Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Civil

Association for Government Accountability,

Petitioner,

vs.

Myron Frans in his Official Capacity as Commissioner of Management and Budget as an 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.

Court File No. 62-CV-17-3396
Judge John H. Guthmann

RESPONDENT COMMISSIONER MYRON FRANS' MEMORANDUM IN SUPPORT OF DISMISSAL OF PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

Pursuant to the Court's Order to Show Cause, Respondent Myron Frans, Commissioner of Minnesota Management and Budget, submits this memorandum in support of dismissal of the petition for writ of mandamus.

A writ of mandamus is an extraordinary remedy that is only appropriate when an official has failed to perform a duty clearly imposed by law and when there is no other adequate legal remedy. Such relief is not appropriate here for several different reasons. First, Petitioner has an adequate alternative remedy through the Uniform Declaratory Judgments Act. Second, this matter is not ripe for this Court's review because the Legislature still has over 21 million dollars that can be used to pay salaries after July 1, 2017. Third, Petitioner does not have standing to sue

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

on behalf of its unidentified members because, among other reasons, Petitioner's alleged harms are hypothetical and not sufficiently specific. Accordingly, Commissioner Frans asks the Court to dismiss the Petition as asserted against him.

BACKGROUND

On March 21, 2017, the Legislative Salary Council ("Council"), pursuant to its authority under Minn. Const. art. IV, § 9 and Minn. Stat. § 15A.0825, subd. 7, issued a report, prescribing salaries of $45,000 for Minnesota senators and representatives, effective July 1, 2017. (Petition, Ex. C.) The Speaker of the House Kurt Daudt, however, wrote a letter instructing the House Budget and Accounting Office not to appropriate money to pay for the Council's prescribed salary. (*Id.*, Ex. D.)

In May 2017, the State Legislature passed an Omnibus State Government Appropriations bill, which included appropriations for the Legislature. 2017 Minn. Laws 1st Spec. Sess. ch. 4, art. 1, § 2. On May 30, 2017, Governor Mark Dayton line-item vetoed the appropriations for the House and Senate. (*Id.*, Ex. F.)

According to reports that are public data, as of June 21, 2017, the House of Representatives had $4,858,908 and the Senate had $5,063,366 remaining in its budget for fiscal year 2017. (*See* Affidavit of Deputy Commissioner Eric Hallstrom ("Hallstrom Aff."), Exs. 1–2.) Unlike the executive and judicial branches, general fund appropriations to the Legislature, if unspent, carry forward into the next biennium and may be used, *inter alia*, "to pay expenses associated with sessions, interim activities, public hearings, or other public outreach efforts and related activities." Minn. Stat. § 16A.281 (noting that the Legislature may carry forward general fund balances without the approval of the Commissioner of Management and Budget). As of June 21, 2017, the House of Representatives has a carry forward balance of $8,330,624, and the

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

Senate has a carry forward balance of $2,931,270. (*See* Hallstrom Aff., Exs. 3–4.) The House and Senate's average total monthly general fund expenditures are $2,529,189 and $2,453,498, respectively, of which the legislators' salaries are only a part. (Hallstrom Aff., Ex. 5.) Indeed, the monthly cost of $45,000 salaries for legislators is approximately $500,000[1] for the House and $250,000[2] for the Senate.

Petitioner Association for Government Accountability ("AGA") alleges that it is a state-wide association of citizens and taxpayers purportedly advocating for government compliance with federal and state regulatory, statutory, and constitutional law. (Petition ¶ 1.) The AGA seeks a writ of mandamus requiring payment of the legislators' increased salaries starting July 1, 2017. (*Id.* (Prayer For Relief).) No individual members of the AGA have joined the Petition or have been otherwise identified therein.

ARGUMENT

I. THE PETITION SHOULD BE DISMISSED BECAUSE MANDAMUS IS AN IMPROPER PROCEDURAL VEHICLE FOR PETITIONER'S CHALLENGE.

"Mandamus is an extraordinary legal remedy awarded, not as a matter of right, but in the exercise of sound judicial discretion and upon equitable principles." *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995) (citing *State ex rel. Hennepin Co. Welfare Bd. v. Fitzsimmons*, 58 N.W.2d 882, 891 (1953)). Importantly, "a writ of mandamus 'shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.'" *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (quoting Minn. Stat. § 586.02).

[1] 134 members x ($45,000 ÷ 12 months).

[2] 67 members x ($45,000 ÷ 12 months).

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

Here, mandamus relief is inappropriate because other adequate legal remedies are available. Specifically, Petitioner could initiate a declaratory judgment action under procedures provided in the Uniform Declaratory Judgments Act.[3] Pursuant to Minn. Stat. § 555.01, "[c]ourts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minnesota courts have repeatedly found a declaratory judgment action to be an adequate alternative remedy to mandamus. *See Houck v. E. Carver Cty. Schs.*, 787 N.W.2d 227, 234 (Minn. App. 2010) (upholding district court's decision denying a writ of mandamus to compel a school board election where a declaratory judgment action under Minn. Stat § 555.01, *et seq.* provided an adequate alternative remedy to mandamus); *Mendota Golf,* 708 N.W.2d at 178 (reiterating that mandamus is an "extraordinary remedy" and that, despite cases affirming its use in ordinary zoning matters, the proper procedure for such decisions generally will be a declaratory judgment action possibly including injunctive relief).[4]

Since the Uniform Declaratory Judgments Act provides Petitioner an adequate alternative legal remedy, mandamus is inappropriate, and the Court should dismiss the Petition on this basis.

II. THE COURT LACKS JURISDICTION OVER THIS DISPUTE, AS THE ISSUES PRESENTED IN THE PETITION ARE NOT RIPE FOR JUDICIAL REVIEW.

"Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . ."

[3] As discussed further below, Petitioner's claim is not justiciable, and therefore it would fail even if it were re-filed under the Uniform Declaratory Judgments Act.

[4] To the extent the Petition references a gubernatorial veto (Petition ¶ 24), the Minnesota Supreme Court has expressly held that it is "procedurally inappropriate" to challenge such an action through mandamus proceedings. *Inter Faculty Org. v. Carlson*, 478 N.W.2d 192, 193 (Minn. 1991) (holding that the Uniform Declaratory Judgments Act provides the proper procedure).

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

Leiendecker v. Asian Women United of Minn., 731 N.W.2d 836, 841 (Minn. App. 2007) (quoting *Nat'l Park Hospitality Ass'n v. Dep't of the Interior*, 538 U.S. 803, 807 (2003)). The doctrine, based on the principle that a court will consider only redressable injuries, "bars suits brought before a redressable injury exists." *State ex rel. Friends of Riverfront v. City of Minneapolis*, 751 N.W.2d 586, 592 (Minn. App. 2008). It is well-established that "[i]ssues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012) (quotation omitted); *see also Parrish v. Dayton*, 761 F.3d 873, 875–76 (8th Cir. 2014) ("A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'") (quotation omitted).

AGA's petition, which seeks a writ requiring Commissioner Frans to effectuate funding of legislators' salary increases on July 1, 2017, is not ripe for this Court's review.

First, past unspent general fund appropriations to the Legislature carry forward and may be used, *inter alia*, "to pay expenses associated with sessions, interim activities, public hearings, or other public outreach efforts and related activities." Minn. Stat. § 16A.281. As of June 21, 2017, public reports indicate that, collectively, the Legislature has a remaining 2017 fiscal year balance and carry forward balance of over 21 million dollars. (Hallstrom Aff., Exs. 1–4.) Paying $45,000 salaries for legislators would cost approximately $500,000 per month for the House and $250,000 for the Senate; a cost that in isolation could be covered with existing funds for over two years. In any event, the average total monthly general fund expenditures for the House and Senate are $2,529,189 and $2,453,498, respectively, which means the Legislature can continue to pay its general fund expenses well beyond July 1, 2017. (Hallstrom Aff., Ex. 5.)

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

During that time, the Governor and the Legislature—the two branches of government to which the State Constitution confers authority to determine the State's budget—will have the opportunity to consider the issue of funding the salary increases of legislators. *See Brayton v. Pawlenty*, 781 N.W.2d 357 (Minn. 2010) (discussing the "constitutionally specified powers" of the executive and legislative branches of government in agreeing upon the state budget and resolving any differences). Accordingly, whether legislators receive their salary increases is not an issue ripe for this Court's review.

Second, AGA's petition for a writ of mandamus seeks to compel Commissioner Frans to perform an act which he has not yet failed to perform. Such a request is inappropriate for mandamus relief and demonstrates the non-justiciability of the present dispute. *See Mendota Golf*, 708 N.W.2d at 171 (noting that the question, when determining whether mandamus is available, is whether the respondent *failed* to perform a duty clearly imposed by law); Minn. Stat. § 586.04 (providing that a peremptory writ may issue when it is apparent that there is no valid excuse for non-performance). Commissioner Frans cannot be faulted for failing to comply with a duty, if any, before he has done so.

Accordingly, the Court should dismiss the Petition because the Court cannot and should not entangle itself in a dispute that is not yet ripe for its review and would require an impermissible advisory opinion. *See Limmer v. Swanson*, 806 N.W.2d 838, 839 (Minn. 2011) (declining to decide budget issue between legislative and executive branches, noting that "[r]esolution of these budget issues by the other branches through the political process is preferable to [the court's] issuance of an advisory opinion adjudicating separation of powers issues that are not currently active and may not arise in the future"); *State v. N. Star Res. Dev. Inst.*, 200 N.W.2d 410, 425 (Minn. 1972) (explaining that the court generally does "not decide

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

important constitutional questions unless it is necessary to do so"; to do otherwise, "would be to indulge in an advisory opinion").

III. PETITIONER LACKS STANDING TO BRING THIS ACTION.

"Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State v. Philip Morris, Inc.*,, 551 N.W.2d 490, 493 (Minn. 1996). "A party has standing if (1) the legislature has conferred standing by statute, or (2) a party has suffered 'injury-in-fact.'" *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003). To demonstrate injury-in-fact, the party must show that it has suffered an actual, concrete injury as a result of the challenged conduct and its interest in the statute is different in character from the interest of citizens in general. *Id.*

Under the doctrine of organizational or associational standing, "an organization may sue to redress injuries to itself or injuries to its members." *Philip Morris*, 551 N.W.2d at 497–98. However, the court, in considering whether an organization has standing, must consider two key questions: "(1) if [the] organizations were denied standing, would that mean that no potential plaintiff would have standing to challenge the regulation in question? and (2) for whose benefit was the regulation at issue enacted?" *All. for Metro. Stability*, 671 N.W.2d at 915 (citing *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165 (Minn. 1974)).

Here, the AGA asserts that it has standing because its members "are beneficially interested in their legislative representatives being paid their salaries so they are available to them and to enact legislation and conduct oversight on the executive and judicial branches and local government." (Petition ¶ 7.) The AGA lacks standing to bring this challenge for multiple reasons under both the traditional and statutory analyses.

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

First, the harms alleged by Petitioner are speculative and contingent on future events that may not occur. (*See id.* (alleging that *if* legislators are not paid they *may* not meet with or respond to constituents or hold hearings).) As discussed above, the Legislature has funds to cover expenses, including legislators' salaries, well beyond July 1, 2017. Petitioner's hypothetical injuries are insufficient to confer standing. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 322 (Minn. App. 2007) (stating courts "will not issue declarations upon remote contingencies or as to matters where the plaintiff's interest is merely contingent upon the happening of some event in the future") (quotation omitted).

Second, the AGA's interest, as set forth in the Petition, is not sufficiently specific. In *St. Paul Area Chamber of Commerce v. Marzitelli*, the Minnesota Supreme Court rejected a similar attempt to assert organizational standing. 258 N.W.2d 585 (Minn. 1977). In *Marzitelli*, a nonprofit organization "existing for the purposes of enhancing and promoting the business climate in the city of St. Paul, and represent[ing] the downtown St. Paul business community" filed a declaratory judgment action challenging the constitutionality of a legislation regarding the construction of Interstate 35E in St. Paul. *Id.* at 586–87. The Supreme Court, in finding that the organization's purported interest was not sufficiently specific, held the following:

> the Chamber's interest in this case stems from its general concern for the welfare of the St. Paul business community. Such a broad interest, if held to be sufficient for justiciability, would give the Chamber or similar groups a right to challenge virtually every legislative enactment affecting business in St. Paul. Even under a loose interpretation of the justiciability requirement, such a result is clearly not contemplated by our prior decisions in this area.

Id. at 590; *see also Stansell v. City of Northfield*, 618 N.W.2d 814, 818 (Minn. App. 2000) (holding that residents who failed to allege specific injuries as a result of defendant's actions and instead appeared to be merely litigating a matter of public interest lacked standing to sue). Like

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

the plaintiffs in *Marzitelli* and *Stansell*, the AGA's generalized concerns are not sufficiently specific to establish standing.

Third, the AGA submits only conclusory and generalized assertions that its unidentified members' interests as taxpayers and voters will be affected if, at some future time, legislators are not paid. These general references to unidentified members are insufficient. As the Minnesota Court of Appeals held in *St. Paul Police Federation v. City of St. Paul*, an organization that "has not identified a member who is suffering immediate or threatened injury" does not have standing to sue on his or her behalf, even under the relaxed requirements when an organization is seeking equitable relief. No. A05-2186, 2006 WL 2348481, *2 (Minn. App. Aug. 15, 2006).[5]

Petitioner's lack of standing does not mean that no potential plaintiff would have standing to assert the claims made by Petitioner. *See All. for Metro. Stability*, 671 N.W.2d at 915. Individual legislators could be potential plaintiffs to enforce payment of their salary increases.

To the extent the AGA attempts to assert taxpayer standing, this argument also has no merit. "Taxpayers generally lack standing to challenge government action absent damage or injury 'which is special or peculiar and different from damage or injury sustained by the general public.'" *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 174–75 (Minn. App. 2009) (quoting *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007)). While taxpayers may have standing under very limited circumstances to challenge a specific *disbursement* of money, the AGA's Petition, which challenges the hypothetical *withholding* of disbursements, does not present such a case. *See Marzitelli*, 258 N.W.2d at 588 (noting that

[5] A copy of this opinion is attached to Transmittal Affidavit of Jacob Campion as Ex. 1.

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

while there is "no question that taxpayers may sue to enjoin waste or illegal use of public funds," the suit brought by the Chamber of Commerce to challenge the non-expenditure of public funds on a highway presented a different case); *Olson*, 742 N.W.2d at 684 (holding that challenge to tax exemption could not be pursued solely on taxpayer basis because it did not involve *expenditure* of tax funds); *Ctr. for Biological Diversity v. Minn. Dep't of Nat. Res.*, No. A12-1680, 2013 WL 2301951, *4 (Minn. App. May 28, 2013) (holding that expenditures associated with wolf rules did not increase the "overall tax burden" and as such were not expenditures for the purpose of establishing taxpayer standing);[6] *see also Minn. Voters All. v. State*, No. 62-CV-13-7718, 2014 WL 2134372, *5 n.8 (Minn. Dist. Ct. Apr. 28, 2014) (Guthmann, J.) (noting that "the threshold test is simply whether an alleged unlawful *expenditure* of taxpayer funds is truly at stake" (emphasis added))[7]. The AGA therefore also lacks taxpayer standing.

Finally, any reliance by the AGA on statutory standing is misplaced. "To have standing under the mandamus statute, a petitioner must show the following: (1) the official has failed to exercise a duty imposed by law; (2) due to this failure, the petitioner is specifically injured by a public wrong; and (3) there is no adequate alternative legal remedy." *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. App. 2003) (citing *Coyle*, 526 N.W.2d at 207). For the reasons already detailed above, Petitioner has not met this standard. In relevant part, (1) Commissioner Frans has not failed to comply with any duty; (2) Petitioner has not shown a harm "specifically injurious" to its organization or its members to accord it standing to sue; and (3) the Declaratory Judgments Act provides an alternative remedy to mandamus

[6] A copy of this opinion is attached to the Transmittal Affidavit of Jacob Campion as Ex. 2.

[7] A copy of this opinion is attached to the Transmittal Affidavit of Jacob Campion as Ex. 3.

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

relief. Accordingly, because the AGA lacks standing to bring this action, the Court must dismiss the Petition on this additional basis.

IV. GOVERNOR MARK DAYTON IS NOT AN INDISPENSABLE PARTY TO THIS ACTION.

The Court, in its Order to Show Cause, directed the parties to address, in addition to the issues detailed above, why this action should not be dismissed for failure to name an indispensable party. (Order to Show Cause at 2.) An indispensable party is a party "without whom the action could not proceed in equity and good conscience." *Hoyt Properties, Inc. v. Prod. Res. Grp., L.L.C.*, 716 N.W.2d 366, 377 (Minn. App. 2006) (quoting *Murray v. Harvey Hansen-Lake Nokomis, Inc.*, 360 N.W.2d 658, 661 (Minn. App. 1985)); *see also* Minn. R. Civ. P. 19.02.

Governor Dayton is not an indispensable party to this action. The AGA's Petition challenges whether, in the absence of an appropriation to the Legislature, Respondents are constitutionally and statutorily obligated to pay legislators' salary increases, even though no monies have thus far been specifically appropriated for that purpose. (Petition ¶¶ 28–30.) While the Court should dismiss the Petition based on the adequate alternative remedy, ripeness, and standing arguments detailed above, if it declines to do so, it readily could resolve the merits of the Petition in the absence of Governor Dayton being a named party to the lawsuit.

CONCLUSION

For the above reasons, Commissioner Frans respectfully requests that the Court dismiss the petition for writ of mandamus.

SIGNATURE ON FOLLOWING PAGE

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

Dated: June 22, 2017

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Jacob Campion
JACOB CAMPION
Assistant Attorney General
Atty. Reg. No. 0391274

E. BAYLEY TOFT-DUPUY
Assistant Attorney General
Atty. Reg. No. 0397845

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2134
(651) 757-1459 (Voice)
Jacob.campion@ag.state.mn.us

ATTORNEYS FOR RESPONDENT
COMMISSIONER MYRON FRANS

Filed in Second Judicial District Court
6/22/2017 3:05 PM
Ramsey County, MN

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2014).

Dated: June 22, 2017

/s/ Jacob Campion
JACOB CAMPION
Assistant Attorney General
Atty. Reg. No. 0391274