

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

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR A STAY
OF ENFORCEMENT OF JUDGMENT**

INTRODUCTION

The Governor's motion to stay is rife with misleading and false statements. The Governor continues to willfully ignore this Court's Judgment, which undeniably restored funding to the Legislature. He and Commissioner Frans have unlawfully denied the Legislature access to their appropriations, forcing the Legislature to deplete its carryforward funds. This is causing irreparable harm to the Legislature and Minnesotans.

Since June, the Governor has argued that his line-item vetoes were constitutional because, in part, the Legislature could access funds from the Legislative Coordinating Commission (LCC). It is true that the LCC has statutory authority to transfer its funds to the Senate and House. The Legislature never concealed this fact. Those statutes, the very ones Commissioner Frans is charged with administering, are published for the world to read. When mediation failed in September, the Governor attempted to mislead the media and the courts into believing that he did not know the Legislature could access the LCC funds.

After unlawfully denying the Legislature access to its appropriations in contravention of this Court’s Judgment, the Governor casually suggested that the Legislature should raid the LCC’s funds to finance Senate and House operations. The Separation of Powers Clause of the Minnesota Constitution forbids the Governor from forcing the Legislature to take that extraordinary, unprecedented step. In addition to ignoring the Court’s Judgment, the Governor also ignores the irreparable harm that will result from defunding the LCC—it will cripple his administration’s ability to draft bills for the upcoming regular session, put our state’s federal funding at risk, and lower the state’s credit rating. That will harm most Minnesotans.

The Governor stipulated to the entry of final judgment in June, did not ask for a stay when the Court entered final judgment against him in July, and offers no cogent reasons why a stay should be granted at this late stage of the proceedings. The Legislature will set the record straight below, and explain why the Court’s Judgment should not be stayed.

The Governor’s Selective Quoting of the Supreme Court’s Interim Decision

The Governor continues to tell the public and media that the Minnesota Supreme Court upheld his line-item vetoes as constitutional. This is not true. In its September 8, 2017 Order, the supreme court held that the Governor’s line-item vetoes were constitutional under the plain language of Article IV, section 23 of the Minnesota Constitution. *Ninetieth Minnesota State Senate, et al. v. Dayton*, 901 N.W.2d 415, 415–416 (Minn. 2017). Notably, however, in the very next sentence of its Order, the supreme court stated “[t]his conclusion does not, however, end the matter.” *Id.* at 416. The court proceeded to express concern that the Governor’s line-item vetoes “may soon” deprive Minnesotans “of their constitutional right to three independent branches of government, *see* MINN. CONST. art. III, each functioning at a level sufficient to allow the exercise of the constitutional powers committed to each branch for the ‘security, benefit and protection of

the people, in whom all political power is inherent.’ ” *Id.* at 416 (quoting MINN. CONST. art. I, § 1.) Contrary to the Governor’s assertion, the supreme court’s holding does not contradict this Court’s Judgment. It is likely the supreme court will ultimately hold the Governor’s line-item vetoes of the entire appropriations to the Senate and House for the 2018–2019 fiscal biennium accomplished an unconstitutional result, affirming this Court’s Judgment.

The Governor’s False Assertions About LCC Funds

The Governor falsely claims the Legislature has concealed facts regarding LCC funds from the courts. The Governor’s prior arguments directly refute his claim. As this Court is aware, the Governor has consistently argued since June that his line-item vetoes were constitutional in part because the Legislature could access LCC funds in the absence of its appropriations. (*See* Answer 2, 4; Defs.’ Mem. Resp. Order to Show Cause 4, 16, June 22, 2017; Apps.’ Statement of the Case 5 n.1, July 24, 2017; Apps.’ Br. 5 n.4, July 28, 2017; Apps.’ Informal Mem. 9 n.2, Sept. 15, 2017.) This Court considered the Governor’s argument and rejected it. (Order Granting Declaratory J. 15 n.4.)¹

The Legislature never concealed the LCC funding. Indeed, the Governor insisted in his Answer that he left the LCC’s appropriations for the 2018–2019 fiscal biennium intact. (Answer 2, 4, Exs. B & C.) The parties agree on the amount of carryforwards the LCC has on hand. (*See*

¹ The Governor falsely claims this Court’s Judgment “was based, at least in part, on the assumption that the Senate and House could not access the LCC funds through the time needed for the appeal or to pass new appropriations in the 2018 Session.” (Defs.’ Mot. Stay 10, Nov. 1, 2017.) This Court correctly noted that LCC funds are not intended to fund Senate and House operations. (Order Granting Declaratory J. 15 n.4.) Accessing the LCC funds is indisputably discretionary. (*See* Defs.’ Mot. Stay 10 n.4.) Consistent with this Court’s analysis and Minnesota jurisprudence, the Governor cannot force the Legislature to access the LCC funds. (Order Granting Declaratory J. 13 (citing *State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314–16 (Minn. 1930).) Furthermore, the Legislature did not conceal its potential ability to access the LCC funds. The availability of LCC funds has been one of the Governor’s principal arguments since June 2017.

Apps.’ Informal Mem. 3, Oct. 5, 2017; Resp’ts’ Informal Mem. 5, Oct. 5, 2017.) The LCC is not some piggy bank or rainy day fund the Senate and House dip into at their pleasure. The LCC has 140 employees who each serve vital functions. (*See* Aff. of Gregory Hubinger, Nov. 8, 2017.) The LCC appropriations fund the Revisor of Statutes, the Legislative Auditor’s Office, and the Legislative Reference Library among other agencies. Forcing the Senate and House to transfer and exhaust LCC funds will cause irreparable harm throughout the legislative branch.

It is disingenuous for the Governor to argue the Legislature concealed the limited statutory authority to transfer “unobligated balances” of LCC appropriations to the Senate and House. *See* Minn. Stat. § 3.305, subd. 2. The Governor has argued since June that his line-item vetoes were constitutional because, in part, he left the appropriations to the LCC for the 2018–2019 fiscal biennium intact. The clear import of his argument is that the Legislature should transfer LCC funds to the Senate and House in the absence of an appropriation. Given this history and Defendants’ undoubted knowledge of the statutory transfer authority, the Governor, Commissioner Frans, and Deputy Commissioner Hallstrom could not have been “shocked” to learn that the LCC could transfer certain funds to the Senate and House.² By ignoring the Court’s Judgment and forcing the Senate and House to exhaust their limited carryforwards, the Governor may force the LCC to transfers its funds in the near future. If that happens, it will be extraordinary and unprecedented. Moreover, it would yield yet another unconstitutional result of the Governor’s line-item vetoes because the Separation of Powers Clause of the Minnesota Constitution forbids the Governor from

² Deputy Commissioner Eric Hallstrom asserts that, “[a]fter the parties participated in court-ordered mediation, I learned for the first time that the Senate and House obtained a legal opinion that they could access LCC carryforward funds and FY18-19 appropriation [*sic*], and intended to do so.” (Second Affidavit of Eric Hallstrom ¶ 8, Nov. 1, 2017.) The Deputy Commissioner’s statement about LCC funds strains credulity. The LCC transfer authority exists in the statutes he is charged with administering.

forcing the LCC to transfer its funds to continue Senate and House operations. *See State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314–16 (Minn. 1930). The Minnesota Constitution guarantees the people of this state a functioning Legislature. MINN. CONST. art. III, § 1. The Legislature may be forced to take extraordinary steps to secure that right if the courts do not provide relief soon.

The Governor further claims there is no distinction between the LCC and the Legislature. (Defs.’ Mot. Stay 10 n.4.) The term “legislature” is commonly used to refer to the Senate and House, and, to a lesser extent, the LCC. The Senate and House were established by the Minnesota Constitution. MINN. CONST. art. III, § 1; *Id.* at art. IV, § 1. The LCC is a separate legislative agency, established “to coordinate the legislative activities of the senate and house of representatives.” Minn. Stat. 3.303, subd. 1.³ Although the LCC may be generally considered part of the “legislature,” it is legally distinct from the Senate and House. All three have separate appropriations. Therefore, the Governor’s suggestion that “[a]ny effort to distinguish between the House and Senate and the LCC is disingenuous” is wholly unfounded and misplaced. (Defs.’ Mot. Stay 11 n.4.)

The Governor’s Misguided Claims About Travel Reimbursement and Housing Stipends

The Governor’s comments about legislative expenditures for so-called “luxury apartments” and “travel reimbursements” during the interim were likewise misguided.⁴ The

³ Similarly, the Revisor of Statutes, Legislative Auditor, and Legislative Reference Library are statutorily created entities with specific duties and responsibilities. Minn. Stat. §§ 3.302 (Legislative Reference Library), 3.97–3.979 (Legislative Auditor), and ch. 3C (Revisor of Statutes).

⁴ Contrary to the Governor’s apparent view, the line-item veto power does not empower him (or the Judiciary through court-ordered funding of core functions) to determine how the Legislature should carry out its responsibilities. The Minnesota Constitution exclusively assigns

Governor implies the Legislature does not conduct official, necessary business during the interim. *Nothing could be farther from the truth.* In the roughly 89 working days since July 1, 2017, the Senate and House have held 77 public hearings on a wide variety of issues vital to the public. (*See* Second Affidavit of Cal Ludeman ¶ 3, Ex. A, Nov. 8, 2017.) Legislators represent the entire state and live throughout Minnesota. Those living far from the capitol must travel to represent their constituents. Legislators representing the people of Grand Marais, Winona, Worthington, and Thief River Falls should not be forced to pay for travel expenses out of their own pockets. Presently, many of them are. That is wrong. Legislators from greater Minnesota should not be treated differently than those representing the metro area.

Similarly, many of these legislators from greater Minnesota are provided with a housing stipend that allows them to rent apartments near the capitol. (Second Ludeman Aff. ¶ 4.) Individual legislators' days are filled with early mornings and late nights. Spending the night in a furnished apartment while on official business means another night away from family for many legislators. Legislators throughout Minnesota willingly sacrifice much to represent their districts.

ARGUMENT

This Court entered final judgment on July 20, 2017, which declared Governor Dayton's line-item vetoes unconstitutional, null, and void. That Judgment was final under Minnesota Rule of Civil Procedure 54.02. The Judgment was not stayed and has not been vacated. It remains fully in effect. Despite these undeniable facts, the Governor has intentionally ignored this Court's Judgment and unlawfully denied the Legislature access to its appropriations for the 2018–2019 fiscal biennium. A stay of enforcement of the Judgment would allow the Governor's

that determination to the Legislature. The Governor's assertions regarding travel reimbursement and housing stipends seem especially inapt since his veto message made clear that he did not disagree with the amount or character of the appropriations to the Legislature.

unconstitutional line-item vetoes to persist and reward his unlawful behavior. For the following reasons, the Legislature respectfully requests that the Court deny the Governor's motion and enforce its Judgment.

Minnesota Rule of Civil Appellate Procedure 108 provides the district court with jurisdiction to order enforcement of a judgment pending appeal and, under exceptional circumstances, to stay such enforcement. *See* Minn. R. Civ. App. P. 108.01, subd. 1 (entitled "Generally No Stay of Enforcement of Judgment or Order on Appeal.").

The rule is designed to afford a respondent some measure of the protection or security that would exist, in the absence of a stay, by virtue of the ability to immediately pursue enforcement of the judgment or order. It also provides an appellant protection from enforcement of the judgment or order in the event the lower court's decision is reversed. The rule strikes a balance between the right of a prevailing party to be secure in victory and the right of a party who has lost to preserve the status quo pending appeal.

3 ERIC J. MAGNUSON, DAVID F. HERR & SAM HANSON, MINNESOTA PRACTICE—APPELLATE RULES ANNOTATED § 108.1 (2017 ed.) (citing *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007)).

A party seeking to stay enforcement of a judgment pending appeal must move first in the trial court. Minn. R. Civ. App. P. 108.02, subd. 1. The appellant is generally required to provide security "fixed at such amount as the trial court determines will preserve the value of the judgment or order to the respondent during the pendency of appeal." *Id.* at subd. 4. Governmental bodies, however, are not required to provide security.⁵ *Id.* at subd. 2. "[W]hile the trial court possesses the power to proceed while an appeal is pending to enforce the order or judgment appealed from, it may, in its discretion, decline to do so even in the absence of a supersedeas bond." 3 MAGNUSON,

⁵ Although governmental bodies are not required to provide security to obtain a stay pending appeal, that does not mean stays should be routinely granted to governmental bodies.

HERR & HANSON at § 108.4 (citing *State v. N. Pac. Ry. Co.*, 22 N.W.2d 569, 574–75 (Minn. 1946)). “This power is, and should be, used sparingly and only in exceptional circumstances.” *Id.* (citing *No Power Line, Inc. v. Minnesota Environmental Quality Council*, 262 N.W.2d 312 (Minn. 1977); *Briggs v. Shea*, 50 N.W. 1037 (Minn. 1892)).

The standard under Minnesota law for granting or denying a motion to stay enforcement of a judgment pending appeal was articulated in *Northern Pacific Railway*, 22 N.W.2d at 574–75. The following factors may be relevant to that inquiry: “whether the appeal raises substantial issues; injury to one or more parties absent a stay; and the public interest, which includes the effective administration of justice. Effective administration includes protecting appellate jurisdiction, avoiding multiple lawsuits, and preventing the defeat of ‘the objects of the appeal or writ of error.’” *Webster v. Hennepin Cnty.*, 891 N.W.2d 290, 293 (Minn. 2017) (quoting *N. Pac. Ry.*, 22 N.W.2d at 574–75). The “trial court has broad discretion in deciding which of the various factors are relevant in each case” and “need only analyze the relevant factors.” *Id.* The trial court should “identify the relevant factors, weight each factor, and then balance them[.]” *Id.* (citations omitted).

A. The Appeal Raises No New Substantial Issues.

The issues before the supreme court are identical to those considered by this Court. The Complaint alleges the Governor’s line-item vetoes violated the Separation of Powers Clause of the Minnesota Constitution by effectively preventing the Legislature from exercising its constitutional powers and duties. The Governor has consistently argued his line-item vetoes were constitutional because the Senate and House can use their carryforward funds and access the LCC’s carryforward funds and appropriations. (Answer 2, 4; Defs.’ Mem. Resp. Order to Show Cause 4; Apps.’ Statement of the Case 5 n.1, July 24, 2017; Apps.’ Br. 5 n.4, July 28, 2017; Apps.’ Informal Mem. 9 n.2, Sept. 15, 2017.) This Court, by its independent analysis, declared the Governor’s line-item

vetoed violate the Separation of Powers Clause and are therefore unconstitutional, null, and void. The parties' positions have not changed and the appeal raises no new, substantial issues.

The supreme court has twice asked for additional information since it took this case under advisement on August 28, 2017. (*See Ninetieth Minnesota State Senate*, 901 N.W.2d at 417 (mandating mediation and requiring additional briefing on the constitutionality of court-ordered funding in the absence of an appropriation and updated calculations on how long the Senate and House could survive on their respective carryforward funds); Order, Sept. 28, 2017 (requiring the parties to identify all funds held by the Senate, House, and LCC that could be used to fund Senate and House operations in the absence of an appropriation, and explain the legal basis for using those funds).) Although the supreme court's orders have introduced some new facts into the case, the orders did not introduce any substantial issues. The appeal therefore raises no substantial issues. This factor weighs in favor of denying Defendants' motion to stay enforcement of the Judgment.

B. The Legislature and the State of Minnesota Will Suffer Irreparable Harm if the Court Grants the Governor's Motion to Stay.

The balance of harm weighs heavily against the Governor's motion to stay enforcement of the Judgment. The Legislature will suffer irreparable harm if the Court grants the motion to stay or does not order enforcement of its Judgment. The parties agree that the Senate will exhaust its carryforwards and cease operations on December 1, 2017, followed by the House on February 1, 2017. (Resp'ts' Statement of Legislative Finances 3, Sept. 18, 2017; Apps.' Statement on Carryover Funds 4, Sept. 18, 2017; Apps.' Am. Statement on Carryover Funds 4, Sept. 25, 2017.)⁶

⁶ The Governor falsely claims the Legislature misled the courts about the funding available to the Legislature in the absence of an appropriation. (*See Defs.' Mot. Stay* 7–9, Nov. 1, 2017.) The Legislature properly disclosed its appropriations and carryforward funds available on July 1, 2017. The Governor took no issue with those amounts. The Governor falsely claims the Legislature misled the Court by omitting the LCC funds. The appropriations to the Senate and House are the

The LCC plans to meet in the near future to vote to transfer its carryforward funds to the Senate. (Second Ludeman Aff. ¶ 7, Ex. D.) If the LCC transfers its entire carryforward balance to the Senate, the Senate can delay furloughing its employees and continue operations until January 12, 2017. (Second Ludeman Aff. ¶ 7.) At that time, the Senate will shut down and Minnesotans will be deprived of a functioning Senate in violation of the Separation of Powers Clause of the Minnesota Constitution. The House will follow on February 1, 2018. The harm will be irreparable.

The Senate implemented a hiring freeze on June 27, 2017, as a direct result of the Governor's line-item vetoes and the Defendants' decision to ignore this Court's Judgment. (Second Ludeman Aff. ¶ 5, Ex. B.) There are currently 14 vacant positions in the Senate. These vacancies already seriously impede the Senate's ability to prepare for the regular session, and will impact normal Senate operations once in session. Without judicial relief, the hiring freeze will remain in place through 2018. This harm is irreparable.

As discussed in Plaintiffs' Motion to Enforce Judgment, the Senate has cancelled all bonding tours as a direct result of the Governor's decision to ignore this Court's Judgment. (Pls.' Mot. Enforce J. 5, Oct. 25, 2017; Aff. of Betty Myers ¶ 8, Oct. 25, 2017; Second Ludeman Aff. ¶ 6.) Members of the Senate Capital Investment Committee "rely on information and observation from the tours to assist in reviewing bonding proposals totaling from three to four billion dollars to assemble a capital investment bill totaling about one billion dollars." (Second Ludeman Aff. ¶ 6.) Without judicial relief, the Senate cannot conduct bonding tours. The resulting harm is irreparable and unjustified by the Governor's line-item veto power.

only proper funds they should use for their operations. Their respective carryforwards are discretionary and the Governor cannot force them to use those funds in the absence of an appropriation. *See Birkeland*, 229 N.W. at 314.

If the Legislature is forced to use LCC appropriations to continue Senate and House operations, the LCC and the State of Minnesota will suffer irreparable harm. (*See Hubinger Aff.*) For example, \$13,308,000 of the LCC's appropriations for the 2018–2019 fiscal biennium fund the Legislative Auditor's Office. MINN. LAWS 2017, First Special Session, ch. 4, art. 1, § 2, subd. 4. "Continuous legislative review of the spending of public funds and financing at all levels of government is required in the public interest to enable the enactment of appropriate legislation." Minn. Stat. § 3.97, subd. 1. The "Legislature relies on the Legislative Auditor's audits, evaluations, and investigations to ensure that state agencies, metropolitan organizations, courts, and nonprofit agencies use public money and other public resources in compliance with the laws the Legislature enacts." (*Aff. of James R. Nobles ¶ 9, Nov. 8, 2017.*) If the Senate or House uses money appropriated for the Legislative Auditor's Office, it will be forced to furlough 60 employees and cease audits and evaluations. (*Nobles Aff. ¶¶ 14–15.*) Without funding, the Legislative Auditor's Office will not be able to complete the state's annual financial statements for fiscal years 2017 and 2018. (*Nobles Aff. ¶ 16.*) This will cause the State of Minnesota's credit rating to drop. (*Nobles Aff. ¶ 16.*) The State of Minnesota may not be able to sell bonds to fund capital projects without an independent audit of its annual financial statements. (*Nobles Aff. ¶ 16.*) Without funding, the Legislative Auditor's Office will not be able to audit the state's use of federal grants which will "likely jeopardize future funding to the state from the federal government." (*Nobles Aff. ¶ 17.*) It is not clear whether the Senate and House will choose, in their discretion, to use the LCC appropriations. If they do, the consequences will be severe and irreparable.

The Governor's line-item vetoes and the Defendants' decision to ignore this Court's Judgment will also harm the Revisor of Statutes ("Revisor"). The Revisor provides critical support to the Legislature, constitutional officers, departments, agencies, and the public. (*Aff. of Paul M.*

Marinac ¶ 4, Nov. 8, 2017.) Much of the support provided by the Revisor is constitutionally and statutorily mandated. (Marinac Aff. ¶¶ 4–12.) The Revisor’s “duties are essential to the core function of the legislative branch in making law.” (Marinac Aff. ¶ 8.) For example, the Revisor has been responsible for legislative drafting for the Legislature for the past 70 years. (Marinac Aff. ¶ 10.) To this end, the Revisor “is responsible for creating or reviewing and approving legislative documents such as all bill drafts, amendments, house committee reports, all house and senate engrossments, house and senate desk comparisons, side-by-side comparison, conference committee reports, and enrollments.” (Marinac Aff. ¶ 10.) If the Legislature is forced to use LCC funds to continue Senate and House operations, the Revisor will be forced to cease its critical support and furlough its 59 highly skilled employees. (Marinac Aff. ¶ 4.) The resulting harm will be irreparable.

The Governor falsely claims the Legislature will not suffer any harm because the parties’ “stipulations were intended to supersede the Judgment, even after the temporary funding expired on October 1, 2017.” (Defs.’ Mot. Stay 12.) This Court entered final judgment under Rule 54.02 and no stay was ordered. The partial final Judgment supersedes the June 26 order granting temporary injunctive relief (“Temporary Injunction”).⁷ The July 31 Stipulation and Order only deferred litigation over the interpretation of the Court’s Judgment and provided temporary funding to the Legislature until appellate review was complete or October 1, 2017, whichever occurred first. The Governor was unwilling to extend the stipulation under the same terms. October 1 passed without a ruling from the supreme court and the Legislature filed its motion to enforce the Court’s Judgment as expressly contemplated by the parties. It is nonsensical to believe that the Legislature,

⁷ Even if the Judgment did not supersede the Temporary Injunction, the Temporary Injunction would have expired by its terms on October 1, 2017.

with a valid Judgment in its favor, would agree to begin exhausting its carryforwards on October 2 with nothing to show in return.

The Governor also argues the Legislature will not be harmed if the Court grants its motion to stay because the Legislature “will still have the opportunity in the 2018 Legislative Session to pass new appropriations and make them retroactive to July 1, 2017.” (Defs.’ Mot. Stay 13.) This argument ignores the irreparable harm the Legislature is suffering now and will continue to suffer until and if it is able pass new appropriations to the Senate and House. In his public statements, the Governor has steadfastly confirmed his determination to force the Legislature to renegotiate the five items listed in his veto message. There is every reason for the Legislature to believe the Governor will line-item veto its appropriations once again.

The Governor will suffer no harm if the Court denies his motion to stay. The only hypothetical harm the Governor might suffer would be to his perceived political leverage over the Legislature, and that is not an interest this Court should endeavor to protect. As stated in his veto message, the Governor line-item vetoed the appropriations to the Senate and House for the 2018–2019 fiscal biennium to force the Legislature to repeal laws he already signed into law. The clear purpose of his line-item vetoes was to gain leverage over the Legislature by denying its funding. This Court’s Judgment denied him that leverage. That was too much for the Governor to swallow, so he ignored the Court’s Judgment. The parties agreed to continue funding the Legislature through October 1, 2017, hoping the supreme court would issue a final decision by then. When October 1 passed without a ruling from the supreme court, the Governor sought to regain leverage over the Legislature by once again ignoring the Judgment of the Court. An order denying the Governor’s motion to stay and enforcing the Judgment will merely take away his unconstitutional leverage.

That will not harm the Governor. Conversely, a stay of enforcement of the Judgment would reward the Governor's unlawful behavior and irreparably harm the Legislature.

The Governor claims he will be irreparably harmed if the Court denies his motion to stay and grants the Legislature's motion to enforce the Judgment because, he argues, the Legislature will be forced to "refund" all expenditures since July 1, 2017. The Governor's argument is contrary to his contention to this Court that the Legislature is entitled to court-ordered funding of its core functions even in the absence of an appropriation. Additionally, he previously agreed to three months of funding by stipulation without recourse. The Governor's assertion that the Legislature would automatically be required to refund any expenditures since July 1, 2017, is an illusion. There is simply no precedent for restitution in such a scenario and, even if it came to fruition, it would not result in any harm to the Governor. Much of the money appropriated to the Legislature for the 2018–2019 fiscal biennium is sitting in an account controlled by Commissioner Frans and will continue to accumulate as revenues are collected. It will not disappear if the supreme court reverses this Court's Judgment.

For these reasons, the irreparable harm to the Legislature and the State of Minnesota far outweighs any potential harm to the Governor. This factor weighs heavily in favor of denying the Governor's motion to stay.

C. The Public Interest Weighs in Favor of Denying the Stay.

The Minnesota Constitution unambiguously guarantees "three distinct departments: legislative, executive and judicial." MINN. CONST. art. III, § 1. The parties agree that the Senate will exhaust its carryforward funds and cease operations on December 1, 2017, followed by the House on February 1, 2017. The supreme court has apparently made these findings. (*See* Order 1, Sept. 28, 2017.) The public interest weighs in favor of providing Minnesotans with a functioning

Legislature. This is in line with the Governor's concession that the Legislature is entitled to court-ordered funding of its core functions in the absence of an appropriation. It is inconsistent for the Governor to now argue that the Legislature should be deprived of funding while the parties await a final decision from the supreme court.

The Governor argues that enforcement of the Judgment will interfere with the jurisdiction of the supreme court. (*See* Defs.' Mot. Stay 15.) The Governor provides no legal basis for his claim because none exists. This Court clearly retains jurisdiction to order enforcement of its Judgment pending appeal. 3 MAGNUSON, HERR & HANSON § 108.3 (district court generally retains jurisdiction to enforce a judgment); Minn. R Civ. App. P. 108.01, 1998 advisory comm. cmt. ("Generally, the trial court retains jurisdiction to enforce its judgment[.]"); *e.g. Spaeth v. City of Plymouth*, 344 N.W.2d 815, 824 (Minn. 1984). The supreme court fully understands that this Court entered final judgment under Rule 54.02 and did not stay enforcement. An order enforcing the Court's Judgment would only cause confusion if the supreme court disregarded the effect of this Court's unambiguous final judgment and the general rule against stays pending appeal. A stay of enforcement at this very late stage of the proceedings would cause much greater confusion. The Governor's assumptions regarding the supreme court's requests for additional information are pure speculation. For all these reasons, the public interest weighs in favor of denying the Governor's motion to stay.

CONCLUSION

For these reasons, the Legislature respectfully requests that this Court deny the Governor's motion to stay and issue an order enforcing or clarifying its Judgment as previously entered.

Respectfully submitted,

Dated: November 8, 2017

KELLEY, WOLTER & SCOTT, P.A.

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

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