

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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

Case Type: Civil Other
File No.: 62-CV-17-3601
Judge: John H. Guthmann

Plaintiffs,

v.

Mark B. Dayton, in his official capacity as
Governor of the State of Minnesota, and
Myron Frans, in his official capacity as
Commissioner of the Minnesota Department
of Management and Budget,

Defendants.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER GRANTING TEMPORARY
INJUNCTIVE RELIEF**

The above-captioned matter came before the Honorable John H. Guthmann, Chief Judge of the Second Judicial District on June 26, 2017 at the Ramsey County Courthouse, St. Paul, Minnesota. Douglas A. Kelley, Esq., represented plaintiffs. Sam L. Hanson, Esq., represented defendants Governor Mark B. Dayton and Myron Frans. This Order addresses only the parties' Stipulation for the entry of injunctive relief compelling the Commissioner of Management and Budget to allot continuing funding to the Minnesota Legislature. All remaining issues remain under advisement.

STATEMENT OF UNDISPUTED FACTS

1. Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives constitute the Ninetieth Minnesota Legislature. The Minnesota Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional

“session-only”, full-time staff. (Ludeman Aff. ¶¶ 3, 10.) The Minnesota House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional “session-only”, full-time staff. (Reinholdz Aff. ¶¶ 4, 13, 16.)

2. Elected legislators, through the two houses of the Minnesota Legislature, have the responsibility under the state constitution to pass all legislation, raise funds to support the operation of state government, and appropriate funds for the operation of state government. MINN. CONST. art IV.

3. During and between legislative sessions, elected legislators, with the assistance of their paid staff, are responsible for communicating with constituents, researching and crafting legislation, monitoring legislation introduced by other legislators, holding committee meetings, and publishing journals of meetings. (Ludeman Aff. ¶¶ 3-5; Reinholdz Aff. ¶¶ 5-8.)

4. Based on spending levels in effect through June 30, 2017, the Senate’s monthly operating expenses are approximately \$2,558,000. (Ludeman aff. ¶ 15.) The House’s monthly operating expenses are approximately \$2,700,000. (Reinholdz aff. ¶ 16.)

5. The Senate subleases the Minnesota Senate Building from the Commissioner of Administration for \$683,000 a month. (Ludeman aff. ¶ 13.) The Commissioner of Administration leases the building from the Department of Management and Budget, also known as Minnesota Management and Budget (“MMB”). The Commissioner of Administration must pay \$1,911,000 on November 14, 2017, and \$4,131,000 on May 14, 2018 to the MMB. (*Id.*) The Commissioner of Administration makes the required payments from the money received in monthly rent from the Senate. (*Id.*) MMB may

remove persons and property from the Senate Building if these payments are not made. (*Id.* ¶ 14.) Failure to make these payments could damage Minnesota's credit rating. (Ludeman aff. ¶ 19.)

6. Mark B. Dayton is the duly elected Governor and Chief Executive Officer of the State of Minnesota. Governor Dayton heads the executive branch, which includes MMB.

7. Myron Frans is the Commissioner of MMB. The Commissioner manages the State's financial affairs and is the State's controller and chief accounting and financial officer, appointed by the Governor with the consent of the Senate. Minn. Stat. §§ 15.06, 16A.01 (2016). Defendant Frans is responsible for allotting appropriations to the Legislature for its expenditures. (Compl. ¶ 6.)

8. On May 26, 2017, in special session, the Minnesota Legislature completed passage of a comprehensive budget for fiscal years 2018 and 2019. (*See* Ludeman aff. ¶ 9.) The budget included nine appropriation bills and a tax bill. (*See id.*) After the bills were passed, the Legislature adjourned the 2017 special session *sine die* and the budget bills were presented to Governor Dayton. (*Id.*); *see* MINN. CONST. art IV, § 23.

9. The Omnibus State Government Appropriations Bill included funding for the Minnesota House and the Minnesota Senate for fiscal years 2018 and 2019. (*See* Reinholdz Aff., Ex. 1.) The appropriations were not itemized. Rather, the appropriation for each house for each fiscal year was stated in a single lump sum. (Hallstrom Aff., ¶ 4.) On May 30, 2017, Governor Dayton line-item vetoed the lump-sum appropriations for the Senate and House for each fiscal year. (*See* Reinholdz Aff., ¶ 11.)

10. To date, the Governor has not called a special session to seek passage of a “lights on” bill or a new bill that funds the Legislature during the next biennium.¹

11. Plaintiffs’ suit seeking declaratory, injunctive, and mandamus relief was filed on June 13, 2017. (Compl., Counts I-III.) On June 14, 2017, the court issued an Order to Show Cause, directing the parties to submit written briefs and to attend a hearing at 10:00 a.m. on June 26, 2017. In the meantime, defendants filed an answer and a motion for judgment on the pleadings.

12. On June 23, 2017, the parties filed a Stipulation requesting, *inter alia*, that the court enter a temporary injunction directing the Commissioner of Management and Budget to provide continuing funding to the Legislature pending resolution of the instant litigation through appeal or until October 1, 2017, whichever occurs first.

13. The parties June 23, 2017 Stipulation is adopted by the court and incorporated by reference herein.²

14. The court views the Stipulation as a petition by the parties to fund the Minnesota Legislature on a temporary basis because the Legislature is an independent branch of government that provides core governmental functions that must be performed in accordance with Minnesota’s Constitution. MINN. CONST. art IV.

¹ In *State ex rel. Sviggum v. Hanson*, the Court of Appeals noted that the Legislature could prevent the need for “another judicially mandated disbursement of public funds without an authorized appropriation” by establishing statutory standards or by creating an emergency fund. 732 N.W.2d 312, 323 (Minn. Ct. App. 2007). During the ten years since *Sviggum*, no such plan has been enacted into law.

² Not every agreement reached in the Stipulation is addressed in this Order. Several of the agreements reached by the parties apply to those portions of the litigation remaining under advisement. Thus, the fact that the court did not include or address every paragraph of the Stipulation in this Order should not be viewed as a decision by the court to reject those provisions.

15. Absent funding, Minnesota's legislative branch cannot perform all of the core functions envisioned by the Minnesota Constitution.

16. On three occasions since 2000, this court was asked to ensure the continued operation of state government after a budget funding its core functions was not enacted. In 2001 and 2005 this court issued orders providing for the continued performance of the core functions of the executive branch. *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, C0-05-5928 (Minn. Dist. Ct. June 23, 2005); *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, C9-01-5725 (Minn. Dist. Ct. June 29, 2001). In 2011, this court and a retired judge appointed by the Minnesota Supreme Court ordered the continued performance of the core functions of all three branches of government. *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, 62-CV-11-5203 (Minn. Dist. Ct. June 29, 2011) (Gearin, J.) (Executive and Legislative branches); *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, 62-CV-11-5203 (Minn. Dist. Ct. June 28, 2011) (Christopherson, J.) (Judicial branch). The validity of these orders has never been considered by a Minnesota appellate court. *See Limmer v. Swanson*, 806 N.W.2d 838, 841-42 (Minn. 2011) (Page, J., dissenting); *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. Ct. App. 2007).

CONCLUSIONS OF LAW

1. The court has jurisdiction over the instant litigation and venue in Ramsey County is proper. Minn. Stat. §§ 484.01; 542.01 (2016).

2. Plaintiffs have standing to bring the instant action because the injury to individual legislators caused by the inability to carry out their constitutional duties are “personal, particularized, concrete, and otherwise judicially cognizable.” *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 150 (Minn. 1997) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 (1997)). See generally *id.* at 146-50.

3. In addition to the parties’ Stipulation that Count I of the Complaint is ripe for decision, the court also finds that the issues presented to the court in Count I of the Complaint are ripe and require a ruling from the court. See *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc.*, 271 N.W.2d 445, 447-49 (Minn. 1978).

4. In their Stipulation, the parties “request that the Court” issue an injunction compelling the temporary funding of the Legislature. (Stipulation, June 23, 2017, ¶ 5.) Based on its review of temporary funding orders issued by this court in 2001, 2005, and 2011, along with its review of the Minnesota Constitution and case law interpreting the Minnesota Constitution, this court concludes that it is authorized to grant the relief requested by the parties.

5. 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*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928). Just as a statute must be construed as a whole, the constitution “must be taken by its four corners, and effect given to all its language, and the main purpose and object as thus made manifest effectuated.” *State v. Twin City Telephone Co.*, 104 Minn. 270, 285, 116 N.W. 835, 836 (1908).

6. According to the Minnesota Constitution: “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.” MINN. CONST. art I, § 1.

7. The separation of powers principle is imbedded in the Minnesota Constitution:

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.

Id. art. III.

8. The Minnesota Constitution prescribes a variety of core functions that are the responsibility of the three branches of government, and the elected officials within each branch, to perform. *Id.* art. IV-VI.

9. The Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” MINN. CONST. art XI, § 1. However, Article IV of the Minnesota Constitution also provides that the Legislative Branch has and must perform certain core functions.

10. If the Legislative Branch is not funded, it cannot carry out its core functions, which include those functions necessary to draft, debate, publish, vote on, and enact legislation.

11. Just as the Minnesota Constitution “implicitly places a limitation on the power of the legislature” so that it may not abridge the core functions of the Executive Branch, *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986), the failure to fund

the core functions of the Legislative Branch nullifies a branch of government, which in turn contravenes the Minnesota Constitution. *See In re Clerk of Court's Compensation for Lyon County*, 308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976) (if one branch of government could “effectively abolish” another, “separation of powers becomes a myth”).

12. While it may be argued that a literal reading of Article XI of the Minnesota Constitution prohibits the relief requested by the parties, it is the duty of the courts to interpret constitutional provisions that appear to be irreconcilable and attempt to reconcile and harmonize them. *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, 62-CV-11-5203, slip. op. at 6 (Minn. Dist. Ct. June 28, 2011). The continuing operation of the Minnesota Legislature is a constitutional right of Minnesota citizens.³ Therefore, “when the traditional processes of government have failed”, “the rigidity of Article XI” must temporarily yield in favor of the broader constitutional rights of Minnesota’s citizenry. *Id.*

13. In their Stipulation, the parties seek injunctive relief. The procedure for obtaining a temporary injunction is set forth in Rule 65 of the Minnesota Rules of Civil Procedure. The purpose of a temporary injunction is to preserve the rights of the parties pending determination of the litigation. *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214, 220 (Minn. Ct. App.), *rev. denied* (Minn. 2002). Here, the parties wish to insure continuing operation of the Minnesota Legislature

³ Before entering into the Stipulation, Governor Dayton noted, among other things, that he did not veto \$17 million in annual funding for the Legislative Coordinating Commission, thereby eliminating any constitutional concern about the Legislative branch being shut down. (Mem. in Resp. to Order to Show Cause and in Supp. of Def.s’ Motion for Judgment on the Pleadings, at 16-20.) However, the enacted appropriation does not fund any activity by elected legislators or their staffs.

past June 30, 2017 while they litigate whether Governor Dayton's line-item veto of legislative funding is valid.

14. Because an injunction is an equitable remedy, the party seeking an injunction must demonstrate that there is no adequate legal remedy and that the injunction is necessary to prevent irreparable harm. *Cherne Industrial, Inc., v. Grounds & Associates, Inc.*, 278 N.W.2d 81, 92 (Minn. 1979). In previous paragraphs, this court already expressed its conclusion that operation of the Legislature is a constitutional right of all Minnesota citizens. The failure to fund the core functions of the Legislative Branch nullifies a branch of government, contravenes the Minnesota Constitution, and causes irreparable harm to all Minnesota citizens, including the parties to this case.

15. Once the court finds irreparable harm, the court must consider five factors when determining the propriety of granting a motion for a temporary injunction. *E.g.*, *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965). These factors have become known as the "Dahlberg Factors." *State by Ulland v. International Ass'n. of Entrepreneurs*, 527 N.W.2d 133, 136 (Minn. Ct. App.), *review denied*, (Minn. 1995). The applicant for injunctive relief has the burden of proving all five *Dahlberg* factors. *North Central Public Service Co. v. Village of Circle Pines*, 302 Minn. 53, 60, 224 N.W.2d 741, 746 (1974). "Injunctive relief should be awarded only in clear cases reasonably free from doubt." *Sunny Fresh Foods Inc. v. MicroFresh Foods Corp.*, 424 N.W.2d 309, 310 (Minn. Ct. App. 1988).

16. The first factor is the relationship of the parties. The parties are two co-equal branches of government that share a constitutional responsibility to fund the core functions

of government. The relationship of the parties favors injunctive relief so the Legislature may continue to perform its constitutional functions while litigating the instant dispute.

17. The second factor is the likelihood of success on the merits. If the applicant shows no likelihood of prevailing on the merits, the court cannot grant injunctive relief. *Metropolitan Sports Facilities Comm'n*, 638 N.W.2d at 226. Of the *Dahlberg* factors, the likelihood of succeeding on the merits is the “primary factor.” *Minneapolis Federation of Teachers, AFL-CIO Local 59 v. Minneapolis Public School Special District 1*, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994), *rev. denied* (Minn. Mar. 31, 1994). However, “if a plaintiff makes even a doubtful showing as to the likelihood of prevailing on the merits, a district court may consider issuing a temporary injunction to preserve the status quo until trial on the merits.” *Metropolitan Sports Facilities Comm'n*, 638 N.W.2d at 226 (citation omitted). Here, both parties, through their Stipulation, apply for injunctive relief. One of them must necessarily prevail. The second factor favors issuance of an injunction.

18. The next *Dahlberg* factor examines the public policy implications if injunctive relief is granted. On three occasions during the past seventeen years, this court has provided for the temporary funding of core government operations during an impasse between the Legislative and Executive Branches of state government. In each case, the constitutional right of our citizenry to a functional government was preserved while the Legislative and Executive Branches successfully worked out their differences. This history demonstrates that the injunctive relief sought by the parties represents sound public policy. Moreover, the injunction does not impose funding at the fiscal 2018 and 2019 levels appropriated by the 2017 Legislature, which was vetoed by the Governor. By continuing

existing funding previously approved by both the Legislature and the Governor, the Judicial Branch is acting with an appropriate level of restraint as the litigation unfolds. *See generally Limmer v. Swanson*, 806 N.W.2d 838, 840-41 (Minn. 2011) (Anderson, J., concurring) (discussing the principle of judicial restraint in a separation of powers context).

19. *Dahlberg* also requires the court to examine the relative harm if relief is denied compared to the harm inflicted if relief is granted. Absent injunctive relief, the public would be irreparably harmed through the deprivation of a basic constitutional right—a fully functioning Legislative Branch. The state’s credit rating would also be at risk. Should funding be ordered at the fiscal-year 2017 levels requested by the parties, the court is aware of no negative financial impact on the state treasury.

20. Finally, the court must weigh any administrative burdens involved in judicial supervision and enforcement of an injunction. The court concludes enforcing an injunction in this case interposes no greater burden on the court than the enforcement of any court order. Little or no court supervision should be necessary.

21. Consideration of the *Dahlberg* factors strongly favors issuance of the injunctive relief requested by the parties in their Stipulation.

ORDER

1. The court issues a mandatory injunction requiring the Commissioner of Management and Budget to take all steps necessary to provide continuing funding to the Minnesota Senate and the Minnesota House of Representatives, not to exceed the fractional share of their fiscal year 2017 base general fund funding that corresponds to the period that

this injunction is in effect. In addition, plaintiffs shall pay for all of their obligations as necessary to continue performing their official and constitutional powers and duties.

2. Before midnight on June 30, 2017, the Minnesota Senate shall pay from its fiscal year 2017 appropriation the amount of \$683,954 to the Minnesota Department of Administration. This sum represents June 2017 rent for the Senate Office Building and debt service payments for the parking garage.

3. Beginning in July 2017, and monthly thereafter while this injunction is in effect, the Minnesota Senate shall pay the amount of \$669,332 to the Minnesota Department of Administration for rent for the Senate Office Building and debt service payments for the parking garage.

4. In accordance with the parties' Stipulation, and to the extent the funding is not included as part of the injunction set forth in paragraph 1 of this Order, the Senate is authorized by Minn. Stat. § 16A.281 to use its carryforward funds to make payments for the Senate Office Building and parking garage.

5. No bond or other security is required while this injunction is in effect.

6. This injunction shall remain in effect until the court issues its final decision and all appellate review has been completed or until October 1, 2017, whichever first occurs and subject to further order of this court.

Dated: June 26, 2017

BY THE COURT:

John H. Guthmann
Chief Judge, Second Judicial District