

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Rebecca Otto, in her official capacity  
as State Auditor of the State of Minnesota,

Court File No. 62-CV-16-606

Plaintiff,

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

vs.

Wright County, Becker County, and  
Ramsey County,

Defendants.

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On June 23, 2016, Plaintiff's Motion for Summary Judgment came on for hearing before the undersigned Judge of Ramsey County District Court. Attorneys Joseph T. Dixon III and Joseph J. Cassioppi appeared on behalf of Plaintiff Rebecca Otto, in her official capacity as the State Auditor of the State of Minnesota ("Plaintiff"). Attorneys Scott T. Anderson and Liz J. Vieira appeared on behalf of Defendants Wright County and Becker County. Attorneys Robert Roche and John T. Kelly appeared on behalf of Defendant Ramsey County, which took no position on the motion.

The Court, having reviewed the motion papers and heard the arguments of counsel, and based upon the files, records and proceedings herein, makes the following:

**ORDER**

1. Plaintiff's Motion for Summary Judgment is **GRANTED in part** and **DENIED in part**.
  - a. Plaintiff's request for the declaratory relief requested in Count I of her Complaint is **GRANTED in part** and **DENIED in part**. The Court makes the following declarations of law:
    - i. Auditing counties is an essential core function of the Office of the State Auditor (the "OSA") under the Minnesota Constitution. Minn. Stat. § 6.481 does not divest the OSA of its constitutional authority to audit counties and control the county audit process

because under the statute, the OSA retains supervision and ultimate authority over all such audits.

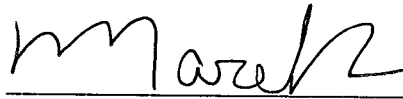
- ii. Minn. Stat. § 6.481 may be construed in a manner that is consistent with the OSA's continuing exercise of its essential core function of auditing counties.
  - iii. Minn. Stat. § 6.481, subd. 6, allows the OSA to continue to exercise its constitutional authority to audit counties at its discretion and to require counties to pay for such audits.
  - iv. Counties must submit to the OSA's statutory authority to audit counties under the circumstances described by Minn. Stat. § 6.481 and must pay for audits conducted by the OSA.
  - v. Plaintiff's request for the declaratory relief requested in the remainder of Count I of her Complaint is **DENIED**. Giving counties the right to choose whether a CPA firm performs their audits does not transfer a core function away from the OSA, but merely modifies one of the OSA's existing duties.
- b. Plaintiff's request for the declaratory relief requested in Count II of her Complaint is **DENIED**. Minn. Stat. § 6.481 does not violate the Separation of Powers Clause contained in Article III, section 1 of the Minnesota State Constitution.
  - c. Plaintiff's request for the declaratory relief requested in Count III of her Complaint is **DENIED**. The 2015 State Government Finance Omnibus Bill does not violate the Single Subject Clause contained in Article IV, section 17 of the Minnesota State Constitution.
  - d. For the same reasons that Plaintiff's summary judgment motion on part of Count I and Counts II and III has been denied, judgment is directed to be entered for Defendants on these Counts. Pursuant to Rule 54.02 of the Minnesota Rules of Civil Procedure, even though this is technically a partial judgment, there are no disputed fact issues requiring a trial, and no just reason for delay.

2. The following Memorandum is made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 2, 2016.

BY THE COURT:



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Lezlie Ott Marek  
Judge of District Court

### MEMORANDUM

I. **Statement of Undisputed Facts**

Plaintiff Rebecca Otto is the State Auditor for the State of Minnesota. She brought this civil action challenging the constitutionality of Minn. Stat. § 6.481 (the “County Audit Statute”). The County Audit Statute was passed as part of the 2015 State Government Finance Omnibus Bill and replaced Minn. Stat. § 6.48 on August 1, 2016.<sup>1</sup> The County Audit Statute provides in relevant part as follows:

**Subdivision 1. Powers and duties.** All the powers and duties conferred and imposed upon the state auditor shall be exercised and performed by the state auditor in respect to the offices, institutions, public property, and improvements of several counties of the state. The state auditor may visit, without previous notice, each county and examine all accounts and records relating to the receipt and disbursement of the public funds and the custody of the public funds and other property. The state auditor shall prescribe and install systems of accounts and financial reports that shall be uniform, so far as practicable, for the same class of offices.

**Subdivision 2. Annual audit required.** A county must have an annual financial audit. A county may choose to have the audit performed by the state auditor, or may choose to have the audit performed by a CPA firm meeting the requirements of section 326A.05. The state auditor or a CPA firm may accept the records and audit of the Department of Human Services instead of examining county human service funds, if the audit of the Department of Human Services has been made within any period covered by the auditor's audit of other county records.

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<sup>1</sup> See 2015 Minn. Sess. Law Serv. Ch. 77, art. 2, sec. 88 (S.F. 888) (West).

**Subdivision 3. CPA firm audit.** A county audit performed by a CPA firm must meet the standards and be in the form required by the state auditor. The state auditor may require additional information from the CPA firm if the state auditor determines that is in the public interest, but the state auditor must accept the audit unless the state auditor determines it does not meet recognized industry auditing standards or is not in the form required by the state auditor. The state auditor may make additional examinations as the auditor determines to be in the public interest.

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**Subdivision 6. Payments to state auditor.** A county audited by the state auditor must pay the state auditor for the costs and expenses of the audit. If the state auditor makes additional examinations of a county whose audit is performed by a CPA firm, the county must pay the auditor for the cost of these examinations. Payments must be deposited in the state auditor enterprise fund.

**Subdivision 7. Procedures for change of auditor.** A county that plans to change to or from the state auditor and a CPA firm must notify the state auditor of this change by August 1 of an even-numbered year. Upon this notice, the following calendar year will be the first year's records that will be subject to an audit by the new entity. A county that changes to or from the state auditor must have two annual audits done by the new entity.

See Minn. Stat. § 6.481.

The County Audit Statute allows a county to choose to have its audit outsourced to a private CPA firm rather than having it performed by the OSA. Prior to the enactment of the County Audit Statute, the OSA—in exercising its discretion to prioritize resources—allowed certain counties to hire a private CPA firm to perform county audits. (Otto Aff., ¶¶ 7–8). Every three years, the OSA determined which counties it would audit and which counties would be required to hire a private CPA firm. (*Id.* ¶ 7).

When the latest three-year cycle ended on December 31, 2014, the OSA sent its customary notice letters to each county stating whether the OSA would audit the next three-year cycle—the years ending on December 31 of 2015, 2016, and 2017—or whether the OSA would require the county to retain a private CPA firm. (*Id.* ¶ 9). Along with the notice letter, the OSA sent sixty-one counties a contract for the three-year audit period. (*Id.* ¶¶ 9–10). Fifty out of

those sixty-one counties, including Defendants here, refused to sign the three-year contract with the OSA. (*Id.* ¶¶ 16, 21).

On September 15, 2015, Wright County informed the OSA of its intention to pursue a private audit as soon as would be permitted under the County Audit Statute. (*Id.* ¶ 11, Exs. B–C). Similarly, Becker County did not sign the three-year contract and refused to commit to future audits performed by the OSA. (*Id.* ¶ 12, Ex. D). Ramsey County also declined to sign the three-year contract and cited concerns that the County Audit Statute might impact the quality and services of the OSA. (*Id.* ¶ 13, Ex. E). Ramsey County stated that while it was “very pleased with the services provided by [the OSA],” it would not “commit to a full three-year cycle, preferring a year-to-year approach instead.” (*Id.*).

Plaintiff believes that Defendants have posed a direct challenge to her constitutional authority as State Auditor by refusing to sign the three-year contract. (*Id.* ¶ 2). Plaintiff contends that Defendants’ interpretation of the County Audit Statute would result in a drastically altered OSA and would substantially reduce the OSA’s ability to oversee the use of taxpayer dollars. (*Id.* ¶ 21); (Compl. ¶¶ 58–59). Plaintiff, therefore, seeks the following declaratory relief: Count I of the Complaint requests that the Court declare that the County Audit Statute requires counties to submit to the constitutional authority of the State Auditor. (Compl. ¶¶ 61–70, 71a–d). In essence, Plaintiff seeks a declaration that Minnesota counties may not “opt out” of OSA audits and must submit to OSA audits for the entire current three-year audit cycle. (*Id.* ¶¶ 63, 70). In Count II, Plaintiff seeks a declaration that the County Audit Statute violates the Separation of Powers Clause of Article III, Section 1 of the Minnesota Constitution by purporting to limit the State Auditor’s authority relating to auditing counties and by transferring an inherent core function of the State Auditor to county governments.<sup>2</sup> (*Id.* ¶¶ 72–82, 83a–b). In Count III, Plaintiff seeks a declaration that the State Government Finance Omnibus Bill—containing the County Audit Statute—violates the Single Subject Clause of Article IV, Section 17 of the Minnesota

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<sup>2</sup> Minn. Const., art. III, § 1 provides: “The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.”

Constitution.<sup>3</sup> (*Id.* ¶¶ 84–91, 92a–c). Plaintiff asserts that the County Audit Statute is not germane to the subject of the 2015 State Government Finance Omnibus Bill—that subject being state government appropriations and finance—such that the many topics contained in the bill are not connected even by “a mere filament.” (*Id.* ¶¶ 86, 92a–c). As a result, Plaintiff contends that the County Audit Statute must be severed from Minnesota law and declared null and void. (*Id.* ¶ 92c).

## **II. Legal Standards**

### **A. Rule 56**

Rule 56.03 of the Minnesota Rules of Civil Procedure provides that “[j]udgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact, and that either party is entitled to judgment as a matter of law.” In deciding summary judgment motions, the district court is required to view the evidence in the light most favorable to the non-moving party. *Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 432 (Minn. 2002). If the non-moving party fails to meet its burden of coming forward with admissible evidence showing genuine issues of material fact for trial, summary judgment is mandated. Minn. R. Civ. P. 56.05; *see also Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

### **B. Declaratory Judgments**

The purpose of declaratory judgments is to “declare the existence of rights in doubt or uncertainty, rather than create new rights.” *Ketterer v. Indep. Sch. Dist. No. 1 of Chippewa Cnty.*, 79 N.W.2d 428, 439 (Minn. 1956). “The main characteristic of the declaratory judgment which distinguishes it from other judgments is that, by the act authorizing it, courts are empowered to adjudicate upon disputed legal rights whether or not further relief is or could be claimed.” *Id.* at 439; *see* Minn. Stat. § 555.01; *see also* Minn. R. Civ. P. 57 (“The procedure for obtaining a declaratory judgment pursuant to [Chapter 555], shall be in accordance with these rules. . . . The

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<sup>3</sup> Minn. Const., art. IV, § 17 provides: “No law shall embrace more than one subject, which shall be expressed in its title.”

existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.”).

Section 555.02 specifically provides for challenges to the validity of a statute when that statute affects the rights of a person. See Minn. Stat. § 555.02 (“Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute, . . . and obtain a declaration of rights, status, or other legal relations thereunder.”). A complaint requesting declaratory relief must present a substantive cause of action “that would be cognizable in a nondeclaratory suit.”<sup>4</sup> *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012); see also *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337–39 (Minn. 2011) (stating that a declaratory judgment action must present an actual justiciable controversy when challenging the constitutionality of a law).

### C. Constitutional Challenges to Statutes

When interpreting the Minnesota Constitution, “[t]he primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and the people in adopting the article in question.” *State v. Babcock*, 220 N.W. 408, 410 (Minn. 1928). Correspondingly, the paramount goal of the courts when interpreting a statute “is to ascertain and effectuate the intention of the legislature.” *W. Bend Mut. Ins. Co. v. Allstate Ins. Co.*, 776 N.W.2d 693, 698 (Minn. 2009) (citing Minn. Stat. § 645.16). Minnesota statutes are presumed to be constitutional, and courts are to interpret the words of a statute according to their plain and ordinary meaning. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). “When the language of a statute is unambiguous, its plain meaning is given effect.” *W. Bend Mut. Ins. Co.*, 776 N.W.2d at 698.

Courts have the power to declare a statute unconstitutional, but such power “should be exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d at 364. The party challenging a statute carries the heavy burden of demonstrating unconstitutionality beyond a reasonable doubt. *Kimberly Clark Corp. & Subsidiaries v. Comm’r of*

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<sup>4</sup> This Court has already found that Plaintiff’s civil action presents a justiciable controversy. See (Order filed June 9, 2016).

*Revenue*, 880 N.W.2d 844, 848 (Minn. 2016); *see also State v. Behl*, 564 N.W.2d 560, 566 (Minn. 1997).

### III. Analysis

At its essence, the issue in the case is who—the Counties or the State Auditor—has the power to choose whether a CPA firm may perform a county audit. It is clear from a plain language reading of the County Audit Statute that Minnesota counties are given the right to choose who performs their initial audit. *See* Minn. Stat. § 6.481, subd. 2 (“A county may choose to have the audit performed by the state auditor, or may choose to have the audit performed by a CPA firm meeting the requirements of section 326A.05.”). Since the right to choose is expressly given to the counties, Plaintiff bears the “very heavy burden of demonstrating beyond a reasonable doubt” that giving counties the right to choose who performs their audit is unconstitutional. *Behl*, 564 N.W.2d at 566.

#### A. Auditing Counties is a Core Function of the State Auditor.

The first step in this analysis is to determine whether auditing counties is a core function of the State Auditor under Article III and Article V of the Minnesota Constitution. Article III of the Minnesota Constitution establishes the distribution of powers of the state government as follows:

##### Section 1. Division of powers.

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

*See* Minn. Const. art. III, § 1.

Article V of the Minnesota Constitution provides for the executive branch of state government. Article V states that the executive department consists of the following executive officers: “a governor, lieutenant governor, secretary of state, auditor, and attorney general. . . .” Minn. Const. art. V, § 1. Except for the governor, Article V does not expressly set the terms and duties of each of these executive officers. *See id.* at § 3 (describing powers and duties of the governor). Nevertheless, each of these executive officers possesses inherent core functions. These inherent core functions are gleaned from the duties performed by the officer and the title



and history of the office. See *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 780–83 (Minn. 1986).

It is clear that one of the State Auditor’s primary duties is auditing Minnesota counties. See (Otto Aff., ¶¶ 3–4). The OSA is tasked with overseeing and reviewing Minnesota counties’ annual use of more than \$6 billion of federal, state, and local tax dollars. (*Id.* ¶ 3). In 2015 alone, the primary duty of over half of the OSA’s employees was to audit counties and county-related entities. (*Id.* ¶ 4). Sixty-four percent of the OSA’s staff either audits counties or supports the OSA’s county-audit function. (*Id.*). Furthermore, a commonsense understanding of the term “state auditor” connotes a person who is an accountant of the state—a job that necessarily includes auditing the funds coming into and out of the State of Minnesota. See *Mattson*, 391 N.W.2d at 780–81 (citing the Arizona Supreme Court’s decision in *Hudson v. Kelly*, 263 P.2d 362, 368 (Ariz. 1953)). The duty of auditing the funds of the State of Minnesota necessarily includes auditing funds coming into and out of the eighty-seven counties that make up the State of Minnesota. Therefore, the title given to the State Auditor, the manner in which she performs her duties, and the amount of resources and manpower devoted to auditing counties supports the conclusion that auditing counties is a core function of the State Auditor.

**B. The County Audit Statute is Consistent with the State Auditor’s Exercise of her Constitutional Authority.**

**1. The Legislature has the Power to Modify the State Auditor’s Duties Under *State ex rel. Mattson v. Kiedrowski*. Modifying who Performs the Initial Audit Does not Transfer her Core Function of Auditing Minnesota Counties.**

As noted previously, Article V does not expressly set the terms and duties of the State Auditor as an executive officer. The task of prescribing duties for executive officers is reserved for the legislature by the “prescribed-by-law” provision of Article V, section 4. See Minn. Const. art. V, § 4 (“The duties . . . of the executive officers shall be prescribed by law.”). Although the legislature is prohibited from using the “prescribed-by-law” provision to transfer core functions away from an executive officer, the legislature is permitted to modify an executive officer’s duties “as the public health and welfare demand.” *Mattson*, 391 N.W.2d at 780–81 (stating that a transfer of inherent or core functions may not be reassigned from an executive officer to an appointed official). Courts have made clear that the legislature’s power to change the duties of

executive officers is distinct from its ability to modify. *See id.* at 781–82. While a mere modification of certain functions is constitutional, a drastic overhaul that transfers all of an executive officer’s power is deemed unconstitutional because it strips from the officer his or her core function, rendering the office a hollow shell. *Id.* at 782.

The parties agree that the Minnesota Supreme Court’s decision in *Mattson v. Kiedrowski* is the controlling case, but differ on its interpretation and application to the facts here. In *Mattson*, the court was faced with a constitutional challenge to a law passed as Chapter 13 of the 1985 Minnesota Special Session Laws. Chapter 13 had the effect of transferring several positions from the State Treasurer’s Office to the Commissioner of Finance and relieving the State Treasurer of its duties relating to the disbursement of state funds, its ability to verify payments of state funds to private vendors, its ability to determine the amount of state funds available for investment, and its ability to manage the debt service function on all state bond issues. *Id.* at 778–79. In declaring Chapter 13 unconstitutional, the *Mattson* court found that the legislature overstepped the boundaries of Article V, section 1, when it transferred to the Commissioner of Finance the responsibilities of the State Treasurer relating to the receipt, care, and disbursement of state monies—functions which defined and separated the treasurer position from the other executive offices. *Id.* at 782. As articulated by the *Mattson* court:

The limitation implicit in Section 1 of Article V serves only to prevent the legislature from abolishing all of the independent functions inherent in an executive office. To allow the legislature to abolish all such functions of an executive office is to allow it to do violence to the title the drafters afforded the office and the core functions necessarily implied therefrom.

*Id.*

**2. Consistent With the Principles Articulated in *Mattson*, The County Audit Statute Constitutionally Modifies the Existing Duties of the OSA.**

Here, Plaintiff argues that because sixty-four percent of the OSA’s employees are engaged in the county audit process and sixty percent of the OSA’s budget is derived from county audit fees, and because the OSA devotes more staff time and resources to county audits than the remaining duties of the OSA combined, performing county audits is an inherent core function of the State Auditor that cannot be transferred away by legislation. (Pl.’s Reply in Supp. at 2); (Otto Aff., ¶¶ 3–4). Defendants assert that giving counties the ability to choose whether a CPA firm or

the OSA performs the initial audit is nothing more than a modification of the State Auditor's constitutional function. Defendants interpret the *Mattson* decision as standing for the literal proposition that an executive office may not be divested of *all* its inherent independent duties. See (Defs.' Mem. in Response at 21). Defendants point to the language of the County Audit Statute giving the OSA ultimate authority to review county finances in support of their position that the County Audit Statute does not transfer all of the State Auditor's inherent independent duties. (*Id.* at 23); see also Minn. Stat. § 6.481, subd. 3 ("The state auditor may require additional information from the CPA firm if the state auditor determines that is in the public interest, but the state auditor must accept the audit unless the state auditor determines it does not meet recognized industry auditing standards or is not in the form required by the state auditor.")<sup>5</sup> This statutory safeguard, according to Defendants, keeps ultimate auditing oversight authority with the OSA and therefore does not transfer all of the duties of her office, rendering the OSA a hollow shell.<sup>6</sup>

In accordance with this Court's obligation to make every effort to construe the statute as constitutional, the Court finds that the County Audit Statute does not transfer the State Auditor's core function of auditing Minnesota counties, but instead modifies her existing duties. *Mattson*, 391 N.W.2d at 782. In this case, the County Audit Statute does not abolish *all* independent functions inherent in the OSA and does not eliminate the OSA's ability to perform audits. In fact, until a county provides notice of its intent to hire a CPA firm, the OSA is the default county auditor, a function it previously had under Minn. Stat. § 6.48.

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<sup>5</sup> Defendants also argue that the historical role of the OSA does not include conducting county audits. (Defs.' Mem. in Response at 14–20). The Court does not address this argument because the focus of the Court's inquiry in the State Auditor's core functions is on the then-current duties of the officer. See generally *Mattson*, 391 N.W.2d at 778–83 (analyzing the then-current facts as applied to the constitutional challenge).

<sup>6</sup> Defendants further argue that even though Plaintiff has not pointed to "any concrete evidence" that the County Audit Statute will functionally impact the OSA to the point where it will no longer be able to carry out its core functions, if such a scenario were to occur, the State Auditor could seek a remedy by petitioning the courts for an order directing the legislature to properly fund the OSA. See (Defs.' Mem. in Response at 22–23).

Unlike the effects of the challenged legislation in *Mattson*, the County Audit Statute does not relegate the OSA to performing miscellaneous duties or strip it of its major policy-making function of setting auditing standards and overseeing county audits. The County Audit Statute does not bar the OSA from actively overseeing audits performed by private CPA firms—a practice which the OSA has used since 2003. (*Otto Aff.*, ¶ 7). If a county elects to have an audit performed by a CPA firm in lieu of the OSA, the State Auditor retains the power to control the manner in which the audit is performed by setting its own accounting standards. See Minn. Stat. § 6.481, subd. 3 (“A county audit performed by a CPA firm must meet the standards and be in the form required by the state auditor.”). If the CPA audit complies with acceptable accounting standards and the State Auditor’s guidelines, the State Auditor must accept the audit. *Id.* In a scenario where the State Auditor determines that the information contained in a CPA firm’s audit is insufficient, does not meet recognized industry auditing standards, or is not in the form required by the State Auditor, the State Auditor may require additional information from the CPA firm if the State Auditor determines that additional information is “in the public interest.” *Id.* This, coupled with the fact that the State Auditor is authorized to conduct its own examination if it determines that such intervention is “in the public interest,” makes clear that under the County Audit Statute the OSA retains meaningful oversight over all county audits, including those performed by CPA firms. *Id.*

At this time it is unknown whether all eighty-seven Minnesota counties will leave the OSA for private CPA firms.<sup>7</sup> Even assuming such a scenario were to occur, the County Audit Statute would not permanently ban the State Auditor from performing future audits. Once a county chooses to employ the services of a CPA firm, the decision is not everlasting. See *id.* at subd. 7. The County Audit Statute also contains safeguards that give the State Auditor the ability to define the rules for conducting county audits, and provides the State Auditor with final authority for

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<sup>7</sup> Plaintiff has sought leave from the Court to file a supplemental affidavit, detailing the number of counties that have now notified the OSA of their intent to hire private CPA firms after the County Audit Statute became effective on August 1, 2016. The issue raised by the Affidavit is not critical to the Court’s decision because the constitutionality of the statute is independent of the number of counties who have chosen to opt out of OSA audits. Because the Court has already considered all possible scenarios, the Court has issued its ruling without considering Plaintiff’s request.

accepting those audits. Under this hypothetical scenario, the functional duties of the OSA would be altered from an office that actively performs audits to an office that largely sets auditing standards and reviews outside audits for compliance. Although different, this modification does not attack the State Auditor’s core function as the accountant of the state. The State Auditor would continue to function as the taxpayers’ watchdog by setting strict auditing standards, thoroughly reviewing outside audits, and having the authority to intervene when intervention is determined to be “in the public interest.” *See id.* at subd. 3.

While the Court can posit several reasons why giving private CPA firms the ability to conduct county audits is not advisable, reasonable trepidation about how a piece of legislation may operate is not enough to declare a law unconstitutional. *See e.g.*, (Carlson Aff., ¶¶ 4–8) (expressing concern that the County Audit Statute may diminish the independence of the OSA, and articulating apprehension with private CPA firms auditing Minnesota counties when, contrary to the allegiance of the OSA, a private firm’s primary allegiance is not exclusively to the people of the State of Minnesota); *see generally* (Otto Aff., ¶¶ 19, 21); *see also* (Dayton Aff., ¶ 3). For this reason, the Court finds that Plaintiff has not met the very heavy burden of demonstrating beyond a reasonable doubt that giving counties the right to choose who conducts their audits is unconstitutional. By way of the “prescribed-by-law” provision of Article V, section 4, the legislature acted within its constitutional authority to alter the duties of the OSA. *See* Minn. Const. art. V, § 4. Because the State Auditor continues to have the authority to audit Minnesota counties—by performing audits herself or reviewing outside audits for compliance—the Court concludes that giving Minnesota counties the right to choose whether the OSA or a CPA firm performs its audit is not the kind of a drastic overhaul articulated in *Mattson* that transfers away *all* of an executive officer’s power, thereby rendering the office a hollow shell. *Mattson*, 391 N.W.2d at 782. Therefore, the Court finds that the County Audit Statute does not violate the separation-of-powers clause under Article III, or the inherent authority of the State Auditor under Article V of the Minnesota Constitution.

### **C. Single Subject Challenge**

Article IV, Section 17 of the Minnesota Constitution—the Single Subject and Title Clause—provides that, “No law shall embrace more than one subject, which shall be expressed in its title.”

The clause is construed liberally when analyzing whether a law violates the single subject provision.<sup>8</sup> As stated by the Minnesota Supreme Court, “[a]ll that is necessary is that the [law] should embrace some one general subject . . . merely, that all matters . . . should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.” *Anderson*, 252 N.W.2d at 137. If there is a common thread linking all of the provisions and the subject of the legislation, even if that thread is but “a mere filament,” it will not be found to violate the Single Subject and Title Clause. *Blanch*, 449 N.W.2d at 155. A party alleging that legislation runs afoul of the Single Subject Clause must prove unconstitutionality “beyond a reasonable doubt.” See *Associated Builders*, 610 N.W.2d at 299; see also *Behl*, 564 N.W.2d at 566. In this case, Plaintiff can prevail on her Single Subject challenge by demonstrating that as a matter of law the challenged section of the 2015 State Government Finance Omnibus Bill is not connected by even a “mere filament” to the subject of Chapter 77.

**1. The Provisions of Chapter 77, Including the Challenged County Audit Statute, are Germane to a Single Subject Because They are Linked by a Common Thread That Satisfies the Mere Filament Test.**

The title of Chapter 77 begins by declaring it “[a]n act relating to the operation of state government.” See 2015 Minn. Sess. Law Serv. Ch. 77 (S.F. 888) (West). The title’s listing of topics under this subject includes “appropriating money for the legislature, governor’s office, state auditor, attorney general, secretary of state, certain agencies, boards, councils, retirement funds, military affairs, and veterans affairs,” and “allowing counties to elect to have an audit conducted by a CPA firm”—a specific reference to Chapter 77’s Article 2, sections 3 and 88. *Id.*

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<sup>8</sup> Since the 1970s, the Minnesota Supreme Court has considered eight challenges to the Single Subject Clause, and has struck down a challenged provision only one time. See *Wass v. Anderson*, 252 N.W.2d 131, 137 (Minn. 1977) (law upheld); *Lifteau v. Metro. Sports Facilities Comm’n*, 270 N.W.2d 749 (Minn. 1978) (law upheld); *Mattson*, 391 N.W.2d at 783 (law deemed unconstitutional as violating Section 1 of Article V and Section 1 of Article IX of the Minnesota Constitution); *Blanch v. Suburban Hennepin Reg’l Park Dist.*, 449 N.W.2d 150, 155 (Minn. 1989) (law upheld); *Metro. Sports Facilities Comm’n v. County of Hennepin*, 478 N.W.2d 487, 490 (Minn. 1991) (law upheld); *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 300 (Minn. 2000) (holding that a prevailing wage law violated the Single Subject and Title Clause because it was contained in the Omnibus Tax Act); *Townsend v. State*, 767 N.W.2d 11, 13–14 (Minn. 2009) (law upheld); *Wallace v. State*, 820 N.W.2d 843 (Minn. 2012) (law upheld).

Plaintiff relies on *Associated Builders & Contractors v. Ventura* in support of her position that the contested legislation fails to satisfy the Single Subject Clause. In *Associated Builders*, the Minnesota Supreme Court examined a challenged provision contained in an omnibus tax bill that required a prevailing wage be paid on all construction or remodeling projects of educational facilities exceeding \$100,000. *Associated Builders*, 610 N.W.2d at 295 (affirming the holding of the court of appeals that the “prevailing wage amendment was ‘not remotely related [to the bill’s subject of] tax reform and relief,’ and that the title provision was violated because the title made no reference to topics such as ‘prevailing wage,’ ‘school districts’ or ‘labor’”). In holding that the prevailing wage provision did not share a thread of germaneness with the rest of the bill, the court struck down the challenged provision using a two-part test to determine (1) whether the provision is germane to the other provisions contained in the bill; and (2) whether the legislative history of the provision and the bill demonstrate the type of improper “log-rolling”<sup>9</sup> of unrelated legislation that the Single Subject Clause was designed to prevent. *Id.* at 301–04. “[E]ven under a liberal interpretation,” the court found that the bill’s provision relating to prevailing wages for private projects did not share a single topic with the rest of the bill’s provisions relating to taxation. *Id.* at 303. The court noted that “more than an impact on state finances is required to establish even a minimum thread of germaneness, as virtually any bill that relates to government financing and government operations affects, in some way, expenditure of state funds.” *Id.*

In this case, allowing counties to elect to have an audit performed by a CPA firm is germane to other provisions within the legislation such that the mere filament test is satisfied. When the court in *Associated Builders* stated that “more than an impact on state finances is required . . . as virtually any bill that relates to government financing and government operations affects, in some way, expenditure of state funds,” it did so in response to the appellants’ “strained” argument tying the prevailing wage amendment to tax relief. *Id.* at 302. The holding does not, as argued by Plaintiff, stand for the proposition that legislation cannot have the broad

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<sup>9</sup> “Log-rolling” is the attachment of undesirable riders upon bills that are more likely to be passed. Proper observance of the single subject rule of the constitution assures that every distinct piece of legislation is considered on its own merits. See *State v. Cassidy*, 22 Minn. 312, 322 (1875).

subject of financing the operation of state and local government. In fact, rather than find the subject of the 1997 Omnibus Tax Bill was limited strictly to taxes, the court in *Associated Builders* analyzed the prevailing wage amendment for relevance to the broader subject of government financing and operation. *Id.* While the wage law failed even this analysis, the court relied upon this broader subject characterization in refuting the argument that certain other provisions were not germane to the Tax Bill. *Id.* at 303 n.24. The court held that to construe the prevailing wage act amendment as related to the funding and operating of state and local government “would push the mere filament to a mere figment.” *Id.* at 303. Here, unlike the prevailing wage amendment in *Associated Builders*, the section of the 2015 Government Finance Omnibus Bill permitting counties to hire CPA firms for performing county audits is related to the operation of state government by more than a mere filament. Plaintiff’s constitutional challenge to the statute fails on this basis.

**2. Plaintiff’s Allegations of Log-rolling and Irregularities Regarding the Legislative and Committee Processes Cannot Constitute a Violation of the Single Subject Clause Where the Legislation has Been Found Germane to a Single Subject.**

Plaintiff’s argument includes a detailed history of the legislative process behind Chapter 77. The crux of Plaintiff’s argument is that based on legislative custom and history, the passage of the County Audit Statute was a significant deviation from traditional practice, and therefore was the product of impermissible log-rolling in violation of the Single Subject Clause. Plaintiff has highlighted significant oddities about this legislation and its passage, but such factors only become relevant when the legislation has failed the mere filament test. Where the Court has found that legislation is germane to a single subject, allegations of legislative improprieties cease to be a proper subject for judicial review.

In *Associated Builders*, the court noted several concerns about the bill’s passage, including deviations from legislative custom in that such a measure would typically be found in a different type of bill and before a different committee, that the measure had no companion in the opposite chamber and received little discussion, and that there was a much more direct route to its passage that was not used. *Id.* at 303–04. However, it was only after determining that the



prevailing wage amendment failed the mere filament test that the court addressed the appellants' argument concerning log-rolling and legislative mischief. *See id.* at 303.

It is a fundamental and logical necessity that in order to constitute a single subject violation, the legislation must address more than one subject, no matter the circumstances surrounding its passage. *See Unity Church of St. Paul v. State*, 694 N.W.2d 585, 597 (Minn. Ct. App. 2005) ("What the Minnesota Constitution requires is germaneness. It does not require the absence of legislative maneuvering to enact unpopular, but germane, bills."). There is no reason for the Court to examine whether the purposes behind the constitutional restriction have been violated where no violation of the actual restriction has been found. Therefore, having concluded that the challenged provision satisfies the mere filament test, the Court need not examine Plaintiff's allegations regarding legislative procedures and custom.

#### **IV. Conclusion**

The County Audit Statute does not divest the OSA of its core function of auditing counties. While the County Audit Statute allows counties to initially decide who performs the audit, the OSA retains supervision and ultimate authority over all such audits. Plaintiff has not carried her heavy burden to show that the challenged legislation is unconstitutional. For these reasons, the Court finds that Minn. Stat. § 6.481 does not violate the Minnesota Constitution.

*mmarek*  
Sept 2, 2016.