No. A10-432

STATE OF MINNESOTA

IN COURT OF APPEALS

Robert Carney, Jr.,

Appellant,

vs.

State of Minnesota, et al.,

Respondents.

RESPONDENTS' BRIEF AND ADDENDUM

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LEGAL ISSUES

I. Has Appellant abandoned his complaint's claim that the political contribution refund program is exempt from the unallotment statute?

This issue is raised by Appellant's failure to argue this claim in his brief on appeal.

In re Olson, 648 N.W.2d 226 (Minn. 2002)

II. Does Appellant's complaint also challenge the unallotment of the political contribution refund program for the 2010-2011 biennium based on its timing?

This issue was raised by Respondents' motion to dismiss and the arguments on that motion. MNCIS Doc. Nos. 3, 8, 14, 17; Transcript of October 13, 2009 Hearing. The district court ruled that Appellant's complaint challenges the unallotment of the political contribution refund program for the 2010-2011 biennium only on the ground that the program is exempt from the unallotment statute and that this challenge fails to state a claim upon which relief can be granted. Respondents' Addendum A1-A4. The issue was preserved for appeal by the judgment of dismissal. *Id.*

Brayton v. Pawlenty, 781 N.W.2d 357 (Minn. 2010)

III. Alternatively, is Appellant's challenge to the unallotment of the political contribution refund program for the 2010-2011 biennium moot because Minnesota Session Laws 2010, 1st sp. sess., ch. 1, has voided the unallotment and eliminated the program for the 2010-2011 biennium, or is this legislation unconstitutional because: (a) it is an ex post facto law in violation of Minn. Const. art. I, § 11, or (b) it was passed on the day prescribed for adjournment in contravention of Minn. Const. art. IV, § 21?

The legislation voiding the unallotment and eliminating the political contribution refund program for this biennium was enacted after the district court's decision and the filing of this appeal. Thus, the issue of whether the legislation moots this case or is unconstitutional was not raised or addressed in the district court.

Starkweather v. Blair, 245 Minn. 371, 71 N.W.2d 869 (1955)
Peterson v. Humphrey, 381 N.W.2d 472 (Minn. Ct. App. 1986), *rev. denied* (Minn. Apr. 11, 1986)
McClelland v. McClelland, 393 N.W.2d 224 (Minn. Ct. App. 1986), *rev. denied* (Minn. Nov. 17, 1986)
State v. Hoppe, 298 Minn. 386, 215 N.W.2d 797 (1974)

STATEMENT OF THE CASE AND FACTS

Appellant Robert Carney, Jr., filed this lawsuit against Respondents, the State of Minnesota and its Commissioner of Revenue, in Ramsey County District Court on July 24, 2009. His complaint challenges the unallotment of funding for the political contribution refund ("PCR") program in the current biennium of July 1, 2009 to June 30, 2011. The basis for Carney's challenge is his claim that the PCR program is not subject to the unallotment statute, Minn. Stat. § 16A.152 (2008), which authorizes the executive branch to reduce unexpended allotments of appropriations to avoid a budget deficit.

The PCR program is administered by the Department of Revenue pursuant to Minn. Stat. § 290.06, subd. 23 (2008). Under the program, Minnesota voters who contribute money to a qualifying political candidate or party may apply annually for a refund of all or part of the contribution, up to $50 for an individual and $100 for a married couple. *Id.*, subd. 23(a)-(c). The amount needed to pay claims for these refunds is appropriated from the general fund to the Commissioner of Revenue. *Id.*, subd. 23(g). Funding for the PCR program totaling $10.4 million was included in the approximately $2.5 billion in unallotments for this biennium that the Governor approved on July 1, 2009. Garry Aff. Exhs. 5-6.

Because this unallotment eliminated funding for political contribution refunds in the biennium beginning July 1, 2009, the Department of Revenue notified the public via its website, and in the 2009 application form and instructions, that refunds for political contributions in calendar year 2009 are limited to contributions made before July 1, 2009. Garry Aff. Exhs. 8-11.

Carney knew of and opposed the proposed unallotment of funding for refunds on political contributions made after June 30, 2009. *See www.republicancontract.com* (Carney's website as a candidate for governor). On July 22, 2009, after the unallotment had taken effect, Carney made a $50 contribution to the Green Party and the next day he filed an application seeking a refund of this contribution, specifically noting that it was for a contribution made after June 30, 2009. Garry Aff. Exh. 12.

The Department of Revenue mailed Carney a notice on August 26, 2009, in response to his application. Garry Aff. Exh. 13. The notice advised Carney that the Department could not process his application because, due to the unallotment, no funding was available to pay refunds for contributions made between July 1, 2009, and June 30, 2011. *Id.* The notice further advised Carney that if the funding for such refunds were restored in the next legislative session, the Department would notify him and proceed to grant or deny his application. *Id.*

Carney served this lawsuit on July 23, 2009, the same day he filed his refund application. His complaint claims that unallotment of funding for political contribution refunds is substantively outside the unallotment authority given by subdivision 4(b) of Minn. Stat. § 16A.152, on the theory that such refunds are "tax refunds." Complaint ¶¶ 17-18. The complaint does not challenge any of the other approximately $2.5 billion in unallotments that the executive branch made to address the deficit for this biennium.

Respondents moved to dismiss Carney's complaint for failure to state a claim and Carney brought a cross-motion for temporary injunction. The motions were heard by the district court, the Honorable Kathleen R. Gearin, on October 13, 2009.

On December 30, 2009, while the cross-motions in Carney's case were pending, Judge Gearin issued her decision in *Brayton v. Pawlenty*, 781 N.W.2d 357 (Minn. 2010), which presented constitutional and statutory challenges to the executive branch's use of unalloment authority at the beginning of this biennium. In *Brayton*, Judge Gearin ruled that the unallotment of funding for the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program was unlawful due to its timing. *See id.* at 359, 362. An immediate appeal was taken and the Supreme Court granted accelerated review. *Id.* at 362.

In Carney's case, Judge Gearin granted Respondents' motion to dismiss and denied Carney's motion for temporary injunction by order filed on January 11, 2010. Respondents' Addendum A1-A4. Judge Gearin rejected Carney's theory that refunds under the PCR program are tax refunds exempt from unallotment. Her decision specifically noted that Carney's complaint does not assert the broader challenge to unallotment that was made in the *Brayton* case.

Judgment dismissing Carney's complaint was entered on January 12, 2010. Respondents' Addendum A2. Carney's counsel withdrew by notice filed in the district court on January 21, 2010. Carney appealed pro se from the judgment on March 4, 2010. He filed a petition for accelerated review in the Supreme Court on March 26, 2010.

On May 5, 2010, the Supreme Court issued its opinion affirming Judge Gearin's decision in *Brayton*. The Supreme Court held that the unallotment of funding for the MSA-SD program did not comport with subdivision 4(a) of Minn. Stat. § 16A.152 because the unallotment was made at the beginning of the biennium before the legislative and executive branches had enacted a balanced budget. *Brayton*, 781 N.W.2d at 362-368.

In the wake of the Supreme Court's decision in *Brayton*, the Governor called a special session to convene on May 17, 2010, to enact budget-balancing legislation. Journal of the House 3-4 (1st Sp. Sess. 2010). In the special session, which lasted one day, the legislature passed a bill that voids all the unallotments made for the 2010-2011 biennium and then reduces or eliminates funding for various programs in the 2010-2011 biennium. Minnesota Session Laws 2010, 1st sp. sess., ch. 1. The Governor signed the bill into law on May 21, 2010.

The legislation includes a section that eliminates the PCR program for this biennium in the same manner as the voided unallotment: "Notwithstanding the provisions of Minnesota Statutes, section 290.06, subdivision 23, or any other law to the contrary, the political contribution refund does not apply to contributions made after June 30, 2009, and before July 1, 2011." Minnesota Session Laws 2010, 1st sp. sess., ch. 1, art. 13, § 4.[1]

On May 18, 2010, the Supreme Court denied Carney's petition for accelerated review. Carney then filed his brief, arguing that: (1) his complaint should not have been dismissed because it includes the timing challenge to unallotment that the Supreme Court accepted in *Brayton*; and (2) this challenge is not rendered moot by the legislation eliminating the PCR program for this biennium because the legislation is an "ex post facto law" in violation of Minn. Const art. 1 § 11, and was passed on "the day prescribed for adjournment" in contravention of Minn. Const. art. IV, § 21.

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[1] This section also includes a provision reducing renters' property tax refunds for the second year of the biennium in the same manner as the voided unallotment for that program. *See* Garry Aff. Exh. 6. The plaintiffs in *Brayton* stipulated that this provision mooted their pending challenge to that unallotment. Respondents' Addendum A5-A8.

STANDARD OF REVIEW

The dismissal of a complaint for failure to state a claim is reviewed de novo. *See, e.g., Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). A motion to dismiss under Minn. R. Civ. P. 12.02 for failure to state a claim is properly granted if the complaint "does not state a cognizable claim or cause of action under the substantive law." 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 12.9, at 366 (5th ed. 2009). The issue is whether the complaint sets forth a legally sufficient claim for relief, which is a question of law. *See, e.g., Bodah*, 663 N.W.2d at 553.

Whether this case is moot, which must be decided only if Carney's complaint otherwise states a cognizable claim, is a legal issue reviewed de novo. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). A challenge to the constitutionality of legislation, raised here by Carney's contention that the case is not moot, is generally avoided by the Court if there is another basis on which the case may be decided. *See In re Senty-Haugen*, 583 N.W.2d 266, 269 n.3 (Minn. 1998) ("It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise.").

If addressed, Carney's challenge to the constitutionality of the legislation eliminating the PCR program for this biennium is also reviewed de novo. *State v. Tennin*, 674 N.W.2d 403, 406 (Minn. 2004). Legislative enactments are presumed constitutional and will be declared unconstitutional "with extreme caution and only when absolutely necessary." *Id.* at 407 (quoting *State v. Larsen*, 650 N.W.2d 144, 147 (Minn. 2002)). To successfully challenge the constitutionality of legislation, the challenger "must overcome the heavy burden of showing beyond a reasonable doubt that the statute

is unconstitutional." *Tennin*, 674 N.W.2d at 407 (citing *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990)).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DISMISSED APPELLANT'S COMPLAINT CHALLENGING THE UNALLOTMENT OF THE POLITICAL CONTRIBUTION REFUND PROGRAM FOR THE 2010-2011 BIENNIUM.

As the district court recognized in dismissing Carney's lawsuit, his complaint's sole claim is that unallotment of funding for political contribution refunds is substantively outside the authority given by subdivision 4(b) of Minn. Stat. § 16A.152. The crux of Carney's complaint is his theory that political contribution refunds are tax refunds and, as such, cannot be denied based on the unallotment of funding for the PCR program. Unlike the complaint in *Brayton*, Carney's complaint presents no constitutional or statutory challenge to the timing of the unallotment. Thus, the threshold question in this appeal is whether the district court erred in concluding that the PCR program is subject to the unallotment statute.

A. Appellant Has Abandoned His Claim That The Political Contribution Refund Program Is Exempt From The Unallotment Statute.

The district court correctly rejected Carney's claim that political contribution refunds are tax refunds exempt from the unallotment statute. As the court recognized, the PCR program is substantively within the scope of subdivision 4(b) of section 16A.152, which applies to "any" prior appropriation; the PCR is not a refund for payment of taxes; and it is not exempted from unallotment by Minn. Stat. § 270C.435 (2008), the statute that shields tax refunds from private creditors. *See* Respondents' Addendum A3-A4.

Carney does not argue that the district court erred in concluding that the PCR program is subject to the unallotment statute. Thus, Carney has waived this issue and abandoned the unallotment-exemption claim asserted in his complaint. *See In re Olson*, 648 N.W.2d 226, 228 (Minn. 2002) ("It is axiomatic that issues not 'argued' in the briefs are deemed waived on appeal."); *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. Ct. App. 1990) (stating that issues not argued in appellant's brief cannot be revived in a reply brief), *rev. denied* (Minn. Sept. 28, 1990), *cert. denied*, 498 U.S. 1090 (1991).

B. Appellant's Complaint Does Not Challenge The Unallotment Of The Political Contribution Refund Program For The 2010-2011 Biennium Based On The Timing Of The Unallotment.

Carney argues that this lawsuit includes the timing challenge raised in his memorandum response to Respondents' motion to dismiss (MNCIS Doc. No. 14) and accepted later by the Supreme Court in *Brayton*. *See* Appellant's Brief at 8, 15-16, 18. The district court properly concluded that this claim is not asserted in Carney's complaint and, consequently, is not a basis to deny Respondents' motion to dismiss. *See, e.g., Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984) (noting it is "axiomatic" that a court cannot deny a motion to dismiss based on a claim not asserted in the complaint), *cert. denied*, 470 U.S. 1054 (1985).

The timing challenge to use of the unallotment authority asserts a failure to satisfy the procedural conditions in subdivision 4(a) of section 16A.152, not the statute's substantive scope set out in subdivision 4(b). *See Brayton*, 781 N.W.2d at 362-368 (accepting timing challenge that subdivision 4(a)'s conditions — "probable receipts for the general fund will be less than anticipated" and "the amount available for the

remainder of the biennium will be less than needed" — cannot be satisfied before the legislative and executive branches have enacted a balanced budget). Carney's complaint, however, contains no allegation that any condition in subdivision 4(a) of section 16A.152 was violated. To the contrary, the complaint states that subdivision 4(b), setting out the statute's substantive reach, is "[t]he relevant portion of the law." Complaint ¶ 7.

Carney's initial submissions to the district court, as well as his public statements, confirmed that his complaint does not include the subdivision 4(a) timing claim accepted in *Brayton*. Carney's memorandum in support of his cross-motion for a temporary injunction argued on the merits only that political contribution refunds are a tax refund and protected from unallotment by Minn. Stat. § 270C.435. MNCIS Doc. No. 7 at 2, 10. Indeed, that memorandum concluded by stating: "[T]his dispute is simply a matter of interpreting an unambiguous statute" based on Carney's claim that "[t]he State is not permitted to use the legal process of unallotment to cancel tax refunds" *Id.* at 13. Likewise, Carney's informational statement described this case as follows: "Plaintiff asserts that the power of unallotment under Minn. Stat. § 16A.152 does not extend to the elimination of a tax refund." MNCIS Doc. No. 2 at ¶ 3.

Leaving no doubt about the scope of this lawsuit, Carney informed the media when the case was filed that: "This is not in the context of the rest of the unallotment issue, because there you have disputes between the Legislature and the governor as to how extensive the unallotment power is. This is simply a question of an individual

taxpayer's right to their money."[2] Thus, Carney himself did not understand or present his complaint as asserting the subdivision 4(a) timing claim that was made in *Brayton* and that he now belatedly seeks to assert on appeal.

Moreover, because Respondents moved to dismiss instead of answering, Carney could have amended his complaint as of right under Minn. R. Civ. P. 15.01 to add the timing challenge at any time before Judge Gearin dismissed the complaint on January 11, 2010. Carney was represented by counsel throughout this period. He nevertheless chose not to amend the complaint after Respondents argued in their reply memorandum (MNCIS Doc. No. 17) that the timing challenge asserted in Carney's response memorandum was not in his complaint; nor after the October 13, 2009 hearing, at which Judge Gearin indicated that this broader challenge argued in Carney's response memorandum was not asserted in his complaint, Transcript at 24, 38; or even after Judge Gearin issued her decision in favor of the *Brayton* plaintiffs on December 30, 2009.

In sum, the district court correctly dismissed Carney's complaint because the challenge to the timing of the PCR unallotment that he asserts on appeal is not in his complaint. Rather, Carney's complaint is limited to his now-abandoned claim that the PCR program is substantively exempt from the unallotment statute. This is dispositive of Carney's appeal. Therefore, the Court need not reach the issue of whether the appeal is moot due to the legislation eliminating the PCR program for this biennium, and with that, need not address Carney's constitutional challenges to the legislation.

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[2] *See* http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2009/07/unallotment_law.shtml

II. IN ANY EVENT, APPELLANT'S CHALLENGE TO THE UNALLOTMENT OF THE POLITICAL CONTRIBUTION REFUND PROGRAM IS RENDERED MOOT BY THE LEGISLATION THAT VOIDS THE UNALLOTMENT AND ELIMINATES THE PROGRAM FOR THE 2010-2011 BIENNIUM.

The budget-balancing legislation passed in the 2010 special session voids the July 2009 unallotment of the PCR program and eliminates the program for this biennium in the same manner as the voided unallotment. Minnesota Session Laws 2010, 1st sp. sess., ch. 1, art. 1, § 2, & art. 13, § 4. This makes it unnecessary to decide the lawfulness of the July 2009 unallotment, whatever theory Carney may advance to challenge it, because his requested refund will not be paid in any event. "It is well settled that if, pending an appeal, an event occurs which makes a decision unnecessary, the appeal will be dismissed as presenting a moot question." *Peterson v. Humphrey*, 381 N.W.2d 472, 475 (Minn. Ct. App. 1986) (dismissing appeal because legislation enacted after district court's decision rendered plaintiff's claim moot), *rev. denied* (Minn. Apr. 11, 1986).

Carney concedes that the legislation eliminating the PCR program for this biennium renders his lawsuit moot if the legislation is valid. *See* Appellant's Brief at 13. He asserts, however, that the legislation is invalid based on two constitutional challenges. As discussed below, each of these constitutional challenges is without merit.

A. The Legislation Is Not An Ex Post Facto Law In Violation Of Minn. Const. Art. I, § 11.

Carney first argues that the legislation eliminating the PCR program for this biennium violates Minn. Const. art I, § 11, which states: "No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed . . ." Carney asserts that the legislation is an ex post facto law. This assertion is baseless because the

prohibition against ex post facto laws is limited to laws involving punishment for crimes. *Starkweather v. Blair*, 245 Minn. 371, 386-389, 71 N.W.2d 869, 879-881 (1955). This plainly cannot apply to the legislation eliminating the PCR program for this biennium.[3]

Carney does not contend that the PCR statutes give him a contractual right to a refund that is protected under article I, § 11. Such a contention would have no merit under established law. *See Peterson*, 381 N.W.2d at 475 ("A party asserting the creation of a contract [by a state statute] must overcome the well-established presumption that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'") (quoting *National R.R. Passenger Corp. v. Atchinson, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466, 105 S. Ct. 1441, 1451 (1985)). Carney also does not assert that he has a vested property right to a political contribution refund that is protected by due process, nor could he. *See McClelland v. McClelland*, 393 N.W.2d 224, 227 (Minn. Ct. App. 1986) (reiterating that "there is no mature or vested right in an existing law or action until a final judgment has been entered") (citing *Holen v. Minneapolis-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 136, 84 N.W.2d 282, 287 (1957)), *rev. denied* (Minn. Nov. 17, 1986).

In short, there is no basis for Carney's challenge to the budget-balancing legislation under Minn. Const. art I, § 11.

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[3] Carney does not assert that the legislation is a bill of attainder prohibited by article I, § 11, an assertion that also would fail from the outset. *See Reserve Mining Co. v. State*, 310 N.W.2d 487, 490 (Minn. 1981) ("A statute is a bill of attainder when it specifically singles out an identifiable group or individual for the infliction of punishment by other than judicial authority.").

B. The Legislation Was Not Passed On The Day Prescribed For Adjournment In Contravention Of Minn. Const. Art. 4, § 21.

Equally without merit is Carney's contention that the budget-balancing legislation passed in the special session on May 17, 2010, violates Minn. Const. art. IV, § 21. This provision states: "No bill shall be passed by either house upon the day prescribed for adjournment." Minn. Const. art. IV, § 21.

The "day prescribed for adjournment" by Minn. Const. art. IV, § 12, applies only to the biennium's *regular session*, not a special session:

> The legislature shall meet at the seat of government in *regular session* in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The legislature shall not meet in *regular session*, nor in any adjournment thereof, after the first Monday following the third Saturday in May of any year.

Minn. Const. art. IV, § 12 (emphasis added). Thus, the meeting deadlines in this section set May 17, 2010, as the day of adjournment only for this biennium's regular session.

Carney wrongly argues that article IV, § 12, should instead be read as prescribing May 17 as the day of adjournment not only for the regular session, but also for any special session, so that no bills could be passed on that day even in special session. This argument is contrary to the provision's plain language, which applies to only the "regular session" and not to a special session. Accepting Carney's view would impermissibly require the Court to read a reference to special sessions into article IV, § 12. In examining constitutional provisions, the Court must "give effect to the clear, explicit, unambiguous and ordinary meaning of the language." *Rice v. Connolly*, 488 N.W.2d 241, 247 (Minn. 1992). Thus, the Court "cannot ingraft upon the constitution things that

might have been included." *State ex rel. Putnam v. Holm*, 172 Minn. 162, 166, 215 N.W. 200, 202 (1927) (rejecting interpretation that added words to constitutional provision).

Carney's argument is also foreclosed by case law. In *State v. Hoppe*, 298 Minn. 386, 393-395, 215 N.W.2d 797, 802-803 (1974), the Supreme Court confirmed that the "day prescribed for adjournment" in article IV, § 21 (then § 22) refers only to: (1) the end of the biennial regular session, which is either the 120th legislative day or the first Monday following the third Saturday in May of the second (even-numbered) year of the biennium; or (2) a date for final sine die adjournment (i.e., adjournment without a date for reconvening) set in advance by resolution or act of the legislature. Thus, the prohibition against passing bills on the day prescribed for adjournment does not apply to bills passed on the last date in May on which the legislature can meet in regular session in the first year of the biennium. *Hoppe*, 298 Minn. at 393-395, 215 N.W.2d at 802-803. If the legislature can pass bills on this May date in the first regular session of a biennium, it certainly can do so in special session, to which the meeting deadlines of article IV, § 12, do not even refer.[4]

Under *Hoppe*, the legislature could have been prohibited from passing a bill in special session on May 17, 2010, only if it had set that day in advance as the date for final adjournment of the special session. This did not occur in the May 2010 special session. Neither the House nor the Senate prescribed a day for final adjournment of the special

[4] The case on which Carney relies, *Knapp v. O'Brien*, 288 Minn. 103, 179 N.W.2d 88 (1970), is inapposite, as it simply held that a bill cannot be passed on the 120th day of the regular session. *See Hoppe*, 298 Minn. at 394-395, 215 N.W.2d at 802 (discussing *Knapp*).

session. *See* Journal of the House 3-17 (1st Sp. Sess. 2010); Journal of the Senate 3-15 (1st Sp. Sess. 2010); *see also* Minn. Atty. Gen. Op. 280-O (Apr. 24, 1951) (reiterating that a special session can convene, pass a bill, and adjourn on the same day, if the legislature has not prescribed that day for adjournment of the special session).

Carney's argument is not only contrary to the plain constitutional language and the case law, its acceptance would lead to an absurd result that virtually extinguishes the governor's power to call a special session. The constitution does not restrict the power to call a special session to certain periods during a year or a biennium. Rather, it provides that "[a] special session of the legislature may be called by the governor on extraordinary occasions." Minn. Const. art. IV, § 12.[5] Under Carney's interpretation, however, the May date prescribed for adjournment of the biennial regular session would also become the date prescribed for adjournment of any special session, which would mean that a special session could never be called on or after this date in May. Such a temporal limit on the use of special sessions is legally unsupported and produces the absurd result that a special session to enact budget-balancing legislation for this biennium could not have been held at any time after the legislature adjourned the regular session on May 16, 2010.

Thus, because Carney's constitutional attacks on the budget-balancing legislation enacted in the 2010 special session are without merit, his lawsuit challenging the July 2009 unallotment of the PCR program is moot, irrespective of the theory on which he bases the challenge.

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[5] *See also* http://www.leg.state.mn.us/lrl/histleg/spsess.asp (listing the dates of special sessions in Minnesota since 1857 and showing that most have been held after mid-May).

CONCLUSION

The Court should affirm the judgment of the district court dismissing Appellant's complaint.

Dated: July 7, 2010

Respectfully submitted,

LORI SWANSON
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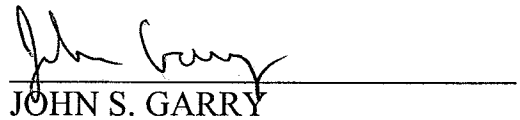

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