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8/15/2017 12:17 PM
Ramsey County, MN

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, and Association for Government Accountability, Putative Defendant-in-Intervention.	Court File No. 62-cv-17-3601 Chief Judge John H. Guthmann **DEFENDANTS' OBJECTIONS TO NOTICE OF INTERVENTION**

TO: Association for Government Accountability and its counsel ERICK G. KAARDAL and JAMES V. F. DICKEY, 150 South Fifth Street, Suite 3100, Minneapolis, MN 55402.

PLEASE TAKE NOTICE that Defendants Governor Mark B. Dayton and Commissioner Myron Frans object to the requested intervention of the Association for Government Accountability (AGA). AGA cannot establish grounds for either Intervention of Right under Minn. R. Civ. P. 24.01 or Permissive Intervention under Minn. R. Civ. P. 24.02.

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AGA's petition is untimely and would unduly delay the adjudication of the rights of the current parties to this action. Further, AGA lacks standing to intervene in this action; the relief requested by AGA is not ripe for decision; and, any interests that AGA may tangentially have are adequately represented by the present parties to this action.

1. AGA's Intervention Should be Denied Because it is Untimely.

As AGA recognizes, intervention is untimely where it would "unduly and adversely affect the rights of existing parties." Notice of Intervention at p. 9 (quoting *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974)). Moreover, Minn. R. Civ. P. 24.02 states that a court "shall consider" whether a permissive intervention would "unduly delay" adjudication of the rights of the original parties. The Minnesota Supreme Court has granted the parties' joint petition for accelerated review. AGA's proposal, and its very participation as a party in this case, would cause confusion and delay. Although waiting 21 days to seek to intervene may not be untimely in an average case, it is too long for an expedited case such as this one.

2. AGA Lacks Standing.

AGA asserts that it seeks intervention in this matter to obtain two separate kinds of relief: to obtain judgment on the pleadings dismissing the Complaint and to appeal the Temporary Injunction ordered by the Court and stipulated to by the parties. (Notice of Intervention at 2.) AGA lacks standing to seek either form of relief.

Standing requires that a party has a sufficient stake in a justiciable controversy to seek relief from a court. *State by Humphrey v. Philip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). To have standing, a party must have suffered an injury-in-fact or be the

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beneficiary of a legislative enactment granting standing, which is not alleged here. *Lorix v. Cromton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007). An "injury-in-fact" is a concrete and particularized invasion of a legally protected interest. *Id.* A party asserting that it has standing must articulate that it has suffered an actual injury to a legally cognizable interest that "differs from injury to the interests of other citizens generally." *In re Complaint Against Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 797 (Minn. 1992).

The reasons AGA clearly lacks standing are articulated at length in Commissioner Myron Frans' Memorandum in Support of Dismissal of the Petition for Writ of Mandamus and this Court's July 19, 2017, Order Dismissing Petition for Writ of Mandamus Without Prejudice in *Association for Government Accountability v. Myron Frans, In his Official Capacity as Commissioner of Management and Budget et al.* Court File No. 62-cv-17-3396. AGA's interest in the dispute is not sufficiently specific, it submits only conclusory and generalized assertions that its unidentified members' interests as taxpayers and voters will be affected if legislators are not paid what AGA asserts they are owed under the Constitution, and there are other potential plaintiffs who would have standing to assert the claims made by AGA.

AGA also argues that it has taxpayer standing to challenge the temporary injunction because "the lawsuit and Order have caused a specific disbursement of State funds in a manner not authorized by law." (Notice of Intervention at 10.) Taxpayer standing can exist in specific, limited circumstances, but none are present here. As an initial matter, AGA only offers conclusory and generalized assertions that its unidentified members are actually taxpayers and that they will be affected by the Court's temporary

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injunction, but general references to unidentified members are insufficient. *See St. Paul Police Fed'n v. City of St. Paul*, No. A05-2186, 2006 WL 2348481, at *2 (Minn. Ct. App. Aug. 15, 2006) (denying an organization standing when it has not "identified a member who is suffering immediate or threatened injury") (citing *Warth v. Seldin*, 422 U.S. 490, 516 (1975) for the proposition that an association "can have standing as the representative of its members only if it has alleged facts to make out a case or controversy had the members themselves brought suit.").

AGA does not identify its membership and does not establish that the interests of its members are coextensive with those of the organization. AGA apparently has no website and is not registered as a nonprofit with the Minnesota Secretary of State nor as a charity with the Minnesota Attorney General. As such, AGA has failed to meet its burden to make a clear showing of standing to bring this suit in its own name. *See, e.g.*, *Washington Legal Found. v. Leavitt*, 477 F.Supp 2d 202, 212 (D. DC 2007).

The cases AGA cites to the contrary are clearly distinguishable. In *State, by Peterson v. Werder*, the taxpayers did not actually seek formal intervention in the case, which dealt with a highway condemnation proceeding. *See* 200 Minn. 148, 150, 273 N.W. 714, 715-16 (1937). The Court's own syllabus limited its holding to "in rem" proceedings, finding that as a consequence, "no question is presented if without formal intervention under the [relevant] statute, interested taxpayers are permitted to appear and to apply for and procure injunctive relief appropriate to the proceeding." *Id.* at 148, 723 N.W. at 714. (Syllabus note 1). In *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, the Court of Appeals noted that Minnesota courts have limited the Minnesota

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Supreme Court case on which it relied—*McKee v. Likins*, 261 N.W.2d 566, 561 (Minn. 1977)—closely to its facts. 770 N.W.2d 169, 175 (Minn. Ct. App. 2009). Indeed, as the Minnesota Supreme Court has since noted, *McKee* dealt specifically with government rulemaking authority allowing for the allocation of tax revenue, not with a general ability for taxpayers to challenge the expenditure of public dollars. *See Matter of Sandy Pappas Senate Comm.*, 488 N.W.2d at 798.

3. AGA's Claims Are Not Ripe.

The claims made by AGA are not ripe for adjudication. The central issue to be decided in this case is whether the Governor's line-item vetoes were valid. If they were, there is no appropriation for legislative salaries, at any level. The level of legislative salaries will only become relevant if the Senate and House seek emergency funding for their critical, core functions (Counts II and III of the Senate and House Complaint). The parties' Stipulation asks the Court to stay the critical, core functions funding proceeding until after appellate review of the legality of the vetoes.

AGA's Notice of Intervention also fundamentally misunderstands the effect the stipulation of the parties has on legislative salaries. AGA argues that Commissioner Frans has "failed to make payments for legislator salaries according to the prescription of the [Legislative Salary Council ("LSC")] and continues to fail to pay legislator salaries according to the prescription of the LSC." (Notice of Intervention at 6.) But Commissioner Frans is not paying the legislators. He only provides funding generally to the Senate and House, which then choose how to use the funds.

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4. AGA Misquotes Minn. Stat. § 16A.281.

AGA next argues that it needs to intervene in this action because the parties have violated Minn. Stat. § 16A.281, but its assertion is without merit, as it ignores critical language in the statute that permits the House and the Senate to spend unexpended balances for "expenses associated with sessions, interim activities, public hearings, or other public outreach efforts and related activities."

As AGA notes, this statute, entitled "Appropriations to Legislature," provides that an unspent legislative appropriation "not carried forwarded and remaining unexpended and unencumbered at the end of a biennium lapses and shall be returned to the fund from which appropriate." Minn. Stat. § 16A.281. But AGA ignores the plain language in the statute that identifies when a balance may be carried forward. As relevant here, this exception specifically provides that balances may be carried forward "to pay expenses associated with sessions, interim activities, public hearing, or other public outreach efforts and related activities," a broad grant of statutory authority that undoubtedly includes the ability to pay rent on the building where the enumerated activities occur.

Further, the carry-forward provision of Section 16A.281 is a standing, statutory appropriation to the Legislature to use its carry over funds. *See* Minn. Stat. § 16A.011, subd. 4 (defining an appropriation as "an authorization by law to expend or encumber an amount in the treasury") and subd. 14a (defining a statutory appropriation as one "which sets apart a specified or unspecified and open amount of public money or funds of the state general fund for expenditure for a purpose and makes the amount, or a part of it, available for use continuously for a period of time beyond the end of the second fiscal

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year after the session of the legislature at which the appropriation is made"). When AGA argues that there is no provision in Section 16A.281 that permits payments for rent and debt service "absent appropriation by law," (Notice of Intervention at 6), it overlooks that the statute itself is an appropriation by law—*i.e.*, a statute that was duly enacted by the Legislature and signed into law by the Governor. No additional appropriation is needed: the statute is effective on its face.

5. <u>The Existing Parties Adequately Represent Any Tangential Interest AGA May Claim</u>.

Finally, AGA claims that the existing parties do not represent its interests as demonstrated by the fact that they agreed to a stipulation providing temporary funding to the Senate and House as the lawsuit continues. (Notice to Intervene at 11-13.) However, the interest AGA asserts—an interest in the payment of a $45,000 legislators salary to—is not before the Court and not relevant to the dispute between the parties. And AGA cannot show that it is entitled to intervene just because it disagrees with the stipulation of the parties on several issues in the course of litigation.

The fact that the parties agreed to the stipulation does not mean AGA's interests were not represented here. As the Court itself noted at the hearing on its Order to Show Cause and Defendants' Motion for Judgment on the Pleadings, the Court performed its own analysis on whether it could independently order the relief the parties sought in the stipulation before approving it. (Hearing Transcript at 53:18-20.)

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CONCLUSION

Defendants request that the Court deny AGA's request to intervene because it is untimely and would cause needless delay. Further, AGA lacks standing to intervene in this action; the relief requested by AGA is not ripe for decision; and any interests AGA may tangentially have are adequately represented by the present parties to this action.

Dated: August 15, 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