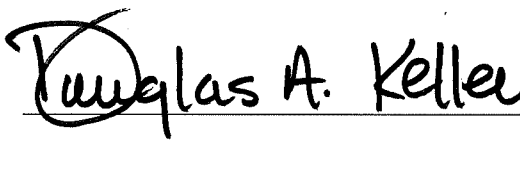
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**ACKNOWLEDGMENT**

The undersigned acknowledges that costs, disbursements, and reasonable attorneys' fees and witness fees may be awarded to the opposing party pursuant to Minn. Stat. § 549.211.



**EXHIBIT 1**















LCC-2

**LEGISLATIVE COORDINATING COMMISSION****Resolution relating to legal counsel**

Senator Gazelka moves that the Legislative Coordinating Commission, on behalf of the Minnesota Senate and the Minnesota House of Representatives, retain the law firm of Kelley, Wolter & Scott, P.A., to serve as outside counsel to represent the Senate and House of Representatives in litigation arising from the May 30, 2017, line-item vetoes of the direct appropriations to the Senate and House of Representatives contained in Laws 2017, First Special Session, chapter 4, section 2, subdivisions 2 and 3. The firm may also handle related legal matters in support of the legislative obligations as an independent branch of government.

SRpWed

June 2, 2017





















