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State of Minnesota

In Supreme Court

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

Respondents,

vs.

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.

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STATEMENT OF LEGAL ISSUE

1. Whether the Governor lawfully exercised his line item veto power when he vetoed the appropriations to the Senate and House for the 2018-2019 fiscal biennium?

Apposite Authorities:

Minn. Const. art. III, § 1 and IV, § 23.
In re Clerk of Court's Comp. for Lyon Cty v. Lyon Cty. Comm'rs, 308 Minn. 172, 241 N.W.2d 781 (1976)
Johnson v. Carlson, 507 N.W.2d 232 (Minn. 1993)
Baker v. Carr, 369 U.S. 186 (1962)

This issue was raised by Defendants' Answer, Motion for Judgment on the Pleadings and Memorandum in Response to Order to Show Cause and in Support of Defendants' Motion for Judgment on the Pleadings. The district court denied Defendants' Motion for Judgment on the Pleadings and on July 19, 2017, issued its Order Granting Declaratory Judgment. Defendants timely appealed under Minn. R. Civ. App. P. 104.01, subd. 1 from the Judgment entered on July 20, 2017.

STATEMENT OF THE CASE

The Ninetieth Minnesota State Senate ("Senate") and the Ninetieth Minnesota State House of Representatives ("House") filed suit in Ramsey County District Court against Mark B. Dayton, in his official capacity as Governor of the State of Minnesota ("Governor Dayton"), and Myron Frans, in his official capacity as Commissioner of the Minnesota Department of Management and Budget ("MMB") ("Commissioner Frans"), seeking declaratory judgment that Governor Dayton's line item vetoes of appropriations to the Senate and the House for fiscal years 2018 and 2019 violated the separation of powers clause of the Minnesota Constitution. (Compl., Count I). The Senate and the House also sought injunctive relief and a writ of mandamus compelling Commissioner Frans to provide funds for the core function obligations of the Legislature. (Compl., Counts II and III). On June 14, 2017, the district court issued an Order to Show Cause asking the parties to "show cause … why the relief sought in … the Complaint should or should not be so ordered." (Add. 51).

Governor Dayton and Commissioner Frans answered Plaintiffs' Complaint on June 22, 2017, denying that the Senate and the House were entitled to their requested relief. (Answer). Governor Dayton and Commissioner Frans also filed a motion for judgment on the pleadings, asking the court to dismiss the request for declaratory judgment with prejudice because the vetoes were valid as expressly authorized by the

Constitution. (Memorandum in Response to Order to Show Cause and in Support of Defendants' Motion for Judgment on the Pleadings).[1]

On June 23, 2017, the parties filed a stipulation narrowing the issues before the district court. (Add. 54). Among other stipulations, the parties requested that the court issue a temporary injunction directing Commissioner Frans to take all steps necessary to provide continuing funding to the Senate and the House at the monthly rate of the fiscal year 2017 base general fund appropriation until all appellate review of the declaratory judgment has been completed or until October 1, 2017, whichever occurs first. (Add. 55, ¶ 5). On June 26, 2017, the district court issued the temporary injunction the parties requested. (Add. 63). The court also held that the "issues presented to the court in [the declaratory judgment count] of the Complaint are ripe and require a ruling from the court." (Add. 63, ¶ 3).

On July 19, 2017, the district court granted declaratory judgment to the Senate and the House and denied Governor Dayton and Commissioner Frans' motion for judgment on the pleadings, treating it as a summary judgment motion because both parties cited materials outside the pleadings. (Add. 3-4). The court ruled that the vetoes violated the separation of powers principle found in Article III of the Minnesota Constitution and thus were unlawful and void. (Add. 3). Although the court's reasoning is confusing and contradictory, it apparently determined that the vetoes of the items of appropriation for

[1] Because the district court did not reach Counts II and III, and stayed them pending this appeal, only Count I—declaratory judgment—is before the Court on appeal.

the Senate and the House had either the intent or effect of "abolishing" the Legislature. (Add. 14 *et seq.*).

The court concluded 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. (Add. 15-18). While the court acknowledged the Governor could use his line item veto authority on the appropriations to the Legislature if he disagreed with the amounts for *fiscal* reasons, it determined that his line item vetoes were unconstitutional because the vetoes were motivated by *policy* concerns. (Add. 19-21). In other words, the court's understanding as to why the Governor used his veto authority was dispositive.

The district court entered judgment on Count I on July 20, 2017. (Add. 4). Governor Dayton and Commissioner Frans now appeal from that Judgment.

STATEMENT OF FACTS

In a special session that immediately followed the end of the 2017 legislative session, the Senate and the House placed a "poison pill" into the Omnibus State Government Appropriations Bill ("state government bill") that would have denied appropriations to the Department of Revenue if Governor Dayton vetoed the Omnibus Tax Bill ("tax bill").[2] (Add. 38 ("This section is not effective until the day following enactment of [the tax bill].")). This attempt to suppress the Governor's constitutional veto

[2] The district court erroneously found that "[t]he Tax Bill passed by the Legislature during its special session contained a provision that would have defunded the Department of Revenue if Governor Dayton vetoed it." (Order, Statement of Undisputed Facts ¶ 3). In fact, the "poison pill" provision appeared in the state governmental bill. (Add. 38).

authority presented him 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, three provisions which would imperil the State's fiscal stability would become law.

Governor Dayton signed the tax bill[3] so the Department of Revenue could continue the essential functions of serving taxpayers and collecting much-needed revenues to fund the operations of the State. But, to defend his veto power from legislative encroachment and to call the Legislators back into session to finish their work, Governor Dayton used his constitutionally prescribed power to line item veto two of three legislative appropriations—those of the Senate and the House. (Add. 40).[4]

As required by the Constitution, Governor Dayton transmitted the signed state government bill to the Legislature with a "statement of the items he vetoe[d]." *See* Minn. Const. art. IV, § 23. And going beyond the constitutional requirement, in two separate May 30, 2107 letters—one to the President of the Senate and the other to the Senate Majority Leader and Speaker of the House—Governor Dayton stated his multi-faceted reasoning for the vetoes. (Add. 41-47). He noted that the "poison pill" was an attempt to

[3] The district court mistakenly found that Governor Dayton allowed the tax bill to become law without his signature. (Order, Statement of Undisputed Facts ¶ 3). Governor Dayton actually signed the tax bill. (First Special Session 2017, House File No. 1 ("Signed by the governor May 30, 2017, 9:56 p.m.")).

[4] The two line items for the Senate and the House are only shown as lump sums. The Legislature's practice is to submit its budget without providing details to the public on the nature of its expenditures. (Add. 40). Despite being unsatisfied with the Legislature's work, Governor Dayton did not leave it penniless. The $35 million appropriation for the Legislative Coordinating Commission has become law. (Add. 34.) The Legislature also has carry-over funding totaling potentially more than $21 million that it can use to fund its operations pending political negotiations. (Answer, Ex. D; Affidavit of Deputy Commissioner Eric Hallstrom ¶¶ 7-8).

"restrict" his executive power, leaving him with only the line item vetoes "to raise … strong objections to your tax bill, which favors wealthy individuals, large corporations, and moneyed special interests at the expense of the State of Minnesota's fiscal stability in the years ahead." (Add. 43). He objected that approval of the appropriations to the Senate and the House was premature, noting: "Your job has not been satisfactorily completed, so I am calling on you to finish your work." (*Id.*). He explained that he did not veto the tax bill because he would not "risk a legal challenge to the Department of Revenue's budget and cause uncertainty for its over 1,300 employees." (*Id.*).

The Senate and the House chose to adjourn *sine die* just after presenting the bills to the Governor, relinquishing their right to remain in session to override a possible veto. (Add. 2-3 ¶ 8). The Governor offered to call a special session to revisit five policy issues and the Senate and House appropriations. (Add. 43). The leaders of the Senate and the House have thus far chosen not to discuss any changes to the five policy issues. By bringing this legal action, they seek to have the courts intervene in the political process, thereby relinquishing their constitutional responsibility to engage with the Governor in passing legislation.

In addition to the two errors noted in footnotes 2 and 3 above, the district court also made misstatements in findings 7 and 8. Finding 7 says that neither the "Governor or his counsel suggested that the Governor vetoed the Legislature's appropriation for any reason specific to the appropriation." (Add. 2). To the contrary, the Governor's letter to the President of the Senate explained: "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." (Add. 41, emphasis added). The Governor's letter to the legislative leaders further complained of their attempts to restrict his executive power and stated: "Your job has not been satisfactorily completed, so I am calling on you to finish your work." (Add. 43). At the hearing, when the court stated that the Governor's objection was not to the appropriation, counsel responded: "I don't agree that it isn't to the appropriation, number one. He said you haven't finished your work, so I'm not going to appropriate to you until you finish your work, so it is to the appropriation …." (Tr. pp. 48:22-49:1).[5]

Finding 8 says "both houses entered into a written agreement with the Governor in which they agreed to adjourn following passage of seven outstanding budget and tax bills." (Add. 2-3). To the extent the court is suggesting that the Legislature was bound by this "agreement" to adjourn *sine die*, it is mistaken. The Legislature did not follow the "agreement." Although the agreement called for a one-day session on May 23, 2017, to end "no later than 7:00 a.m. on May 24, 2017", the Legislature did not adjourn on May 24. Instead, some bills were not even introduced until May 25, and the Legislature did not pass any bills by the agreement's deadline. Then, as the Governor stated, the Legislature "made it impossible for my staff and me to obtain drafts of your bill's language, sometimes not until minutes before they were brought to the floor for passage." (Add. 43). In addition, the bills included numerous policy matters that were not listed in the so-called agreement. (Add. 43-45). The agreement expired as of 7:00 a.m. on May 24,

[5] Citations to "Tr." are to the transcript of the June 26, 2017 hearing on the Order to Show Cause held in front of Judge Guthmann.

2017, and the vast majority of the Legislature's activity occurred beyond, and without regard to the agreement. The Legislature was thus not bound to adjourn *sine die* after passage of the bills, but chose to do so for its own political purposes.

ARGUMENT

I. SUMMARY OF ARGUMENT

The Governor has explicit 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 (emphasis added). The Minnesota Constitution does not exempt legislative self-appropriations from the Governor's line item veto power. In addition, the Constitution does not place motive or intent-based qualification on the Governor's veto power.

Although this Court has invalidated line item vetoes that did not involve an "item of appropriation,"[6] it has been clear that judicial inquiry ends where the item vetoed is an "item of appropriation." The Court has stated "It is not for this Court to judge the wisdom of a veto, or the motives behind it, so long as the veto meets the constitutional test," (*i.e*, it is of an item of appropriation). *Johnson v. Carlson*, 507 N.W.2d 232, 235 (Minn. 1993). In fact, the Court upheld the line item veto in *Johnson* even though the effect of the veto may not have reduced spending, and even though the Governor intended to use the veto to achieve policy objectives he could not achieve otherwise. *Id.* at 234. In other words, the correct constitutional inquiry into the validity of vetoes looks to "the nature of

[6] *See Inter Faculty Org. v. Carlson*, 478 N.W.2d 192 (Minn. 1991).

the power, and not the liability of its abuse or the manner of its exercise." *Lee v. Delmont*, 228 Minn. 101, 115, 36 N.W.2d 530, 539 (1949).

The Legislature admitted that Governor Dayton vetoed "items of appropriation" (Compl., ¶ 3), and the district court agreed, holding that the vetoes met the "constitutional test" as "two items of appropriation dedicated to the specific purpose of funding each house of the Legislature." (Add. 12). But the district court erred when, well beyond the text of the Constitution or any judicial precedent, it created an additional "separation of power constitutional test" that apparently calls for a case-by-case determination of the Governor's motives behind an exercise of the line item veto. (Add. 20). The district court further erred by suggesting that the vetoes "effectively abolish" the Legislature (Add. 20), disregarding the constitutional obligation of the court to require emergency funding to allow any constitutional body of the government to perform the critical, core functions mandated by the Constitution and expected by the citizens. (Add. 17). Finally, the district court erred when it suggested that the use of the line item veto power should be limited to situations where the Governor objects to the level of appropriation, not to policy matters. (Add. 19). Of course, the text of the Constitution does not impose any such limitation, nor has one been recognized in any decision of this Court.

The separation of powers questions before this Court involve less the interactions between the Executive and Legislative branches, and more importantly, the level of intervention of the Judicial branch in the political processes of the other two. Separation of powers requires *judicial restraint* to avoid becoming embroiled in these political processes. As a result, the course of least intrusion by the Judiciary, as dictated by

separation of powers, is to recognize the validity of the vetoes and assure critical, core function funding to the other branches while they continue to engage in the political processes assigned to them by the Constitution.

The district court did not act with judicial restraint, but instead barged head long into the political process. The district court's judgment should be reversed and the matter remanded with directions that Count I of Respondent's Complaint (Declaratory Judgment) should be dismissed with prejudice because the Governor's line item vetoes are valid as expressly authorized by Article IV, § 23 of the Minnesota Constitution. To the extent that Counts II and III of Respondent's Complaint seek emergency funding of critical, core functions, they should be taken up by the district court while the parties re-engage in the political process.

II. STANDARD OF REVIEW

Governor Dayton and Commissioner Frans seek review of the district court's grant of declaratory judgment and denial of their motion for judgment on the pleadings. When reviewing a declaratory judgment action, this Court applies the clearly erroneous standard to the district court's factual findings and reviews the district court determinations of law de novo. *See Onvoy, Inc. v. ALLETE, Inc.*, 736 N.W.2d 611, 615 (Minn. 2007). Because the underlying facts are undisputed, this Court's review is de novo, as is the case when reviewing a grant of summary judgment. *See SCI Minn. Funeral Serv's, Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2010).

III. THE GOVERNOR'S LINE ITEM VETOES WERE VALID

The Minnesota Constitution explicitly provides the Governor a broad veto power as an essential executive tool to ensure a balance of powers with the Legislature. Indeed, the executive veto power was extended in 1876 to add the even more precise tool of the line item veto.[7] *See* 1876 MINN. LAWS ch. 1 § 1. Minn. Const. art. IV, § 23 grants the Governor this clear line item veto authority:

> 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. At the time he signs the bill the governor shall append it to a statement of the items he vetoes and the vetoed items shall not take effect.

Once the Governor exercises his line item veto authority on an item of appropriation, only a legislative override can nullify it. *Id.* (the item can become law only if "approved by two-thirds of the members elected to each house ….").[8]

The Constitution does not qualify or limit the Governor's line item veto power. The text of Article IV is explicit: the Governor may veto one or more appropriation items in a bill. If he does so, "the vetoed items shall not take effect." *Id.*; *see also Clark v. Pawlenty*, 755 N.W.2d 293, 304 (Minn. 2008) ("When examining constitutional

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[7] The 1876 amendment was approved through a referendum, with over 90 percent voter approval. *See* Joel Michael, HISTORY OF THE ITEM VETO IN MINNESOTA, (Information Brief, House Research Staff, September 2016), *available at* www.house.leg.state.mn.us/hrd/pubs/itemveto.pdf [hereinafter "ITEM VETO IN MINNESOTA"].

[8] Governor Dayton's use of the line item veto during his tenure has been judicious compared to his recent predecessors. Governor Arne Carlson used the item veto 238 times, Governor Jesse Venture used it 175 times and Governor Tim Pawlenty used it 202 times. As of September 2016, Governor Dayton had used his item veto power only eleven times. ITEM VETO IN MINNESOTA at 2.

provisions, our task is to give effect to the clear, explicit, unambiguous and ordinary meaning of the language.") (internal quotation omitted). Given the veto power's breadth and specificity, this Court has recognized that judicial review of a veto's legality is extremely limited. The Court has said: "When the Governor vetoes a bill, he exercises a political power …." *In re McConaughy*, 106 Minn. 392, 415, 119 N.W. 408, 417 (1909). Indeed, "[t]he Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred." *Id.*

In addressing issues of separation of powers under Article III, Section 1, of the Minnesota Constitution, the Court described the proper analytical framework in *State ex rel. Patterson v. Bates*:

> Analyzing the constitutional provision, we find it consists of (1) a distributive clause, "The powers of government shall be divided into three distinct departments, legislative, executive and judicial," (2) a prohibitive clause, "No person or persons belonging to, or constituting one of these departments shall exercise any of the power properly belonging to any of the others;" and (3) an exception clause, "Except in the instances expressly provided in this Constitution."

96 Minn. 110, 117, 104 N.W. 709, 712 (1905).

As applied here, the Governor's line item veto authority clearly fits into the exception clause—the line item veto provision expressly permits the Governor to participate in, and, to that degree, interfere with the functions otherwise distributed to the Legislature. Because of the exception clause, the veto does not implicate the prohibitive clause. Hence, the exercise of the Governor's veto power cannot in any sense be seen to

violate separation of powers—it is expressly authorized in order to maintain the balance of powers between the Legislature and the Governor.

The Senate and the House acknowledge that the Governor vetoed "items of appropriation." (Compl. ¶ 3). They also acknowledge that the Governor would have been within his power to veto the entire state government bill. (Tr. at 21:8-9). The question for the Court, then, is whether the Governor's line item veto power is somehow limited as applied to appropriations for the Senate and the House. Several key principles outlined in this Court's cases make the legality of the Governor's line item vetoes readily apparent.

First, the general executive veto and line item veto serve as checks on the Legislature that fortify rather than corrode the separation of powers between the branches. *Duxbury v. Donovan*, 272 Minn. 424, 426-27, 138 N.W.2d 692, 694 (1965). Second, when the political process fails to provide sufficient funding for one branch to perform its critical, core functions, the district court may order such funding on an emergency basis to allow the political process to play out. *See, e.g., Clerk of Court's Comp. for Lyon Cty. v. Lyon Cty. Comm'rs*, 308 Minn. 172, 241 N.W.2d 781 (1976) [hereinafter "*Lyon County*"]. Finally, inquiring into the governor's motives for a veto is itself a violation of the separation of powers. *See Johnson v. Carlson*, 507 N.W.2d 232, 235 (Minn. 1993).

In *State ex rel. Greive v. Martin*, the Supreme Court of Washington considered a case that is strikingly similar to the one before the Court. *See* 63 Wash. 2d 126, 385 P.2d 846 (1963). There, the governor vetoed an item of appropriation for the "Legislative Council." The Washington Legislature had adjourned *sine die* and could not vote to

override the veto. It argued that the governor "exceeded his constitutional authority and has invaded the domain of the state legislature, thus impairing or destroying the separation of powers among the executive, legislative, and judicial branches of state government as provided for in our state constitution." *Id.* at 128-29, 385 P.2d at 848. The court disagreed, noting that the constitution made "no exceptions as to the type of legislative enactment which is subject to veto, requiring that "[e]very act which shall have passed the legislature shall be, before it becomes a law, presented to the governor ....'" *Id.* at 133, 385 P.2d at 850 (internal quotation omitted). "Since the people, in adopting their constitution, made no exception to laws which are subject to the Governor's veto, this court will not read an exception into § 12 in view of the clear language used therein." *Id.*, 385 P.2d at 850.

Here, too, the plain language of the Constitution provides that "[e]very bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor." Minn. Const. art. IV, § 23. It also provides that "[i]f 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." *Id.* As in Washington, the people of Minnesota, in adopting their constitution, "made no exception to laws which are subject to the Governor's veto." *See Martin*, 63 Wash. 2d at 133, 385 P.2d at 850. The Court should not read an exception into the Constitution that does not appear on its face. *See generally Okanogan v. United States*, [*The Pocket Veto Case*], 279 U.S. 655, 677-78 (1929) (discussing and affirming the importance of the President's role in approving or vetoing legislation).

A. The executive and line item vetoes serve as checks and balances that fortify rather than corrode the separation of powers between the branches.

The separation of powers doctrine is premised on the belief that "too much power in the hands of one governmental branch invites corruption and tyranny." *Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 223 (Minn. 1979). However, the Court has noted that "there has never been an absolute division of governmental functions in this country, nor was such even intended." *Irwin v. Surdyk's Liquor*, 599 N.W.2d 132, 137 (Minn. 1999). The founders "were too intensely practical to be controlled by any political theory, and while they recognized the principle in constructing the framework of the government, they violated it in practice and so distributed the powers as to create a system of checks and balances." *Bates*, 96 Minn. at 117, 104 N.W. at 712. The executive veto power is one such check on the power of the Legislature. *See Duxbury*, 272 Minn. at 429, 138 N.W.2d at 696.

In the FEDERALIST PAPERS, Alexander Hamilton discussed the purpose of executive veto power, noting the "propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments." He called special attention to the importance of the executive veto power to permit the executive to "defend himself against the depredations" of the legislative branch:

> He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body to invade the rights of the Executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one

> ought not to be left to the mercy of the other, but ought to possess a constitutional and effectual power of self-defense.

The FEDERALIST PAPERS NO. 73 at 422 (Alexander Hamilton) (Am. Bar Ass'n ed., 2009). In other words, that founding-era document describes the primary reason for the veto power is to defend the Executive's power from encroachment by the Legislature, and the secondary reason is to avoid bad laws.

Minnesota case law amplifies the point that the purpose of the executive veto power is to fortify the checks and balances between the branches of government. In *Duxbury*, the Court highlighted the special importance of the executive veto power when the Legislature is regulating itself. 272 Minn. at 426-27, 138 N.W.2d at 694. The question was whether the Legislature was required to submit apportionment maps to the governor for approval. The Court said yes and noted that the veto "serves merely as a check by which the majority of a legislative body is caused to exercise the awesome power of lawmaking with due consideration for the interests of the minority." *Id*. at 429-30, 138 N.W.2d at 696. The Court held that the veto power applied, noting that it was "difficult to conceive of any function of government more demanding of formal lawmaking process than that involved in apportionment." *Id.* at 434-35, 138 N.W.2d at 699.

The Court recognized the dangers of giving one branch of government unfettered control over the budgetary process in *Brayton v. Pawlenty*, 781 N.W.2d 357 (Minn. 2010). The issue in *Brayton* was whether the Governor could use the statutory unallotment procedure to eliminate a budget deficit. In finding that the Legislature had not intended to grant the Governor such statutory power, the majority avoided the

separation-of-powers issue. However, the dissenting opinion reached the separation of powers issue and observed: "We have likewise recognized that 'some interference between the branches does not undermine the separation of powers; rather it gives vitality to the concept of checks and balances critical to our notion of democracy.' " 781 N.W.2d at 378 (quoting *Wulff*, 288 N.W.2d at 223).

The Governor used his veto authority to defend against the Legislature's encroachment upon Executive power and to engage in constitutionally authorized negotiation with the Legislature. Respondents agreed that the Governor would have had clear authority to veto the tax bill, which contained objectionable policy decisions. (Tr. pp. 21 and 23). But the Legislature attempted to stymy the Governor from making that veto by inserting into the state government bill the "poison pill" that would deny appropriations to the Department of Revenue if the tax bill were vetoed. Surely the Governor was acting well within his Executive authority when he made the strategic decision both to sign the tax bill, thereby avoiding the penalty to the Department of Revenue, and also to veto the Senate and House appropriations, to defend against their intrusion into his executive powers and call them back into session to revisit those policy decisions and their appropriations. That choice did not offend notions of separation of powers, but actually promoted the balance of powers that fundamentally underlies those notions. This Court should not accept the invitation to lend its imprimatur to the Legislature's intrusion on Executive power.

B. The Governor's vetoes did not "abolish" the Legislature.

Contrary to the district court's holding that the Governor's vetoes "effectively abolished the Legislature," (Add. 14-16), the Governor's exercise of his veto power did not and could not do so. The Governor's exercise of his line item veto power did not effectively "abolish" the Legislature because the Legislature had the remedy to seek core function funding while it re-engaged with the Governor on matters of important public policy. When the political process fails to provide sufficient funding for a branch's core functions, a district court may order such critical, core funding to allow the political process to continue to reach a solution.

1. This Court's precedent protects each branch of government from abolition by another branch.

The authority of a court to provide core function funding to preserve the existence of a constitutional body was recognized in *Lyon County*. The Court considered the validity of a court order setting a salary for the clerk of the district court. The Legislature had established minimum salaries for clerks of court and provided that the county board set the clerk's salary annually. *Id.* at 173-74, 241 N.W.2d at 782-83. The dispute arose when the Lyon County judges bypassed that procedure but instead set the clerk's salary by order. *Id.* at 175, 241 N.W.2d at 783.The Court considered whether the inherent power of the Judiciary served as a basis for the judges' order.

The Court noted that the Judiciary's inherent power stemmed from the separation of powers in the Minnesota Constitution, and that it included the power to compel the payment of funds for judicial purposes. *Id.* at 177-78, 241 N.W.2d at 784-85. Among

other findings, the Court identified four relevant principles that apply equally to maintaining core funding of the Legislature:

> (1) Inherent power grows out of "express and implied constitutional provisions mandating a separation of powers and a viable judicial branch of government," and "comprehends all authority necessary to preserve and improve the fundamental judicial function of deciding cases."
>
> (2) Inherent power may not be asserted unless constitutional provisions are followed and the political and legislative process has been exhausted. "Intragovernmental cooperation remains the best means of resolving financial difficulties in the face of scarce societal resources and differences of opinion regarding judicial procedures."
>
> (3) When the political process has failed, a court may assert its inherent power by an independent judicial proceeding brought by "aggrieved parties." The proceeding must include "a full hearing on the merits in an adversary context before an impartial and disinterested district court." The court shall make "findings of fact and conclusions of law" and may grant "appropriate relief."
>
> (4) The test to be applied is whether the relief requested by the court or aggrieved party is "necessary to the performance of the judicial function as contemplated in our state constitution." The test "*is not relative needs or judicial wants, but practical necessity in performing the judicial function.*" It must be applied with "due consideration for equally important executive and legislative functions."

Id. at 180-82, 241 N.W.2d at 786 (emphasis added).[9]

2. <u>This case mirrors prior government shutdowns</u>.

This case presents the same issues that were addressed in the 2001, 2005 and 2011 government shutdown cases, only with the roles reversed. *See* Findings of Fact,

[9] The Court ultimately reversed the Lyon County judges' order on two grounds. First, the Minnesota Constitution specifically provided that the Legislature was to control the setting of the clerk of court's salary, and this express grant acted to limit the district court judges' inherent power to set the clerk's salary. *Id.* at 182, 241 N.W.2d at 787 (citing Minn. Const. art. VI § 4 [now § 13]). Second, the Legislature had established a procedure for the clerk to appeal to the district court if the county's salary was inadequate, a procedure the judges failed to use. *Id.* at 183, 241 N.W.2d at 787.

Conclusions of Law and Order, *In re Temp. Funding of Core Functions of the Exec. Branch*, No. 62-CV-11-5203, 2011 WL 2556036 (Ramsey Cty. Dist. Ct. filed June 29, 2011) (Gearin, C.J.) (Add. 23-32); Findings of Fact, Conclusions of Law and Order, *In re Temp. Funding of Core Functions of the Exec. Branch*, No. 62-CO-05-6928, 2005 WL 6716704 (Ramsey Cty. Dist. Ct. filed June 23, 2005) (Johnson, C.J.); Findings of Fact, Conclusions of Law and Order, *In re Temp. Core Funding of Core Functions of the Exec. Branch*, No. 62-C9-01-5725 (Ramsey Cty. Dist. Ct. filed June 29, 2001) (Cohen, C.J.); Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Finding, *In re Temp. Funding of Core Functions of the Judicial Branch of the State of Minnesota* (Ramsey Cty. Dist. Ct. filed June 20, 2001) (Amdahl, J.).[10]

In 2001 and 2005, the Legislature failed to appropriate any funds for the Executive branch (and in 2001, for the Judicial branch). There was no suggestion that the Legislature's failure to do so violated separation of powers. More important, in 2001, 2005 and 2011 there was no suggestion that a court could compel funding at the level of a requested appropriation.[11]

Faced with the failure of the political branches to reach an agreement, the judiciary intervened only as necessary to allow the dueling branches to reach a political solution. It

[10] None of the orders discusses the core functions of the Legislature at length, but the 2011 order notes that the "Senate and House … must be funded sufficiently to allow them to carry out *critical, core functions* necessary to draft, debate, publish, vote on and enact legislation." (Add. 30, Conclusions of Law ¶ 6).

[11] The only difference between those cases and this case, outside of the reversal of roles, is that, unlike the Executive and Judicial branches, which must return unspent appropriations to the general fund, the Legislature may carry unspent amounts into carry forward accounts. As a result, the Senate and House did not run out of funds on July 1.

ordered that the Executive branch (and in some years the Judicial and Legislative branches as well) must continue performing the *critical, core functions* as distributed to it in the Minnesota Constitution, and that the Commissioner of MMB must fund those *critical, core functions* until a political solution to the non-appropriation could be reached.

The constitutional need for core funding was not based on the prohibitive clause of the separation of powers clause. Instead, the need for and granting of critical, core funding was based on the distributive clause—the grant of power to three branches implies a right to minimum funds necessary to exercise that power. *See Bates*, 96 Minn. at 117, 104 N.W. at 712.

Although the orders in the shutdown cases have never been subject to appellate review, they follow the principles outlined in *Lyon County*. By analogy, the Governor here has a constitutional role to play in the appropriations process. He exercised his line item veto as permitted by the Constitution. *See* Minn. Const. art. IV, § 23. Meanwhile, the Legislature has constitutional functions it is required to perform, which grow out of "express and implied constitutional provisions mandating a separation of powers and a viable [legislative] branch of government." *Lyon County*, 308 Minn. at 180-81, 241 N.W.2d at 786.

The Senate and the House cannot demonstrate that they are entitled to the entire appropriation to perform the critical, core functions of the Legislative branch. Although

the Legislature's budget is (by its own design) opaque,[12] some information that was made public demonstrates that not every penny it spends is in furtherance of its core functions, much less "critical" to those functions. (Add. 49). For example, a Senate budget for the 2016-17 biennium identifies expenditures of $1,000 for dry cleaning, $4,000 in membership fees, $30,000 for water coolers and $200,000 for out-of-state travel. (*Id.*) In a core function proceeding, the Legislature would of course need to provide detail on its proposed expenditures and demonstrate which are critical.

If the Legislature can establish that the failure of an appropriation has the eventual effect of interfering with the Legislature's ability to perform its critical, core functions, *Lyon County* identifies the remedy, which gives proper respect to both Legislative and Executive powers. It does not include invalidating the Governor's veto or reviving the appropriation, but only allows recovery of the cost of critical, core functions pending a political solution to the policy disputes between the Legislature and the Governor. 308 Minn. at 181, 241 N.W.2d at 786. The test to be applied is "whether the relief requested by the … aggrieved party is necessary to the performance of the [legislative] function as contemplated in our state constitution. *The test is not relative needs or [legislative] wants, but practical necessity in performing the [legislative] function.*" *See id.* (emphasis added).[13]

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[12] The Legislature, for example, has exempted itself from the Minnesota Government Data Practices Act. *See* Minn. Stat. §§ 13.01-13.02.

[13] To balance the Judiciary's inherent power with the unreasonable and intrusive assertions of budgetary power by other branches, *Lyon County* did not conclude that the Legislature was required to make an appropriation to the court—thus, it did not create a

C. Judicial inquiry into the Governor's motives for a veto is a violation of separation of powers.

Respondents advocate an unworkable, extra-textual, motive-based test of the exercise of the line item veto. The Senate and the House urge the Court to hold—with no constitutional authority for such a distinction—that for an executive veto to be properly used, the Governor must actually "object to" the appropriation on fiscal grounds.[14] The district court followed this line of reasoning, stating that it cannot consider the "wisdom" of the Governor's decision, but that his motive can be considered "to the extent relevant to determining whether the veto, whatever its rationale, produced an unconstitutional result." (Add. 20). The district court also determined that it would require "a relationship between the purpose of the veto and the vetoed appropriation." (Add. 21).

The district court erred because the motive or intent behind a veto is not legally relevant to a veto's validity. In fact, because judicial inquiry into the Governor's motives for a veto would require it to exercise powers of the Executive, that inquiry itself would

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rule that would invade the Legislature's appropriation authority. Instead, the Court determined that the inherent judicial power can be given effect through an independent judicial proceeding to determine necessary funding: "not the relative needs or judicial wants, but practical necessity in performing the judicial function." 308 N.W.2d at 181, 241 N.W.2d at 786.

[14] Before the district court, the Senate and the House relied on the prior language of the line item veto provision, which provided that "[i]f any bill presented to the governor contain[s] several items of appropriation of money, he may object to one or more of such items …." (Plaintiffs' Memorandum in Response to Order to Show Cause at 21-22 (citing Laws 1876, ch. 1§ 1)). But a constitutional revision changed "object to" to "veto," meaning, the drafters of the refreshed language intended those phrases to be synonymous. *See* Laws 1974, ch. 409 (noting that any changes to the constitution were intended to be a "reforming of [the constitution's] structure, style and form" and not consequential to the meaning). In that sense, the Governor objected to the appropriations in that he vetoed them. In any event, the district court did not address the Legislature's textual argument.

violate separation of powers. *See United States v. Nixon*, 418 U.S. 683, 704 (1974) ("[T]he judicial Power of the United States vested in the federal courts … can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto.") (internal quotation omitted). Legislative override is the answer the Constitution provides for an executive veto based on political motives.

In *Johnson v. Carlson*, this Court considered the constitutionality of the Governor's line item veto that, for reasons not relevant here, had the effect of increasing, not decreasing, government spending. The Court, in considering whether the Governor vetoed an "appropriation," discussed the historical context of the line item veto, which "was put in state constitutions to counteract legislative 'pork-barreling,' the practice of adding extra items to an appropriation bill which the governor could not veto without vetoing the entire appropriation bill." 507 N.W.2d at 235 (internal quotation omitted). The Court noted, however, that its inquiry need not focus on whether the Governor actually intended to reduce overall spending. *Id.* at 234. Instead, "[t]he state constitution, recognizing the governor's oversight responsibilities for the state's budget, provides a gubernatorial line item veto to enable the state's chief executive officer to engage in cost-containment, subject, of course, to the possibility of the veto being overturned. … *It is not for this court to judge the wisdom of a veto, or the motives behind it, so long as the veto meets the constitutional test.*" *Id.* at 235 (emphasis added).

Finding that the vetoed item was indeed an item of appropriation, the Court upheld the Governor's use of the veto, even though the effect of the veto was unconnected with

reducing state spending. *Id.* at 234. In fact, the Court sustained the governor's line item veto even though he clearly intended to use it to achieve policy objectives he could not achieve otherwise. *Id.* at 234 (rejecting plaintiffs' contention that the governor could not use a line item veto to modify legislative strategy when it was clear the governor vetoed a "self-contained appropriation of a distinct sum for a specific purpose.").

Appellate courts in other states similarly refuse to consider a governor's motives in exercising a line item veto, as long as the text of the constitution permits the veto. The Supreme Judicial Court of Massachusetts has noted that it has "never inquired into a Governor's motives in the use of the line item veto power." *See Barnes v. Sec'y of Admin.*, 411 Mass. 822, 828, 586 N.E.2d 958, 961 (1992). There, the governor used his line item veto power to eliminate some funding for an Emergency Assistance (EA) program the legislature had established. *Id.* at 823-24, 586 N.E.2d at 958-59. The parties challenging the line item veto asserted that the governor "attempted to accomplish through 'defunding' what he could not accomplish through the legislative process—the elimination of certain benefits provided as part of the EA program." *Id.* at 827, 586 N.E.2d at 961. The court rejected this contention: "[T]he language of the constitutional amendment clearly authorizes the Governor's reduction; his action was wholly lawful, and our inquiry ends there." *Id.*at 828, 586 N.E.2d at 961; *see also Ex Parte Perry*, 483 S.W.3d 884, 900-901 (Tex. Crim. App. 2016) (finding that even a governor's criminal motivation did not invalidate a veto, and stating that "[o]ther state courts of last resort have held that the Governor's veto power is absolute if it is exercised in compliance with

the state constitution and that courts may not examine the motives behind a veto or second-guess the validity of a veto.").

In *O'Hara v. Kovens*, the Court of Special Appeals in Maryland wrote that the veto power is essentially a legislative power, and that "[w]henever motives for legislative acts have been drawn into question, courts have invariably refused to authorize judicial inquiry into the motives for enactment or rejection of the legislation." 92 Md. App. 9, 23, 606 A.2d 286, 293 (Ct. Spec. App. 1992) (citing *Fletcher v. Peck*, 6 Cranch 87, 3 L. Ed. 162 (1810)).[15] The court also noted that "no precedent suggests that the motives of a governor for vetoing legislation require more scrutiny or are less entitled to separation of powers protection than the motives of legislators in enacting legislation." *Id.* at 25, 606 A.2d at 293.

The Senate and the House argued below that the Governor's intent is relevant, and that the Governor can only veto items of appropriation that he fiscally "objects to." The district court modified this position in its order, suggesting several different, inconsistent

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[15] In *Fletcher*, Chief Justice Marshall explained that inquiry into legislative motives was not for the courts:

> It would be indecent, in the extreme, upon a private contract, between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law.

6 Cranch at 131. Chief Justice Marshall's rationale in *Fletcher* applies equally here. The Governor's vetoes were part of the legislative process.

tests that are unworkable in practice and unsupported by any applicable law. First, without citing constitutional text or judicial precedent, the district court suggested that the line item veto cannot be used "as a tool to secure the repeal or modification of policy legislation unrelated to the vetoed appropriation," and that there must be a "relationship between the purpose of the veto and the vetoed appropriation." (Add. 16, 22). Next, the district court suggested that the Governor could use the line item veto to remove all of the Legislature's funding, but he must "actually object to the manner in which the Legislature funded itself." (Add. 21). Finally, the district court held that the Governor *can* coerce policy legislation with the use of a line item veto "so long as vetoing the appropriation does not nullify or eliminate a branch of government or a constitutional office." (*Id.*)

It is unclear how courts could perform these different analyses in any consistent, workable manner. Furthermore, there is no constitutional support for any of them.

The district court's test would also put courts in the awkward position of investigating what the Governor's motivations actually were. In disputed cases, the district court's approach contemplates a trial for a fact-finder—to determine a Governor's motive in issuing a veto. The Legislature might find it politically attractive to examine a Governor, or his subordinates, under oath in litigation, whereas the Constitution does not require that the Governor explain his reasons for a veto. He is only required to notify the Legislature which items he vetoed. *See* Minn. Const. art. IV, § 23 (requiring the governor only to provide a "statement of the items he vetoes").

Through the lens of *Johnson v. Carlson*, Governor Dayton's line item vetoes were legitimate and politically proper. In response to legislative imposition—through the

"poison pill" that coerced him into signing the tax bill—Governor Dayton used the only other tool available to him to discourage the Legislature's use of such a conditional appropriation and to encourage the Legislature to revisit key public policy issues. As the State's chief executive, he believed these issues were crucial to the financial health, public safety and well-being of the citizens of Minnesota. The Governor has express constitutional permission to negotiate with the Legislature as it considers legislation, whether new proposals or changes to existing law. *Cf. Brayton*, 781 N.W.2d at 365 (Governor can call a special session).

The district court held that Governor Dayton's motives could be considered in determining whether the "end result of the act accomplished some purpose proscribed by the constitution," citing *Starkweather v. Blair*, 245 Minn. 371, 379-80, 71 N.W.2d 869, 876 (1955). (Add. 19).[16] But the district court's analysis of *Starkweather* does not go far enough. There, the Court considered whether a legislative act that stated "no part [of the appropriation] shall be used to pay the salary of an Assistant Director of the Division of Game and Fish" was an unconstitutional bill of attainder when the only person to have ever held that job was a man who had run afoul of some legislators when testifying at the State Capitol. *Id.* The Court made clear that it would not consider the Legislature's motives in passing the bill:

> As long as the legislature does not transcend the limitations placed upon it by the constitution, its motives in passing legislation are not the subject of

[16] The district court also justifies, without textual support in the Constitution or its jurisprudence, its reliance on the Governor's motives by analogy to the Rules of Evidence, noting "consideration of the reason for a veto should go to the weight given the motivation, not its admissibility." (Add. 20).

> proper judicial inquiry. That does not mean that the legislature may use a constitutional power to accomplish an unconstitutional result, but, before it can be held that the latter has been done, it must appear that the end result of the act accomplished some purpose proscribed by the constitution.

Id. at 380, 71 N.W.2d at 876. In fact, the Court pointed out the difficulty of inquiring into legislative motives: "Laws would rest on an insecure foundation if courts were to seek to determine motives of individual members of the legislature in passing laws by resort to extraneous evidence which was not part of the journal entry." *Id.*, 71 N.W.2d at 876.

By reading into the line item veto a requirement that it can be exercised only for the "right reasons," and reserving to the district court the responsibility to ascertain the Governor's motive and whether the motive is proper, the district court impermissibly inserted itself into a political question regarding what is the proper reason for which a governor may exercise his line item veto power.

D. Under the political question doctrine, the right to veto items of appropriation is the Governor's, and there are no judicially manageable standards for limiting that right.

In *Baker v. Carr*, the United States Supreme Court confirmed that a set of "political questions" exist that are nonjusticiable or inappropriate for judicial resolution. 369 U.S. 186 (1962). The political question doctrine is a prudential mechanism protecting the separation of powers. *Id*. at 210. The political question doctrine comes into play when a court is asked to make a decision that the Constitution has committed to another branch of government, and when a court is asked to decide whether another branch's action exceeds the authority committed to it. *Id*. at 211.

Nonjusticiable, political questions are identified by one or more of the following factors: (1) "a textually demonstrable constitutional commitment of the issue to a coordinate political department"; (2) "a lack of judicially discoverable and manageable standards for resolving it"; (3) "the impossibility of deciding without an initial policy determination of a kind meant for nonjudicial discretion"; (4) "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government"; or (5) the potential of "embarrassment" from differing "pronouncements by various departments on one question." *Id.* at 217.

Each of these factors show the nonjusticiability of the Legislature's effort to undo the line-time vetoes via court order. (Compl. ¶¶ 39, 46). First, the right to veto items of appropriation is textually committed to the Governor in Minn. Const. art. VI, § 23. Second, there are no judicially manageable standards for qualifying that right. Indeed, when the Legislature invites the Judiciary to probe the subjective intent of Governor Dayton, it thereby seeks the Judiciary's interference with the Executive branch.

The Legislature wants the Judiciary to take its side in a political controversy between the two political branches. If the Judiciary enters the fray, a court must make an initial policy determination of the proper appropriation for the Senate and the House. The Senate and the House argue their proposed appropriations are best. Yet that very question is left to the enactment process that, under the Constitution, requires actions by both the Legislature and the Governor. For a court to choose either side would both disrespect the losing side and require a policy judgment that does not belong to the Judiciary. Judicial restraint in this political dispute counsels otherwise.

E. The district court misinterprets the relationship between the separation of powers clause and the line item veto.

The position of the Senate and the House demonstrates a fundamental misunderstanding of the relationship between the separation of powers clause and the line item veto. Before the district court, the Senate and the House argued that the Governor's "limited line-item veto authority" is constrained by the separation of powers clause. The district court also implies that the separation of powers clause "imposes a 'constitutional test' of its own" on the veto authority of the Governor. (Add. 12). To the contrary, the Governor's exercise of his veto authority is an exception to the separation of powers principle. *See Bates*, 96 Minn. at 117, 104 N.W. at 712 (referring to the "exception clause" of the separation of powers principle). The Constitution clearly establishes the line item veto authority to permit the Governor to fortify the checks and balances underlying Minnesota's government. *See* Minn. Const. art. IV, § 23.

The district court misapplied both *Lyon County* and *Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). The district court applied *Lyon County* to note that "the Legislature's only forum to seek its 'self-preservation' is by invoking the Separation of Powers clause in court." (Add. 13). In these statements, the district court ignored the remedy specified by *Lyon County*: that the Legislature can seek what it needs to perform its critical, core functions from a district court. 308 Minn. at 176-77, 241 N.W.2d at 784. The test to be applied is "whether the relief requested by the … aggrieved party is necessary to the performance of the [legislative] function as contemplated in our state constitution. *The test is not relative needs or [legislative] wants, but practical necessity*

in performing the [legislative] function." *See id.* at 181-82, 241 N.W.2d at 786 (emphasis added). That reasoning directly contravenes the district court's holding that the Legislature is constitutionally entitled to its entire desired appropriation.

The district court then cited *Mattson* for the inapposite proposition that "[b]y statutorily abolishing all of the independent core functions of a state executive office, the legislature, in effect, abolishes that office, and the will of the drafters … is thereby thwarted." (Order at 14). But *Mattson* is about functions, not funding.[17] *Mattson* arose when the Legislature stripped the state treasurer position of all of its responsibilities, not because the funding for those responsibilities was stripped. Here, Governor Dayton's line item vetoes did not strip the Legislature of its critical, core functions under the Constitution. Reading *Mattson* in light of *Lyon County*, it is clear that because the Legislature is entitled to funding for its critical, core functions, the Governor is incapable of removing all of the Legislature's core functions simply by vetoing appropriations.

The district court also incorrectly took issue with the suggestion that it provide "emergency funding" to the Legislature while the political branches negotiate their differences. There is no justiciable basis for distinguishing between the Ramsey County District Court's provision of emergency funding for the Executive or Judicial branches and emergency funding for the Legislative branch. The district court incorrectly determined that the Governor's view requires "institutionalization of an extra-

[17] *See Otto v. Wright County*, No. A16-1634, 2017 WL 2333030, at *6 (Minn. Ct. App. 2017) ("[T]he *Mattson* court referred to the funding decrease in a footnote; the court's constitutional analysis focused exclusively on the fact that the challenged statute removed all of the state treasurer's core functions.")

constitutional process whereby the Judicial branch becomes a temporary legislature" and that "the use of emergency funding from the Judicial Branch has heretofore been limited to funding only the government's existing core functions to temporarily protect the rights of the citizenry." (Add. 17). Surely, however, the emergency funding process can be used to protect the right of the citizenry to keep the Legislative branch performing its critical, core functions during political disputes with the Governor: emergency funding safeguards citizens' constitutional right to petition their government for a redress of grievances. *See* Minn. Const. art. I § 8. Indeed, the 2011 Shutdown Order used a core function analysis to provide emergency funding for the Legislature.

Although it might be difficult for a court to "pars[e] through legislative functions to determine which constitute a 'core' operation," it is no more "subjective" or "hypothetical" than doing so for the Executive or Judicial Branches. Indeed, the former is easier because the legislative budget is so much smaller. The only real difference is that the Legislature is not as transparent in identifying its operating expenditures. But that does not make a court's function more difficult or distasteful if the Legislature, which seeks funding, can explain and itemize its expenditures.[18] That a task that is constitutionally required may be difficult has never provided an exception to the

[18] The district court's assertion that it cannot perform the core functions analysis for the Legislative Branch is also at odds with its holding that governors can issue a line item veto of the Legislature's appropriation "if they actually object to the manner in which the Legislature funded itself." (Add. 21). It is unclear how the Legislature would continue to operate in such a scenario if the court could not provide emergency funding to it while the political branches worked out a solution.

requirement. In this way, the court gives due respect to both the legislative and executive functions.

CONCLUSION

The district court attempted to create a rule for the "limited and unique" circumstances of this case. Its ruling, however, has far-reaching consequences that would substantially weaken the executive power vis-à-vis the legislature, thwarting the constitutional balance created by the Governor's veto power. By delving into the Governor's motive, the district court impermissibly read requirements and limitations into the veto authority that are not present in the plain language of the Constitution. Indeed, the district court created a new constitutional test for exercise of the line item veto power that does not arise from the text of the Constitution, and fails to respect the constitutional power of the Governor. The district court's order should be reversed, and the case remanded with instructions to dismiss Count I of the Complaint with prejudice and to consider Counts II and III to the extent they request emergency funding for the critical, core functions of the Senate and the House.

Respectfully submitted,

Dated: July 28, 2017

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellants certifies that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is printed in 13-point, proportionately spaced typeface utilizing Microsoft Word 2010 and contains 9,836 words, including heading, footnotes and quotations.

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