

STATE OF MINNESOTA  
IN COURT OF APPEALS

**FILED**

July 24, 2017

**OFFICE OF  
APPELLATE COURTS**

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

Respondents,

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,

Appellants.

District Court File No. 62-cv-17-3601

Chief Judge John H. Guthmann

Appellate Case No. A17-\_\_\_\_

**STATEMENT OF THE CASE OF  
APPELLANTS**

**Date Judgment Entered: July 20, 2017**

**1. Court or agency of case origination and name of judge or hearing officer who presided.**

Ramsey County District Court, Second Judicial District; Chief Judge John Guthmann.

**2. Jurisdictional statement.**

A. Appeal from district court.

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| (1) Statute, rule or other authority authorizing appeal:  | <i>Minn. R. Civ. App. P. 103.03(a).</i>              |
| (2) Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: | <i>Partial final Judgment entered July 20, 2017.</i> |
| (3) Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):         | <i>Minn. R. Civ. App. P. 104.01 subd. 1.</i>         |
| (4) Date of filing any motion that tolls appeal time:   | <i>Not Applicable.</i>                               |

- (5) Date of filing of order deciding tolling motion and date of service of notice of filing: *Not Applicable.*
- B. Certiorari appeal. *Not Applicable.*
- C. Other appellate proceedings. *None.*
- D. Finality of order or judgment.
- (1) Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorneys' fees? *No*
- (a) If yes, provide date of order/judgment:
- (b) If no, did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01? *Yes*
- (i) If yes, provide date of order: *July 19, 2017*
- (ii) If no, is the order or judgment appealed from reviewable under any exception to the finality rule?
- (E) Criminal only.
- (2) Has a sentence been imposed or imposition of sentence stayed? *Not applicable.*
- (a) If no, cite statute or rule authorizing interlocutory appeal. *Not applicable.*

**3. State type of litigation and designate any statutes at issue.**

This appeal is from a declaratory judgment action the Minnesota Senate and House brought against Governor Dayton and Commissioner Frans, challenging the Governor's line-item vetoes of appropriations to the Senate and the House.

**4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.**

The Governor has explicit and unqualified authority under the Minnesota Constitution to veto any line item of appropriation: "If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill." Minn. Const. art. IV, § 23.

In the 2017 legislative special session, the Minnesota Senate and House attempted to suppress the Governor's constitutional veto authority by placing into the Omnibus State Government Appropriations bill a "poison pill" that would have denied appropriations to the Department of Revenue if Governor Dayton vetoed the Omnibus Tax bill. (Answer, Ex. A (First Special Session 2017, Senate File No. 1, art. 1, § 14 ("This section is not effective until the day following enactment of First Special Session 2017, House File No. 1." [the Tax bill])). This presented the Governor with a Hobson's Choice—if he vetoed the Tax bill, there would be no appropriation for the Department of Revenue, but if he signed it, it would imperil the State's fiscal stability and three provisions to which he had serious public policy objections would become law. The Legislature presented the Tax bill, the Omnibus State Government Appropriations bill

and several other bills to the Governor for consideration pursuant to Minn. Const. art. IV, § 23, and immediately adjourned *sine die*.

Governor Dayton made the Executive choice to sign the Tax bill so the Department of Revenue could continue to provide service to taxpayers and collect much needed revenues to fund the operations of the State. But, the Governor believed that the Senate and House had not satisfactorily completed their work and voiced serious concerns about the impact the Tax bill would have on the financial stability of the State. Accordingly, to require the Senate and House to complete their work and to seek renegotiation of five policy issues of concern to the citizens of Minnesota, Governor Dayton used his constitutionally authorized power to line-item veto two of three legislative appropriations—that of the Senate and the House, leaving intact the \$35 million appropriations to the Legislative Coordinating Commission. (Answer, Ex. C; Compl., Ex. 1 and Attachment (“Your job has not been satisfactorily completed, so I am calling on you to finish your work.”)). Senate and House leadership has thus far declined to discuss any of these five policy issues. Indeed, by bringing their legal action, they seek to avoid engaging in the political process needed to resolve these policy differences. The Governor’s choice to use this option was a political decision within the exclusive power of the Executive branch. And by choosing to adjourn *sine die*, the Legislature relinquished its right to override the line-item vetoes.

The Minnesota Constitution authorizes the Governor’s line-item vetoes, without any qualification as to the Governor’s subjective intent or purpose. *See* Minn. Const., art. IV, § 23. The Governor’s vetoes do not “abolish” the Legislature. Although the vetoes

eliminated the separate appropriations for the Senate and House, the vetoes did not, and could not, eliminate the constitutional requirement that the State provide emergency funding for their critical, core functions until the parties obtain a political solution to their differences and restore the appropriations.<sup>1</sup>

In its order issued July 19, 2017, the district court disagreed with the Governor's arguments supporting his vetoes, ruling instead that the vetoes violated the separation of powers principle found in Art. III of the Minnesota Constitution and were illegal and void. Although the Court's reasoning is confusing and somewhat contradictory, it apparently determined that the vetoes of the items of appropriation for House and Senate had either the intent or effect of "abolishing" the Legislature.

The court erred by concluding that the core funding approach it had previously used in the 2001, 2005 and 2011 government shutdown cases was insufficient to prevent the "abolishment" of the Legislature. While the court acknowledged the Governor could use his line-item veto authority on the Legislature's own appropriations if he disagreed with the amounts for fiscal reasons, it suggested that his line-item vetoes were unconstitutional because his vetoes were motivated by policy concerns. In other words, the court's speculation as to why the Governor used his veto authority was dispositive. This was directly contrary to Supreme Court precedent that a court cannot inquire into the

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<sup>1</sup> In addition, the \$35 million appropriation for the Legislative Coordinating Commission ("LCC") has become law. (Answer, Ex. B (First Special Session 2017, Senate File No. 1, art. 1, § 2, subd. 4)). The Legislature also has carry-over funding totaling potentially more than \$21 million that it can use to fund such core operations as it deems critical pending political negotiations. (Answer, Ex. D (Affidavit of Deputy Commissioner Eric Hallstrom, ¶¶ 7-8)).

wisdom of or the motives behind a veto so long as it is authorized by the Constitution.

*See, e.g., Johnson v. Carlson, 507 N.W.2d 232, 235 (Minn. 1993).*

**5. List specific issues proposed to be raised on appeal.**

Did the district court err in invalidating the Governor's line-item vetoes of appropriations to the Senate and the House when the Constitution provides the Governor line-item veto authority without qualification?

**6. Related appeals.**

List all prior or pending appeals arising from the same action as this appeal. If none, so state. *Not applicable.*

List any known pending appeals in separate actions raising similar issues to this appeal. If none known, so state. *Not applicable.*

**7. Contents of record.**

Is a transcript necessary to review the issues on appeal? *A transcript has been prepared*

**8. Is oral argument requested?** *Yes.*

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? *No.*

**9. Identify the type of brief to be filed.**

Formal brief under Rule 128.02 (X)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits) ( )

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ( )

**10. Names, addresses, zip codes and telephone numbers of attorneys for Appellant and Respondent.**

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