

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

Court File No. 62-CV-17-3601

Plaintiffs,

v.

**PLAINTIFFS' MEMORANDUM
IN RESPONSE TO ORDER TO
SHOW CAUSE**

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.

INTRODUCTION

On May 30, 2017, the Governor of Minnesota eliminated the Minnesota Senate and the Minnesota House of Representatives as functioning bodies with a stroke of his pen. He eliminated all funding for the core of the legislative branch, its actual elected legislative bodies, for the next two years. He did so without giving the Legislative branch any recourse, exercising his veto pen after the Legislature adjourned for the session, stating he would not call them back until they acceded in his demand that they repeal legislation the Governor had already signed into law.

Plaintiffs Ninetieth Minnesota State Senate ("Senate") and Ninetieth Minnesota State House of Representatives ("House") bring this action 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. Minn. Const. art. III, § 1. Plaintiffs further seek injunctive relief or mandamus, directing the Commissioner of the Department of Management and Budget (MMB) to allot the funds appropriated to the Legislature for the 2018-2019 fiscal biennium. Injunctive relief is necessary to prevent irreparable harm to the Legislature and the People of the State of Minnesota that will occur on and after July 1, 2017. Without injunctive relief, Plaintiffs are unable to fulfill their constitutional obligations, will not be able to represent their constituents, and the People of the State of Minnesota are deprived of their constitutionally-mandated voice in the administration of their government. This controversy is justiciable and ripe for adjudication. Plaintiffs respectfully request judicial relief on or before July 1, 2017.

FACTS AND BACKGROUND

A. The Budget Negotiations and the Line-Item Veto of Funding for the Legislative Branch.

The Minnesota Legislature concluded the 2017 regular session on May 22, 2017 by adjourning to February 20, 2018. (Aff. of Cal Ludeman ¶ 9.) Shortly before then, the Legislature and Governor Mark Dayton reached a tentative agreement on the State's budget for fiscal years 2018 and 2019. The Governor called a special session that began at 12:01 a.m. on May 23, 2017. (*Id.*) By May 26, 2017, the Legislature passed a comprehensive and balanced budget for fiscal years 2018 and 2019. (*Id.*) The budget included nine appropriation bills and a tax bill. (*Id.*) The Legislature adjourned the 2017 special session *sine die*, and the budget bills and tax bill were presented to Governor Dayton. (*Id.*)

On May 30, 2017, Governor Dayton signed all nine budget bills and the tax bill into law. (Ludeman Aff. ¶ 9.) However, the Governor vetoed two items of appropriation in the Omnibus

State Government Appropriations bill, Chapter 4, Article 1, Section 2, Subdivisions 2 and 3, the entire general fund appropriations for the operating budget for the Senate and House:

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

(Aff. of James Reinholdz Ex. 2, Governor Dayton’s Letter to The Honorable Michelle L. Fischbach at 1, May 30, 2017; Ludeman Aff. ¶ 9.) These two items would have funded Senate and House operating expenses for the 2018-2019 fiscal biennium. Notably, the vetoed appropriations identically matched amounts recommended in the Governor’s Fiscal Year 2018-2019 Budget as presented to the Legislature in January 2017 and again in the Governor’s Revised Budget Recommendations in March 2017. (Reinholdz Aff. ¶ 11, Ex. 3, Governor’s Revised Budget Recommendations for the Legislature at 11, 14, Mar. 27, 2017.) Both before and after the line-item vetoes, the State budget for the 2018-2019 biennium was projected to be in surplus.

B. The Governor’s Rationale for the Line-Item Vetoes

On May 30, 2017, Governor Dayton sent a veto message to President of the Senate Michelle Fischbach, discussing the legislative appropriations he vetoed. (Reinholdz Aff. Ex. 2.) In this letter, the Governor offered this rationale for his vetoes:

At the last minute, the Legislature snuck language into the State Government bill that would hold hostage the Department of Revenue appropriation in this bill to my signature on the Taxes bill. I am unwilling to put the jobs of 1,300 Department of Revenue employees at risk. As a result of this action, 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.

(Reinholdz Aff. Ex. 2 at 1.) The Governor attached a separate letter to Speaker Kurt Daudt and Majority Leader Paul Gazelka, “explaining [the Governor’s] reasoning for line-item vetoing the Senate and House of Representatives’ appropriations.” (*Id.*)

In his May 30, 2017 letter to Speaker Daudt and Majority Leader Gazelka, Governor Dayton offered no complaint about the size of the appropriations or any other objection to the appropriations to allow the Legislature to perform its constitutional duties. (Reinholdz Aff. Ex. 2, Attach., Governor Dayton’s Letter to Speaker Daudt and Majority Leader Gazelka at 1, May 30, 2017.) Rather, the Governor acknowledged he line-item vetoed the Legislature’s budget due to his “strong objections” to the Legislature’s tax bill. (*Id.*) The Governor further said “[the Legislature’s] job has not been satisfactorily completed, so I am calling on [the Legislature] to finish [its] work. However, I will allow a Special Session only if [the Legislature] agrees to remove” the following five provisions from the omnibus budget bills: (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.¹ (*Id.* at 1-3.) Each of these provisions is part of the bills Governor Dayton signed into law on the same day.

C. The Limited Availability of Carryforward Funds to Operate the Legislative Branch.

As a result of the Governor’s line-item vetoes, the Senate and House will have no appropriations for an operating budget after July 1, 2017. Under Minnesota Statutes, section 16A.281, appropriations to the Senate and House that are not spent during the first year of a fiscal biennium “may be spent during the second year of a biennium.” Minn. Stat. § 16A.281; *see also* Minn. Stat. § 16A.28 (explaining the treatment of unused appropriations generally). An unexpended balance may also be carried forward into the next biennium and used only as follows: “(1) for nonrecurring expenditures on investments that enhance efficiency or improve effectiveness; (2) to pay expenses associated with sessions, interim activities, public hearings, or

¹ Three of these provisions are from the tax bill and two from other bills.

other public outreach efforts and related activities; and (3) to pay severance costs of involuntary terminations.” Minn. Stat. § 16A.281.

Unless there is a general fund appropriation to the Senate and House for the fiscal biennium commencing on July 1, 2017, the only funds appropriated to the Senate and House will be their respective unexpended balances carried forward into the 2018-2019 fiscal biennium. (Ludeman Aff. ¶ 15-16; Reinholdz Aff. ¶ 17-18.) On July 1, 2017, the Senate is expected to have approximately \$3,900,000 in carryforward funds, and the House is expected to have approximately \$11,300,000 in carryforward funds. (Ludeman Aff. ¶ 16; Reinholdz Aff. ¶ 17.)

D. The Impact of the Governor’s Line-Item Vetoes on the Legislature.

1. The Senate will cease operations on July 28, 2017.

The Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional “session-only,” full-time staff. (Ludeman Aff. ¶ 10.) The Senate’s average monthly operating costs for the current fiscal year are approximately \$2,558,000. (*Id.* at ¶ 15.)² Without an operating budget, all Senate operations will cease at the close of business on July 27, 2017. (Ludeman Aff. ¶ 17.) The Senate intends to use its carryforward funds to pay salaries and benefits to staff through July 27, 2017, and salaries and benefits to Senators through July 31, 2017. (*Id.*) Paying these salaries and benefits will consume approximately \$1,604,000 of the Senate’s carryforward. (*Id.*) Beginning on July 28, 2017, the Senate will be forced to furlough 202 of its 205 staff. (*Id.*)

The planned furlough will allow staff to claim unemployment insurance and to receive the employer portion of health insurance costs through the end of the calendar year. This will require the Senate to reserve a portion of the remainder of

² The average monthly operating costs for the Senate and House do not account for the payment of obligations to employees that would accrue in the event of layoffs or terminations. (Ludeman Aff. ¶ 15.)

the carryforward amount to pay: (1) \$1,137,000 of the employer portion of health insurance costs for 202 furloughed Senate staff through December 31, 2017; (2) \$695,000 for unemployment insurance costs for furloughed Senate staff; and (3) \$60,000 for payroll costs for three Senate employees to implement these payments through November 30, 2017.

(*Id.*) The Senate will reserve the following amounts from the carryforward account: “(1) \$211,000 of the cost of the employer portion of health insurance for Senators through December 31, 2017; and (2) \$270,000 for housing allowances for Senators through January 1, 2018.” (*Id.* at ¶ 18).³

2. The House of Representatives will cease operations on September 1, 2017.

The House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional session-only staff. (Reinholdz Aff. ¶¶ 4, 13.) The House’s average monthly operating costs for the current fiscal year are approximately \$2,700,000 (Reinholdz Aff. ¶ 16.) Without an operating budget, House operations will cease on September 1, 2017. (*Id.* at ¶ 18.) The House will use its carryforward funds to pay salaries, benefits, and essential operating costs through August 31, 2017. (*Id.*) Paying these salaries, benefits, and essential operating costs will consume approximately \$4,600,000 of the House’s carryforward. (*Id.*) Beginning on September 1, 2017, the House will be forced to furlough 213 of its 232 permanent staff. (*Id.*) These furloughed staff will not be paid but will continue to receive the employer portion of their health insurance costs. (*Id.* at ¶ 19.) Furloughed employees will not receive employer contributions to their retirement plans. (*Id.*)

The staff furlough will require the House to reserve a portion of the remainder of the carryforward to pay approximately: (1) \$818 thousand of the employer portion of health insurance costs for 213 furloughed House staff and members through October 31, 2017; (2) \$820 thousand for anticipated unemployment insurance costs

³ The “[p]rovision of the housing allowance payments will prevent personal liability for Senators who have entered into leases in reliance on the Senate housing allowance.” (Ludeman Aff. ¶ 18.)

for furloughed House staff; and (3) \$700 thousand for compensation and essential operating costs for non-furloughed House staff until January 31, 2017.

(*Id.* at ¶ 19.) The House will continue to pay House members salaries and lodging expenses through August 2017. (*Id.* at ¶ 20.) On October 31, 2017, the House will lay off all furloughed staff. (*Id.* at ¶ 21.) This layoff will require the House to reserve \$4,300,000 of its carryforward for required payout of certain accrued paid-time-off and the employer share of health insurance for employees with at least three years of continuous state service. (*Id.*)

3. The Senate may default under the Minnesota Senate Building Lease.

The Governor's line-item vetoes will also detrimentally impact the Senate's sublease of the Minnesota Senate Building ("Senate Building"). (Ludeman Aff. ¶ 13.)⁴ Under the terms of the lease, the Senate must make monthly lease payments to the Department of Administration. (*Id.*) The funds for these lease payments come out of the Senate's general fund appropriations. (*Id.*) On June 30, 2017, the Senate must make a payment of \$683,000 to the Department of Administration. (*Id.*) On November 14, 2017, the Department of Administration must make a semi-annual rent payment of approximately \$1,911,000 to the MMB. (*Id.*) On May 14, 2018, the Department of Administration must make an additional payment of approximately \$4,131,000 to the MMB. (*Id.*) If the Senate fails to make any of its lease payments when due, MMB may remove persons and property from the Senate Building. (*Id.* at ¶ 14.) There will be no appropriations to the Senate to make any lease payments after the June 30, 2017 payment.⁵

⁴ The Department of Administration entered into a lease-purchase agreement for the Senate Building with the MMB, and subleased it to the Senate. (Ludeman Aff. ¶ 13.)

⁵ The Senate is studying whether it should defer its June 30, 2017 lease payment to conserve funds for its wind down in July 2017.

4. The State of Minnesota's credit rating will be negatively impacted as a result of the Governor's line-item vetoes.

Outright eviction of the Legislature is not the only negative consequence if the Senate fails to make a lease payment on the Senate Building. The State sold Certificates of Participation (COPs) to finance construction of the Senate Building. (Ludeman Aff. ¶ 13.) MMB uses the lease payments from the Department of Administration to pay debt service on the COPs. (*Id.*) On June 15, 2017, Standard & Poor's Global Ratings, a credit rating agency, announced that it put the State of Minnesota on "CreditWatch with negative implications" for the next 90 days as a result of Governor Dayton's line-item vetoes. (Ludeman Aff. Ex. 1, S&P Global Ratings, *Minnesota 'AA+' General Obligation Debt Rating On Watch Negative On Nonappropriation Of Certificates of Participation*, June 15, 2017.). The S&P report warns that it "could lower [its] ratings on the [State of Minnesota] as well as associated ratings by *several notches*" if this controversy is not resolved in the next 90 days. (*Id.* (emphasis added).) Even if this controversy is resolved in the next 90 days, the S&P report also warns it will likely "revise the [State's] outlook to stable rather than back to positive because this situation has illustrated a departure from what has been a very strong budget management and is not commensurate with higher rated credits." (*Id.*) Any downgrade in the State's credit rating would cause immediate, long-term, irreparable harm to the State. (Ludeman Aff. ¶ 19.) It is likely the State's creditworthiness has already suffered irreparable harm. (*Id.*)

There is no opportunity for a legislative override of Governor's vetoes because the special session has adjourned *sine die*. Minn. Const. art. IV, § 12. Only the Governor has authority to call a special session. *Id.* And the Governor said he will not call a special session unless the Legislature removes five provisions from the bills he signed into law. (Reinholdz Aff. Ex. 2, Attach. at 1-3.) The Legislature is not scheduled to meet in session again until the 2018 regular session begins on

February 20, 2018. (Ludeman Aff. ¶ 9.) By then, however, the Senate and House will have exhausted all available carryforward funds.

Finally, without an appropriation for fiscal years 2018 and 2019, the Legislature will not be able to meet in session in 2019 to enact a budget for fiscal years 2020 and 2021.

E. The Core Functions of the Legislature.

The Senate and House members are the directly elected representatives of the People of the State of Minnesota, acting as the Peoples' voice in State government. The core functions of the Legislature include, among other things, communicating with constituents and crafting legislation. (Ludeman Aff. ¶¶ 4-5; Reinholdz Aff. ¶¶ 5-6.)

Legislators are elected to represent constituents within their districts. (Ludeman Aff. ¶ 4; Reinholdz Aff. ¶ 5.) Communicating with constituents, both during the regular session and the interim, is a core function of the Legislature. (Ludeman Aff. ¶ 4; Reinholdz Aff. ¶ 5.) Constituents legitimately expect they can contact their legislators at any time to ask questions about pending legislation, to propose future legislation, and to alert their respective legislators to issues and concerns with the operation of existing law. (Ludeman Aff. ¶ 4.) Legislators rely heavily on legislative staff to facilitate constituent communication year-round. (*Id.*) Legislators cannot represent the will of the people without continuous constituent communication. (*Id.*)

Crafting legislation is another core function of the Legislature. (Ludeman Aff. ¶ 5; Reinholdz Aff. ¶ 6.) This process is complex and protracted. (Ludeman Aff. ¶ 5.) "Preparing draft legislation for introduction is often a time-consuming task that depends heavily on partisan and nonpartisan [legislative] staff, including attorneys, research analysts, and fiscal analysts." (*Id.*) During the interim between regular sessions, legislative staff prepares bills for consideration when the Legislature is in session. (Reinholdz Aff. ¶ 9.)

DISCUSSION

This dispute involves a justiciable and ripe controversy over whether the Governor can effectively eliminate the legislative branch with a line-item veto. This Court should grant a temporary injunction for three significant reasons. First, there is a substantial likelihood that Plaintiff's assertion that the Governor's line-item vetoes violate the Separation of Powers Clause of the Minnesota Constitution will succeed on the merits. The Governor cannot use his line-item veto authority to eliminate all funding for the legislative branch after it has adjourned for the session. Second, Plaintiffs and the People of this State will suffer great and irreparable harm without immediate judicial relief. The Governor's vetoes prevent the Legislature from exercising its constitutional and official powers and duties. The vetoes will also likely cause the State's credit rating to be downgraded "several notches." Third, Plaintiffs have no adequate remedy at law. Only the Governor may call a special session and he will not do so unless the Legislature capitulates to his demands. If the Court does not grant the temporary injunction, Plaintiffs alternatively seek mandamus relief compelling Defendant Frans to allot funds to the Legislature so it may perform its constitutionally-mandated core functions.

I. A JUSTICIABLE CONTROVERSY EXISTS OVER WHETHER THE GOVERNOR CAN ELIMINATE THE LEGISLATURE WITH A LINE-ITEM VETO.

In its June 14, 2017 Order to Show Cause, the Court raised concern over whether this controversy is justiciable. Plaintiffs readily satisfy the threshold question of justiciability. "A justiciable controversy exists if the claim (1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d

611, 617-18 (Minn. 2007); *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447-48 (Minn. 1978).

Under the Minnesota Constitution, the Senate and House are exclusively responsible for crafting a budget to fund state government and enacting laws generally. The Minnesota Constitution unequivocally prohibits another branch from usurping the Legislature's constitutionally-mandated function. Minn. Const. art. III, § 1; *see Otto v. Wright Cty.*, No. A16-1634, 2017 WL 2333030, at *9 (Minn. Ct. App. May 30, 2017) (holding that “conflicting assertions of rights [between state auditor and county government] demonstrate the existence of a justiciable controversy that is ripe for determination under the Minnesota Declaratory Judgments Act.”); *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. Ct. App. 2007) (concluding the case was no longer justiciable because enactment of retroactive legislation rendered dispute moot).

“When a lawsuit presents no injury that a court can redress, the case must be dismissed for lack of justiciability.” *Sviggum*, 732 N.W.2d at 321. “This redressable-injury requirement—and the corollary rule against advisory opinions—is rooted in constitutional text, the nature of judicial decision-making, and prudential concerns. The constitutional function of Minnesota courts is to resolve disputes and to adjudicate private rights.” *Id.* (citations omitted). “Because the nature of judicial decision-making is to resolve disputes, the ‘judicial function does not comprehend the giving of advisory opinions.’ And, as part of our tripartite constitutional structure, the judiciary must act prudentially to abstain from encroaching on the power of a coequal branch.” *Id.* (quoting *Izaak Walton League of Am. Endowment, Inc. v. Minn. Dep't of Natural Res.*, 252 N.W.2d 852, 854 (Minn. 1977)) (citation omitted).

There is a genuine conflict in tangible interests between the Legislature and the Governor. The injury here is not hypothetical. This dispute involves the constitutionality of Governor Dayton's line-item vetoes, which violated the Separation of Powers Clause the moment he issued them on May 30, 2017. Not only did the Governor's line-item vetoes instantly alter the balance of power between the legislative and executive branches, beginning on July 1, 2017, the vetoes will prevent the Legislature from exercising its constitutional and official powers and duties during the 2018-2019 fiscal biennium, including enacting a budget during the 2019 regular session for the 2020-2021 fiscal biennium. The Governor's vetoes will wreak significant and widespread financial harm upon the Legislature and the State as a whole. Employees will be furloughed and later terminated; the Senate will default on its lease payments for the Minnesota Senate Building; and the State's credit rating will likely be downgraded "several notches" as a result. These impending injuries are tangible and significant, and can be avoided by an order from the Court granting Plaintiffs their requested relief.

The Court is the appropriate authority to determine whether the Governor's use of the line-item veto power to defund the legislative branch and coerce a legislative outcome exceeds that constitutional authority. "[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.

The political question doctrine is no bar to the Court determining whether the Governor’s purely political actions exceed his constitutional authority or violate the Separation of Powers under Article III, § 1. While the Minnesota Constitution commits the power to veto to the executive branch, a court is not deprived of its responsibility to determine a bona fide dispute as to whether the exercise of that power exceeds constitutional authority or violates other bedrock provisions of the Minnesota Constitution such as the Separation of Powers Clause contained in Article III, § 1. This is made clear by the Governor’s self-admitted motivations for employing the veto to demand removal of five provisions from bills and the seriously detrimental effects those actions have on the guarantee of a co-equal legislative branch of government under Article III, § 1. Article III of the Minnesota Constitution expressly forbids the Governor from usurping or diminishing the Legislature’s role. His veto authority cannot be used to abrogate this prohibition. Minn. Const. Art. III, § 1. As the Supreme Court instructed in *Baker v. Carr*, “[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). Thus, the political question doctrine cannot shield Governor Dayton’s unconstitutional actions from judicial review.

II. PLAINTIFFS ARE ENTITLED TO A DECLARATION THAT GOVERNOR DAYTON'S LINE-ITEM VETOES VIOLATE THE SEPARATION OF POWERS CLAUSE OF THE MINNESOTA CONSTITUTION.

A. An Action for Declaratory Judgment in the District Court Is the Appropriate Method and Forum to Decide this Controversy.

Minnesota courts “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed . . . The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” Minn. Stat. § 555.01; *see* Minn. R. Civ. P. 57 (delineating the procedure for obtaining a declaratory judgment under Minn. Stat. ch. 555). “The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” Minn. Stat. § 555.06.

A party challenging the exercise of the Governor’s veto power should “petition the district court for a judicial declaration as to the validity or invalidity of attempted vetoes in accordance with Minnesota Statute chapter 555, the Uniform Declaratory Judgments Act.” *Inter Faculty Org. v. Carlson*, 478 N.W.2d 192, 193 (Minn. 1991)⁶; *see Seventy-Seventh Minnesota State Senate v. Carlson*, 472 N.W.2d 99, 99 (Minn. 1991) (dismissing petition asking supreme court to exercise original jurisdiction to address question of effectiveness of attempted vetoes where substantial factual dispute existed, and directing parties to recommence action in district court under Minn. Stat. ch. 555).

⁶ “In both a technical and practical sense, mandamus will not lie to test the validity or invalidity of an attempted gubernatorial veto, but instead would compel the performance by various officials of their duties defined as a consequence of that judicial declaration of validity or invalidity.” *Inter Faculty Org.*, 478 N.W.2d at 193 n.1.

B. The Roles of the Legislature and Governor in the Budget-Creation Process.

This constitutional dispute stems from the recent budget negotiations between the Legislature and the Governor. In *Brayton v. Pawlenty*, 781 N.W.2d 357, 365 (Minn. 2010), the Minnesota Supreme Court explained the branches' respective roles in enacting the State's budget:

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.*

Once a bill has been passed by the Legislature and approved by the Governor (or a veto is overridden), the bill becomes law, and the constitutional responsibility of the Governor is to “take care that the laws be faithfully executed.” Minn. Const. art. V, § 3. If this process of legislative passage and gubernatorial approval or veto does not succeed in producing a balanced budget within the normal legislative session, the Governor has the authority to call the Legislature into special session. *See* Minn. Const. art. IV, § 12.

781 N.W.2d at 365 (emphasis added).

The governor's line-item veto authority derives from Article IV of the Minnesota Constitution, the Legislative Department Article. *Inter Faculty Org.*, 478 N.W.2d at 194. Given its origin, the Governor's line-item veto power is neither an executive function nor an affirmative grant of authority. *Id.* Rather, the veto power is an exception to the legislature's authority. *Id.* “As an exception, the power must be narrowly construed to prevent an unwarranted usurpation by the executive of powers granted the legislature in the first instance.” *Id.*; *Brayton*, 781 N.W.2d at 366.

C. The Separation of Powers Clause.

The Governor's limited line-item veto authority is further constrained by 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. Besides creating three independent branches of government, the Separation of Powers Clause expressly prohibits each branch from “usurp[ing] or diminish[ing] the role of another branch.” *Brayton*, 781 N.W.2d at 365 (citing Minn. Const. art. III, § 1); *In re Civil Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007) (recognizing “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.”). “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.” *State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (Minn. 1930). “[I]t is 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. 78, 81 (Minn. 1865) (internal quotation marks omitted).

Governor Dayton's line-item vetoes violate the Separation of Powers Clause in two significant aspects. First, the Governor has made clear his intent to coerce the Legislature to revisit bills that have already become law. His May 30, 2017 letter to Speaker Daudt and Majority Leader Gazelka confirm the Governor's displeasure with certain provisions in the budget bills presented to him for signature. Nonetheless, the Governor approved all of the bills and they became law. The

Governor then line-item vetoed the Legislature's budget for the 2018-2019 fiscal biennium and instructed the Legislature to "finish [its] work." In this situation, the Legislature would be required to seek majorities to pass new legislation, repealing the very legislation the Governor signed into law contemporaneously with issuing the vetoes giving rise to this litigation. However, the Legislature cannot meet in session before the 2018 regular session unless the Governor calls a special session. And the Governor expressly conditioned calling a special session upon the Legislature removing five provisions from the bills which the Governor signed. The Governor's true motivation for his vetoes is further demonstrated by the fact that he did not disagree with the amounts or character of the appropriations for the House and Senate. In fact, the Governor had specifically recommended identical appropriations for the Senate and House in his proposed budget in January and March 2017. The Governor's intent was purely coercive in nature which violates the Separation of Powers Clause of the Minnesota Constitution.

Second, the Governor's vetoes effectively abolish the Legislature's role in fiscal years 2018 and 2019. This is the relative "evil" encroachment of one branch on another that the Minnesota Supreme Court warned against over 150 years ago. *See In re Application of Senate*, 10 Minn. at 81. Although the Governor generally possesses legitimate authority to veto specific items of appropriation, his line-item vetoes of the Legislature's entire budget for the 2018-2019 fiscal biennium violate the Separation of Powers Clause of the Minnesota Constitution. Consequently, the vetoes are unconstitutional, null, and void.

This case is analogous to *Brayton* which involved a dispute over Governor Tim Pawlenty's reduction of spending allotments without approval from the Legislature. 781 N.W.2d at 357. In *Brayton*, the State faced a projected budget deficit of \$4.57 billion. *Id.* at 359. In response, the Legislature passed and presented to the Governor appropriation bills for the 2010-2011 fiscal

biennium that reduced the projected deficit to \$2.7 billion. *Id.* The Governor signed the appropriations bills into law. *Id.* On the same day the appropriations bills were passed into law, the Legislature passed a “revenue bill that would raise taxes to address the \$2.7 billion projected deficit remaining after enactment of the appropriations bills.” *Id.* Governor Pawlenty vetoed the revenue bill. *Id.* at 360. “Because the Legislature had adjourned by the time of the veto, the \$2.7 billion projected deficit remained. The Governor did not call a special session of the Legislature.” *Id.*

Article XI of the Minnesota Constitution only allows the State to borrow money for limited purposes. *Brayton*, 781 N.W.2d at 360. “As a result, the state's biennial operating budget must be balanced—that is, expenditures cannot exceed revenues for the biennium.” *Id.* Minnesota Statutes section 16A.152 (the unallotment statute), provides the executive branch authority to address a budget deficit, including “authority to reduce unexpected allotments.” *Id.* The Governor approved “allotment reductions of approximately \$2.5 billion on July 1, the first day of the biennium[.]” *Id.* at 361. The Commissioner of the MMB then implemented those unallotments. *Id.*

The district court issued the temporary restraining order, enjoining the defendants from reducing the allotment to the federal Special Diet Program. *Brayton*, 781 N.W.2d at 362. It reasoned:

The authority of the Governor to unallot is an authority intended to save the state in times of a previously unforeseen budget crisis, it is not meant to be used as a weapon by the executive branch to break a stalemate in budget negotiations with the Legislature or to rewrite the appropriations bill.

Id. The defendants appealed, arguing “that the district court erred in concluding the unallotment authority in subdivision 4 of section 16A.152 can be exercised only for budget deficits unforeseen while the Legislature was in session.” *Id.*

On accelerated review, the supreme court affirmed the district court's ruling, concluding the unallotment at issue exceeded the scope of the Governor's statutory authority. *Brayton*, 781 N.W.2d at 363. Recognizing the Governor's "limited constitutional grant of gubernatorial authority with regard to appropriations," the supreme court concluded the Legislature did not intend "to authorize the executive branch to use the unallotment process to balance the budget for an entire biennium when balanced spending and revenue legislation has not been initially agreed upon by the Legislature and the Governor." *Id.* at 366-67. Instead, the court concluded "the Legislature intended the unallotment authority to serve the more narrow purpose of providing a mechanism by which the executive branch could address unanticipated deficits that occur after a balanced budget has previously been enacted." *Id.* at 367 (footnote omitted). To construe the Governor's unallotment authority otherwise, the court explained, "would result in an alternative budget-creation mechanism that bypasses the constitutionally prescribed process." *Id.* (footnote omitted). After concluding the Governor exceeded his authority, the court declared his unallotment "unlawful and void." *Id.*

In *Brayton*, the court held that the Governor's unallotment authority could not be used to bypass a constitutionally prescribed process for enacting budget legislation. Governor Pawlenty's use of his unallotment authority in *Brayton* is analogous to Governor Dayton's use of his line-item veto authority here. While Governor Dayton possesses limited authority to veto specific items of appropriation, he cannot use that authority as an extraconstitutional resolution to the budget enactment process. Governor Dayton has exceeded his limited authority in the budget-creation process by arbitrarily eliminating all funding for the legislative branch for an entire biennium after it adjourned for the session, solely for the Governor's stated purpose of resolving disputes regarding other provisions in budget bills that have been signed into law. Consequently, Governor

Dayton's line-item vetoes are null and void. Following the approach dictated in *Brayton*, the two items vetoed by Governor Dayton are therefore reincorporated into the legislation as passed by the Legislature and signed into law by the Governor.

D. The Governor's Line-Item Vetoes of the Senate and House Appropriations Fail to Satisfy the Constitutional Requirement that He Actually "Object to" the Vetoed Items of Appropriation.

Governor Dayton's line-item vetoes fail to satisfy the Constitution because, as we have previously discussed, his veto letter makes it clear he does not actually object to the vetoed items of appropriations, but rather to other unrelated provisions of the bill and other bills. Nowhere in his veto letter does the governor indicate that he objects to, disapproves of, or opposes the appropriations to the Senate and House that he actually vetoed. In fact, the appropriated amounts were identical to his own budget recommendations. Actually objecting to or opposing a particular item of appropriation is a core requirement of the Governor's limited item veto power under Article IV, section 23 of the Minnesota Constitution.

1. The Governor's line-item power is to be narrowly construed and may not be used in "creative" ways beyond its narrow authorization in the Constitution.

In its two line-item veto cases, *Inter Faculty Organization*, *supra*, 478 N.W.2d at 194, and *Johnson v. Carlson*, 507 N.W.2d 232 (Minn. 1993), decided two years later, the Supreme Court explained that this power is "to be narrowly construed so to prevent an unwarranted usurpation by the executive of powers granted the legislature in the first place." *Inter Faculty Org.*, 478 N.W.2d at 194.

Thus, the Court should view skeptically efforts to use the power in creative ways or for unrelated purposes, as Governor Dayton has clearly done here. With these line-item vetoes, the

Governor does not intend to ultimately negate the appropriations but simply to use vetoing them as bargaining chips to obtain enactment of unrelated laws.

2. The original language of the line-item veto power explicitly required the Governor to “object” to items of the appropriation. This requirement continues to apply and limits the line-item veto power.

The line-item veto power was adopted by the People in 1876. The relevant language provided:

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.

Laws 1876, ch. 1, § 1 (emphasis added). The original language was expressed as the Governor “object[ing]” to the items of appropriation, rather than as vetoing them.⁷

It is clear that the line-item veto power should be read as continuing to limit the Governor’s use of the power to items the Governor actually “objects” to. When “object” is used as a verb, as it

⁷ In 1974, the people adopted a constitutional amendment that restructured and rewrote much of the constitution. Laws 1974, ch. 409. The amendment modified the text of the item veto power by substituting the term “veto” for “object” each place it appeared in the text of the constitution. The 1974 amendment, as expressed in its title, was intended to be a “reforming of [the constitution’s] structure, style and form.” *Id.* The fact that the rewriting accomplished by the 1974 amendment was not intended to be substantive is confirmed by the severability clause that was included in the legislation that submitted it to the voters. It provided:

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.

Id. at § 2 (emphasis added).

is here, it means “[t]o state in opposition; to put forward as an objection.” OBJECT, Black's Law Dictionary (10th ed. 2014).

Reading the constitutional language as allowing the governor to veto any item of appropriation, even one he proposed and supported, for an unrelated purpose (to gain bargaining power over the legislature), does violence both to the intent of the original 1876 constitutional amendment and the limited purpose (improving organization and readability) of the 1974 amendment. Furthermore, retaining the requirement of stating an objection is necessary to constrain the power consistently with the approach articulated by the supreme court in *Inter Faculty Organization v. Carlson* and *Johnson v. Carlson*.

Once one recognizes that “objecting” is a core requirement of the use of the constitutional veto power, it is clear that Governor Dayton’s use of the power here, where he has no objection to the appropriations at issue, exceeds the constitutional limits of the power and must be voided by the court.

E. This Issue Is Ripe for Adjudication.

As discussed *supra* in Section I, “[j]usticiability generally requires (1) a genuine or present controversy (2) presented by persons with truly adverse interests and (3) capable of specific rather than advisory relief by a decree or judgment. *Rice Lake Contracting Corp. v. Rust Env't & Infrastructure, Inc.*, 549 N.W.2d 96, 99 (Minn. Ct. App. 1996) (citation omitted). “In declaratory judgment actions, the ‘present controversy’ requirement of justiciability is viewed leniently and is satisfied if there is a controversy of ‘sufficient immediacy and reality’ to warrant issuance of a judgment.” *Id.* (quoting *Holiday Acres No. 3*, 271 N.W.2d at 448) (citing Minn. Stat. § 555.12 (1994) (stating the declaratory judgment statute is remedial: “its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and [it]

is to be liberally construed and administered”); *Harrington v. Fairchild*, 51 N.W.2d 71, 73 (Minn. 1952) (same)).

“As Minnesota courts have phrased it, a ‘ripening seeds’ inquiry replaces the usual ‘present controversy’ justiciability inquiry in declaratory judgment situations: if a declaratory judgment claimant possesses ‘a bone fide legal interest which has been, or with respect to the ripening seeds of a controversy is about to be, affected in a prejudicial manner,’ jurisdiction exists.” *Rice Lake Contracting Corp.*, 549 N.W.2d at 99 (quoting *State v. Haveland*, 25 N.W.2d 474, 477 (Minn. 1946)) (citations omitted).

The Legislature has a bona fide legal interest in exercising its constitutional and official powers and duties. The Legislature was prejudiced the moment Governor Dayton issued his line-item vetoes and eliminated appropriations to the Legislature for the 2018-2019 fiscal biennium. Furthermore, it is likely the Governor’s line-item vetoes have already negatively impacted the State’s creditworthiness. The specter of greater, long-term harm will only increase with time. The Court need not wait until Plaintiffs or the State suffers further prejudice. This controversy was ripe for adjudication on May 30, 2017, and it will not ripen further with the passage of time.

III. TEMPORARY INJUNCTIVE RELIEF IS NECESSARY TO MAINTAIN THE SEPARATION OF POWERS UNDER ARTICLE III OF THE MINNESOTA CONSTITUTION.

Plaintiffs move the Court for a temporary injunction under Rule 65.02 of the Minnesota Rules of Civil Procedure, compelling Defendant Frans to allot funds that were appropriated to the Legislature for the 2018-2019 fiscal biennium. “A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits.” *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982) (citation omitted). “The party seeking

the injunction must demonstrate that there is an inadequate legal remedy and that the injunction is necessary to prevent great and irreparable injury.” *U.S. Bank Nat. Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. Ct. App. 2000) (citing *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 91 (Minn. 1979)). The moving party must demonstrate sufficient grounds exist for the requested relief by affidavit, deposition testimony, or oral testimony. Minn. R. Civ. P. 65.02(b). The district court has broad authority to grant or deny a temporary injunction. *E.g.*, *Cherne*, 278 N.W.2d at 91.

In determining whether to issue a temporary injunction, the court considers five factors:

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
- (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965) (footnotes omitted).⁸ These factors, taken together, weigh heavily in favor of granting a temporary injunction.

A. The Parties' Relationship.

This factor examines the parties' relationship before Governor Dayton's May 30, 2017 line-item vetoes. The purpose behind analyzing the relationship between the parties is to determine

⁸ The *Dahlberg* “analysis applies equally to temporary restraining orders.” *M.G.M. Liquor Warehouse Int'l, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. Ct. App. 1985)

whether injunctive relief will affect the parties' reasonable expectations. *Dahlberg*, 137 N.W.2d at 322. For over 100 years, the parties' relationship has been characterized by co-equal existence. Article III of the Minnesota Constitution establishes three co-equal branches of government. Minn. Const. art. III, § 1. The express purpose of the Separation of Powers Clause is to prohibit one branch from "interfering with the coordinate branch's exercise of its authority." *Giem*, 742 N.W.2d at 429; e.g., *Brayton*, 781 N.W.2d at 365; *State ex rel. Decker v. Montague*, 262 N.W. 684, 684 (Minn. 1935) ("The constitutional separation of authority into legislative, executive, and judicial departments forbids interference of one with the other within their respective spheres.").

The legislative and executive branches reasonably expect the other will abide by the Separation of Powers Clause. Governor Dayton's line-item vetoes of the Legislature's budget for the 2018-2019 fiscal biennium effectively abolish the parties' constitutionally-mandated relationship. Accordingly, temporary injunctive relief is necessary to maintain the status quo until the case can be adjudicated on the merits. This factor therefore weighs in favor of granting a temporary injunction.

B. The Likelihood of Success on the Merits.

The Minnesota Constitution expressly forbids one branch of government from intruding on the authority of another. Minn. Const. art. III, § 1. The Governor's use of his line-item veto power, left unchecked, will effectively abolish a co-equal branch of government. As discussed *supra* in Section II, the Governor's May 30, 2017 line-item vetoes are unconstitutional, null, and void. This factor also weighs in favor of granting a temporary injunction.

C. The Balance of Harms.

An injunction is appropriate if the moving party stands to suffer "great and irreparable injury without its entry." *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d

214, 222 (Minn. Ct. App. 2002). The Legislature and the State will suffer tangible, great, and irreparable harm if the temporary injunction is not granted.

The Legislature suffered a constitutional injury the moment Governor Dayton issued his line-item vetoes on May 30, 2017. Without a temporary injunction, the Legislature will not be able to communicate with constituents or craft legislation. The Legislature will no longer be able to represent the will of the People. The People will be deprived of their constitutionally-mandated tripartite system of government. These injuries are great and irreparable.

Without a temporary injunction, the Senate will cease operations on July 27, 2017. Beginning on July 28, 2017, the Senate will be forced to furlough 202 of its 205 permanent staff. Furloughed staff will go without pay. The Senate will have to pay \$695,000 in anticipated unemployment insurance for furloughed staff. The Senate can only afford to pay the employer portion of health insurance for furloughed staff until December 31, 2017.

Without a temporary injunction, the House will cease operations on September 1, 2017. On that date, the House will be forced to furlough 213 of its 232 permanent staff. Furloughed staff will go without pay for an indefinite period of time. The House will have to pay \$820,000 in anticipated unemployment insurance costs for those staff. The House can only afford to pay the employer portion of health insurance for furloughed staff until October 31, 2017. On that date, the House will be forced to lay off all furloughed staff.

Without a temporary injunction, the Senate will likely default on the Senate Building lease. The Senate must make a \$683,000 payment to Department of Administration for the Senate Building on June 30, 2017. That amount is approximately eighteen-percent of the Senate's \$3,900,000 carryforward funds. If the Senate decides not to make the payment, MMB may evict

the Senate from the Senate Building. If the Senate makes this payment, it will be forced to furlough its staff earlier than expected and they will go without pay for a longer period of time.

If the Senate misses a payment on its Senate Building lease, the State's credit rating will likely be downgraded "several notches." The impact of the Governor's line-item vetoes to the State's creditworthiness cannot be stressed enough. The State's credit rating is an indicator to investors of its ability to fulfill its financial commitments. A downgrade in the State's credit rating will increase interest rates charged by lenders and impair the State's bond market for the unforeseeable future, including bonds that would otherwise be sold this year to fund projects authorized in the bonding bill enacted this year. According to the S&P Global Ratings report, the State's credit rating will likely be downgraded from positive to stable regardless of the outcome of this controversy. The harm to the State's credit rating caused by the Governor's line-item vetoes is dire and irreparable.

The Governor will not suffer harm if the Court compels Defendant Frans to allot the funds appropriated to the Legislature for the 2018-2019 fiscal biennium. Although the Governor vetoed the appropriations to the Legislature for the 2018-2019 fiscal biennium, the funds are still provided for in the State's budget. The Governor cannot unilaterally reallocate those funds for some other purpose without legislative action.

The Legislature and the State of Minnesota have already suffered great and irreparable harm which will only worsen over time if the temporary injunction is not granted. Accordingly, this factor weighs in favor of granting the temporary injunction.

D. Public Policy Considerations.

The public policy considerations at play in this controversy flow from the Minnesota Constitution. The Separation of Powers Clause creates three independent branches of government

and forbids one branch from usurping or diminishing the role of another. Public policy strongly favors this system of checks and balances. The public interest will therefore be served by issuance of a temporary injunction to preserve the *status quo* until the merits of the instant case have been decided.

E. The Administrative Burden.

The administrative burdens resulting from the injunctive relief sought by Plaintiffs, if any, will be minimal. A temporary injunction declaring Governor Dayton's line-item vetoes unconstitutional and compelling Defendant Frans to allot funds to the Legislature will not result in any administrative burden to enforce and monitor the relief. Thus, this factor also favors entry of the requested injunction.

F. No Bond or Other Security Should Be Required.

Rule 65.03 of the Minnesota Rules of Civil Procedure provides that a temporary restraining order or temporary injunction may not be granted "except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Minn. R. Civ. P. 65.03. "In the exercise of its discretion, a trial court may waive the security requirement." *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 297 (Minn. Ct. App. 1995) (citing *Howe v. Howe*, 384 N.W.2d 541, 546 (Minn. Ct. App. 1986)).⁹

Plaintiffs are seeking an injunction declaring Governor Dayton's May 30, 2017 line-item vetoes unconstitutional and compelling Defendant Frans to allot funds that were appropriated to

⁹ "To facilitate appellate review, however, a trial court should note its decision to do so." *Ecolab, Inc.*, 537 N.W.2d at 297 (citing *Bio-Line, Inc. v. Burman*, 404 N.W.2d 318, 322 (Minn. Ct. App. 1987) (trial court abused its discretion either by failing to address security requirement or by waiving the requirement without stating its reasons for doing so).

the Legislature for the 2018-2019 fiscal biennium. Plaintiffs should not be required to post a bond or other security because the Defendants are not at risk of harm should the Motion be granted. Accordingly, Plaintiffs respectfully request that the Court waive the bond requirements under Rule 65.03.

G. This Issue Is Ripe for Adjudication.

The Legislature has already started planning for the shutdown which has triggered a chain reaction of negative consequences. For example, the Senate will send out furlough notices on June 28, 2017 to begin furloughing staff on July 28, 2017. The Senate will cease operations on July 27, 2017. The House will cease operations and begin furloughing staff on September 1, 2017. The Senate must decide whether to make its June 30, 2017 Senate Building lease payment. The State's credit rating will likely be downgraded "several notches" if the Senate misses that lease payment. For these reasons and those discussed *supra* in Section I, this controversy is ripe for adjudication.

IV. THE COURT SHOULD ALTERNATIVELY GRANT MANDAMUS RELIEF.

As an alternative to injunctive relief, Plaintiffs seek mandamus relief compelling Defendant Frans to allot funds to the Legislature to perform its core functions. "In both a technical and practical sense, mandamus will not lie to test the validity or invalidity of an attempted gubernatorial veto, but instead would compel the performance by various officials of their duties defined as a consequence of that judicial declaration of validity or invalidity." *Inter Faculty Org.*, 478 N.W.2d at 193 n.1. 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. As Commissioner of the MMB, Defendant Frans is responsible for allotting appropriations to the Legislature for its

operating expenditures. The Court may therefore issue a writ of mandamus to Defendant Frans, compelling him to allot such funds to the Legislature.

To determine the core functions of the Legislature, Minnesota courts must consider the functions of the Legislature in the time period preceding and contemporaneous to the 1857 adoption of the Minnesota Constitution. *Otto*, 2017 WL 2333030, at *4 (citing *Mattson* 391 N.W.2d at 782 (focusing on framers' intent to determine core functions of state treasurer)). Article IV of the Minnesota Constitution does not explicitly list the core functions of the Legislature. The Framers' intent, however, is clear. The Legislature is entrusted with representing the will of the People. This requires unabridged communication with constituents and crafting legislation. These are the Legislature's primary, core functions. (*See Reinholdz Aff. Ex. 4 at *8* (determining the core functions of the Legislature include drafting, debating, publishing, voting on, and enacting Legislation). These two functions occur year-round and require significant investments in time and resources. The overwhelming majority of legislative staff contributes to these functions on a daily basis. Defendant Frans must be compelled to allot funds to allow the Legislature to perform these core functions.

Plaintiffs have no other legal recourse since the regular and special sessions have ended. Only the Governor can call a special session and he has expressly stated he will not do so unless the Legislature repeals existing law he disagrees with. Consequently, Plaintiffs have no other "plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02.

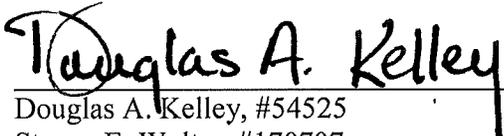
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue a declaration that Governor Dayton's line-item vetoes are unconstitutional, null, and void, and an order reinstating the appropriations to the Legislature for the 2018-2019 fiscal biennium. In order to

effectuate this relief, the Court must also grant injunctive relief compelling Defendant Frans to allot those appropriations to the Legislature. If the Court does not grant the temporary injunction, it may alternatively grant mandamus relief directing Defendant Frans to allot funds to the Legislature to perform its constitutionally-mandated core functions.

Dated: June 22, 2017

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