

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,

Plaintiffs,

v.

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.

Court File No. 62-CV-17-3601
Chief Judge John H. Guthmann

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION TO ENFORCE JUDGMENT**

INTRODUCTION

Plaintiffs' Motion to Enforce Judgment is an unwarranted motion in an unnecessary lawsuit and should be denied.

Plaintiffs argue that the Judgment is final and has not been stayed. But this argument merely begs the question in several respects. First, Defendants have moved to stay enforcement, so the proper legal standard requires a balancing of interests. Second, the parties stipulated to the entry of a final judgment solely to enable an immediate appeal, not to have that Judgment govern their relationship pending appeal. This is what Defendants bargained for when they agreed to Temporary Injunction funding until

October 1, 2017, based on the value of the otherwise expired fiscal year 2017 appropriation.

Plaintiffs argue that they will suffer irreparable harm by curtailing their activities. But that “harm” has no legal significance because it is not caused by the Governor’s vetoes, but rather by the Plaintiffs’ voluntary choice not to draw on funds that are available for their use. In other words, harm that is self-inflicted cannot be considered irreparable.

This Court should exercise restraint in light of the ongoing proceedings before the Supreme Court and deny Plaintiffs’ Motion to Enforce Judgment.

ARGUMENT

I. The District Court has Jurisdiction, But the Applicable Legal Standard is the Standard That Governs Defendants’ Motion to Stay Enforcement.

Defendants agree that the district court retains jurisdiction to decide this issue. But Plaintiffs do not address the proper legal standard – the balancing of interests required to address Defendants’ Motion to Stay enforcement of the Judgment. (*See* Defendants’ Memorandum in Support of Motion to Stay Enforcement of the Judgment, pp. 3-5).

II. The Parties’ Stipulations Govern the Appeal Period and Should Operate to Stay Enforcement of the Judgment During Appellate Review.

Consistent with the parties’ Stipulations, the Court should decline to allow the Plaintiffs to draw on the vetoed FY18-19 appropriations pending appeal. The parties’ June 23, 2017 Stipulation was designed to permit the prompt and final determination by the Supreme Court of the seminal issue of Count I—the constitutionality of the

Governor’s line item vetoes—in order to “advance the just, inexpensive, and efficient resolution of this case.” (June 23, 2017 Stipulation, p. 2, ¶2). Critical to ensuring this just, inexpensive and efficient resolution were the agreements to 1) stay the remainder of the proceedings before the district court, and 2) maintain the status quo pending appeal by providing continuing funding to the House and Senate until the termination of appellate proceedings or until October 1, 2017, whichever came first. (*Id.* ¶¶3, 5.) In entering this Stipulation, as well as the post-Judgment Stipulation, the parties agreed to promote inexpensive and efficient resolution by avoiding “unnecessary litigation” about whether Plaintiffs are entitled to the vetoed FY18-19 appropriations until that issue is finally decided by the Supreme Court. (*See* July 31, 2017 Stipulation and Order, p. 1.)

The parties clearly contemplated that the FY18-19 House and Senate appropriations would not be restored during the pendency of the appeal. Both Stipulations and the Court’s following Orders provided for limited continuing funding to the House and Senate. Importantly, this temporary funding was based on extending Plaintiffs’ fiscal year 2017 appropriation level, *not* on the vetoed FY18-19 appropriations.

Plaintiffs have made representations to the Supreme Court that after the stipulated extended funding ceased on October 1, they would begin using carryforward funds. (Add. 13.)¹ This representation recognizes that the Stipulations govern the proceedings pending Supreme Court decision and supersede the Judgment, even after the Temporary

¹ “Add.” refers to the Addendum to Defendants’ Memorandum in Support of Motion for a Stay of Enforcement of the Judgment Pending Appeal.

Injunction funding expired. This Court should not now intervene to enforce the Judgment pending appeal to restore the vetoed appropriations, in contravention of the parties' Stipulations. Plaintiffs now attempt to backtrack on their agreement with Defendants and their representations to the Supreme Court and seek to insert this Court into the fray by manufacturing a financial crisis that, as demonstrated in the Supreme Court proceedings, simply does not exist.

III. Since Plaintiffs Have Access to More Than Sufficient Funds to Operate, They Cannot Justify Judicial Intervention to Restore the Vetoed Appropriations Pending Supreme Court Review.

Plaintiffs make specious claims of unavoidable and irreparable financial ruin to justify their request for this Court to intervene. Plaintiffs base this Motion, just like their lawsuit, on the false premise that they require judicial intervention to prevent the Governor's vetoes from abolishing them. However, the facts demonstrate that they have significant funds at their disposal, without any need for action by this Court.

As of November 1, 2017, the House has more than \$8 million and the Senate has more than \$3 million in their carryforward accounts. (Affidavit of Eric Hallstrom in Support of Motion to Stay Judgment ("Second Hallstrom Aff.") ¶9.) It is undisputed that they can use these funds for operations, including specifically to pay the Senate Office Building lease payments. (*See* Minn. Stat. § 16A.281; Order Granting Temporary Injunctive Relief, p. 12, ¶¶ 3-4). In addition, the Legislative Coordinating Commission ("LCC") has more than \$3 million in carryforward funds, more than \$12 million in its

FY18 appropriation, and more than \$17 million in its FY19 appropriation.² (Second Hallstrom Aff. ¶9.) The FY18 and FY19 appropriations are available “in either year of the biennium.” Minn. Stat. § 16A.281. The LCC has broad authority to transfer carryforward and biennial appropriations to the House and Senate. Minn. Stat. § 3.305, subd. 2.

Plaintiffs have more than enough money to continue operating, without making any of the cuts they threaten. Plaintiffs represented to the Supreme Court that their normal monthly operating expenses are approximately \$2.5 million for each body. (Add. 13.) The amounts available to Plaintiffs are more than sufficient to continue these normal spending levels for months. Since the LCC biennial appropriation can be used in either year, Minn. Stat. § 16A.281, Plaintiffs could use the LCC’s FY19 \$17 million appropriation without impacting the LCC this fiscal year at all. With these funds, together with the carryforward funds, Plaintiffs can finance their normal operations until they can pass a new appropriations bill during the 2018 Legislative Session.

Plaintiffs argue that their spending decisions are discretionary, and even suggest that it would be unconstitutional to “force the Legislature to exhaust its carryforwards.” Of course, the Legislature has discretion to use or not use funds available to it. No one seeks to force Plaintiffs to exercise that discretion in any particular way. But the failure to exercise discretion has legal consequences to the validity of Plaintiffs’ claim, just like

² There is no material distinction between Plaintiffs and the LCC. Indeed, the LCC voted to appoint Plaintiffs’ counsel in this case. (Complaint ¶¶4, 22 & Ex. 2.)

the failure of an injured plaintiff to seek medical treatment for the injury has legal consequences.

Here, the question is not whether the Legislature has discretion, but whether Plaintiffs can use that discretion to manufacture a financial crisis and then seek judicial relief from that crisis. Plaintiffs certainly can exercise their discretion to curtail spending. They can even decide not to tap into House and Senate carryforward funds or any LCC funds. However, given their access to substantial funds, they cannot blame the Governor for their decisions to cancel legislative per diems, travel expense reimbursements and bonding tours.³ Nor can they establish the type of irreparable harm that justifies judicial intervention since they have sufficient funds to operate until the Supreme Court rules, and if the Judgment is affirmed, the appropriations will simply be retroactively reinstated. (*See* Add. 4 “[A] proper respect for our co-equal branches of government counsels that we intervene in their dispute only when absolutely necessary.”)

The Legislature is the only branch of Government that has the ability to carry forward general fund operating dollars. The Legislature has broad authority to use carryforward funds, which can be used for operations whether or not the Legislature has other appropriations available. In addition, unlike the executive branch, it can draw on its second year appropriations at the beginning of the biennium, so the LCC FY19 funds can

³ Plaintiffs’ claims that they are being forced to curtail spending are suspect in light of their expenditures since the expiration of Temporary Injunction funding, and while the Legislature is not even in session. These expenditures include \$86,565.58 for apartment/furniture rental and housing reimbursements, \$39,296.38 for other expense reimbursements including mileage, and \$4,375.00 to pay conference registration fees for seven legislators and staff to attend a conference in Boston. (*Second Hallstrom Aff.* ¶3.)

freely be used to fund House and Senate operations in FY18. As a result, expecting the Legislature to draw on these funds where needed to fund their operations is neither harmful nor unreasonable.

IV. This Court Should Exercise Restraint and Deny Plaintiffs’ Motion In Light of the Factual, Legal and Procedural Developments Since the Judgment.

As Defendants demonstrated in their Memorandum in Support of their Motion to Stay Enforcement of the Judgment Pending Appeal, the factual, legal and procedural developments since the Judgment counsel against enforcement. First, the Judgment’s factual premise—that the vetoes “abolished” the Legislature—has been shown to be untrue. Second, the Judgment’s legal underpinnings have been seriously eroded by the Supreme Court’s determination that the vetoes were “constitutional under [Minn. Const. art. IV, § 23].” (Add. 1-2). Finally, the procedural posture of this case weighs against enforcement of the Judgment. The case has been fully presented to the Supreme Court, which has taken steps to determine what funding is available to the Legislature without appropriations, including carryforward funds, LCC funds and, if needed, court-provided core function funding. District court action to restore the vetoed appropriations at this point will only serve to complicate and potentially interfere with the Supreme Court’s process.⁴

⁴ While Minn. R. Civ. App. 108.01, subd. 2 (suspending trial court’s authority to make orders affecting judgment on appeal) does not technically apply here, the purpose of the Rule—to prevent the district court from issuing rulings that would interfere with appellate jurisdiction—does apply.

CONCLUSION

Defendants respectfully request that this Court deny Plaintiffs' Motion to Enforce Judgment, and instead stay enforcement pending the Minnesota Supreme Court's decision.

Respectfully submitted,

Dated: November 8, 2017

BRIGGS AND MORGAN, P.A.

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ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

/s/ Sam Hanson

Sam Hanson