

NO.A10-432

State of Minnesota
In Court of Appeals

Robert Carney, Jr., on behalf of himself and all others similarly situated,

Appellants,

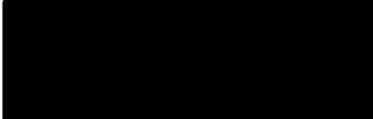
vs.

State of Minnesota, et al.,

Respondents.

APPELLANT'S BRIEF AND APPENDIX

Robert Carney, Jr., pro se



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

Note: due to subsequent events, the Legal Issues stated here are modified from the Statement of the Case.

I. Does Appellant's Complaint sets forth a legally sufficient claim for relief?

The District Court dismissed Appellant's case, finding constitutional issues were not raised in the Complaint or initial pleadings, and ruling against Appellant on statutory interpretation. Subsequent to the District Court's January 11, 2010 Order to Dismiss, the Minnesota Supreme Court issued its opinion in *Brayton v. Pawlenty*. Appellant claims this subsequent precedent is "point on", controlling, and establishes Appellant has a legally sufficient claim for relief.

Brayton v Pawlenty, Minnesota Supreme Court Opinion issued 5/5/10
N. States Power Co. v. Franklin, 265 Minn. 391, 394, 122 N.W.2d 26, 29 (1963)

Minn. Stat. §16A.14
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Minn. Stat. §270C.435

II. Is HR0001 of the first Special Session of the 2010 Legislative unconstitutional, null and void due to a violation of Art. IV, Sec. 21 of the Minnesota Constitution, which forbids passage of a bill by either House of the Legislature on the day "prescribed for adjournment", and/or due to its character as an Ex Post Facto law per Art. I, Sec. 11 of the Minnesota Constitution?

This bears on whether Appellant's case is now moot. HR0001 contains a provision stating: "the political contribution refund does not apply to contributions made after June 30, 2009, and before July 1, 2011." Of course, there is nothing in the District Court record regarding HR0001, because it was passed after the January 11, 2010 Order to Dismiss. Because *Brayton* was controlling law at the time HR0001 was (purportedly) enacted, the Legislature's 2009 appropriation for the PCR was effective, and any attempt to nullify it retroactively is an Ex Post Facto law. In addition, per Art. IV, Sec. 21, HR0001 is null and void in its entirety.

Knapp vs O'Brien, 288 Minn. 103, 179 N.W.2d 88

HR0001, first Special Session of 2010
Minn. Const. Arts. I, IV

III. Should this Court grant Appellant a preliminary injunction, and/or take any other action as the interest of justice may require?

Because the District Court dismissed Appellant's case, Appellant's Motion for Preliminary Injunction was denied, but the District Court's Memorandum did not reach any issue respecting it. Appellant intends to file a Motion with the Appellate Court for a Preliminary Injunction, further addressing both issues raised in the Trial Court, and issues that have arisen due to subsequent events.

Cherne Industrial, Inc. v. Grounds & Assoc., Inc., 278 N.W.2d 81,92 (Minn. 1979)
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Minn. Const. Art. I

INTRODUCTION -- Comment on Rule 103.04 Scope of Review

Rule 103.04 is as follows, with emphasis added:

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require.

*On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. **They may review any other matter as the interest of justice may require.** The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal, including the existence of timely and proper post-trial motions.*

Appellant wants to commence this Brief by first noting that the two phrases above that are emphasized in bold face *could* be thought of as "loopholes big enough to drive a truck through".

Or, they can be viewed as Appellant views them: as coming forth from a root of justice, and of equitable powers.

Our Federal Constitution provides that: "The judicial Power shall extend to all Cases, in Law and Equity,..."

There is no parallel reference in the Minnesota Constitution to the extension of Judicial Power to Equity per se. However, there *is* an explicit right of *individuals* in our Minnesota Constitution respecting Justice, in Article I (emphasis added):

"Sec. 8. **REDRESS OF INJURIES OR WRONGS.** Every person is entitled to a

certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and **to obtain justice freely and without purchase, completely and without denial, promptly and without delay**, conformable to the laws."

Although Appellant is not an attorney, and is acting pro se, most of this Brief is intended to be (and believed to be) straight forward, run of the mill legal argument. Ho hum. Stand by for coffee.

However, towards the end of this Brief, Appellant considers aspects of the present case in the context of Rule 103.04, with its broader mandate -- pursuant to the Minnesota Constitution -- that in Minnesota, individuals... **people... are "...to obtain justice freely and without purchase, completely and without denial, promptly and without delay."**

Appellant encourages all readers of this Brief to take in the initial and more prosaic material with *anticipation* that this will also be the basis for considering broader questions of justice -- and urges that such questions are *not idle*, but in Appellant's view can be, and properly should be, *calls for action by this Court*.

NOTICE REGARDING RELIANCE ON *BRAYTON* DOCUMENTS

Appellant is not an attorney, and there are many similarities between the *Brayton* unallotment case, which the Minnesota Supreme Court ruled on May 6, 2010 (No. A10-64). In preparing this brief, Appellant has relied on documents in the *Brayton* record, including passages of text which are copied from the *Brayton* respondent brief. Rather than clutter this document, no notations are provided as to when and where this is done. A comparison of the documents would be sufficient to identify instances, should anyone feel this is necessary. Appellant will provide Attorney Galen Robinson a copy of this brief, and will draw this notice

to his attention.

STATEMENT OF THE FACTS; TIMELINE OF RELEVANT EVENTS

Preface -- what is the Political Contribution Refund ("PCR")?

Briefly, the PCR is a program administered by the Minnesota Department of Revenue. Minnesota taxpayers can receive a dollar-for-dollar refund of up to \$50 for individuals, and \$100 for married couples, when they contribute to eligible political campaigns (Legislature and Constitutional offices) and/or political parties. Individual campaigns are not eligible for the PCR refund unless they agree to campaign spending limits. See Minn. Stat. § 290.06(23). The PCR is part of Minnesota's campaign finance system. Appellant believes this campaign finance system is an effective way to at least limit the domination of state politics by "big money", while *not* violating anyone's free speech rights.

A. Events leading to the unallotment of the PCR

Rendering a Minnesota biennial budget under requirements of Minnesota law includes joint participation by the Executive and Legislative branches. The Commissioner of Minnesota Management and Budget ("MMB Commissioner") must first prepare a series of forecasts of revenues and expenses. Minn. Stat. § 16A.103, subd. 1 (2008). Budget decisions in the present litigation were made jointly in May and June, 2009. Material facts involve the budget projections available to both branches in the months immediately before May and June of 2009. Both branches relied on the February 2009 budget forecast as a baseline, and on a projected \$2.7 billion deficit "...after considering all bills passed by the Legislature and signed into law by the Governor". After the Legislature had adjourned, MMB Commissioner Tom Hanson advised Governor Pawlenty in a June 4, 2009 letter that the state would be entering the new

biennium with a budget in deficit by \$2.7 billion, and "... it will be necessary to reduce allotments of appropriations or transfers for FY 2010-11." See Garry Affidavit, Exhibit 1.

Once a budget is developed by the Legislature and signed into law by the Governor, the executive branch must implement it. Minn. Const. Art. § 3, Minn. Stat. § 16A.055 (2008). The MMB Commissioner must set allotments for appropriations based on: "A spending plan... on the commissioner's form..., consistent with legislative intent..." Minn. Stat. § 16A.14, subd. 3 (2008). The Commissioner must then verify and approve that spending plans are within the amount and purpose of the appropriation. Minn. Stat. § 16A.14, subd. 4 (2008). Then, and only then, is the allotment established.

In a June 16, 2009 letter to Governor Pawlenty, with a copy to the Legislative Advisory Commission ("LAC"), Commissioner Hanson presented "... a list of proposed unallotments and other administrative actions to balance the state's general fund budget for the upcoming biennium", totaling \$2.7 billion. See Garry Affidavit, Exhibit 2. Some modifications to this plan were announced, and additional information was provided, in a June 25, 2009 letter from Commissioner Hanson to the LAC. See Garry Affidavit, Exhibit 3. Additional information was provided to House Speaker Margaret Anderson Kelliher and Senate President Larry Pogemiller in a June 29, 2009 letter from Commissioner Hanson. See Garry Affidavit, Exhibit 4. On June 30th, Commissioner Hanson, and other Pawlenty Administration officials, testified before the LAC for a second time. On July 1, 2009, Governor Pawlenty wrote to Commissioner Hanson (See Garry Affidavit, Exhibit 5):

"In accordance with Minnesota Statutes 16A.152, I approve of the unallotment recommendations proposed in your letter of June 16, 2009, and amended in letters on

June 25 and 29, 2009, for the biennium beginning today and ending June 30, 2011."

As part of these approved unallotments, the Political Contribution Refund was "...eliminated..." for the 2010-11 biennium. See Garry Affidavit, Exhibit 1, (page 2 of 6 page spreadsheet printout following the letter).

B. Commencement, dismissal, and appeal of the present lawsuit and other events

In this section Appellant offers characterizations that are believed to be objective, but recognizes that some statements made are not factual in the strict sense. The distinction between statements of facts and characterizations should be evident.

On July 23, 2009, Appellant filed for a Political Contribution Refund from the State of Minnesota for a contribution he had made to the 5th Congressional District Green Party of Minnesota on July 22, 2009. See Garry Affidavit, Exhibits 12 and 13. The form Appellant completed stated: "Complete this form to claim a refund of contributions made between January 1 through June 30, 2009,..." See Garry Affidavit, Exhibit 12. On July 23, 2009, Appellant, represented by counsel, filed a Verified Class Action Complaint on behalf of "... himself and all others similarly situated...". See Complaint, page 2. The case was assigned to Ramsey County Chief Judge Kathleen Gearin.

Appellant alleged: "The Commissioner of Revenue, at the direction of Governor Tim Pawlenty, has voided all tax refunds due on or after July 1st, 2009 despite the contributors' compliance with Minn. Stat. § 290.06(23) (2008)... As a result, the Commissioner of Revenue has unilaterally altered tax policy and deprived Plaintiff and Class members of statutorily-mandated refunds reasonably anticipated when they made their political contributions. See Complaint, page 2. Appellant alleged: "Defendants' conduct violates the mandates and

procedures of Minnesota Statutes §§ 16A.152, 290.06, and 270C.435." See Complaint, page 14. In subsequent filings, Plaintiff elaborated with further specificity on multiple ways in which Defendants' violated the mandates and procedures of those statutes.

On September 10, 2009, Appellant made a motion for injunctive relief, praying for judgment that the case be declared a class action, that the class be awarded political contribution tax refunds required by law along with interest, and that the State of Minnesota and the Commissioner of Revenue be enjoined from further inhibiting or interfering with the statutorily mandated payment of PCR tax refunds. See Complaint, pages 14-15.

On September 15, 2009, Respondents filed a cross motion to dismiss, or in the alternative for summary judgment. Respondents asserted Appellant's "claim fails because the unallotment of funding for political contribution refunds in this biennium was authorized by section 16A.152... Because [Appellant's] complaint fails as a matter of law, the Court should grant Defendants' motion to dismiss or, alternatively, grant them summary judgment." See Motion to Dismiss, page 1.

On October 13, 2009 a Motion Hearing was held on both Appellant's Motion for Injunctive Relief and Respondent's Motion to Dismiss.

On October 29, 2009 the *Brayton* case was commenced, and was also assigned to Chief Judge Gearin. Constitutional questions were raised in the Appellant's Complaint only by implication, and were not addressed in Appellant's motion for injunctive relieve. However, a Separation of Powers issues was raised explicitly in a subsequent pleading: See Appellant's Answer to Defendant's Motion to Dismiss. By contrast, the *Brayton* Complaint included three claims explicitly raising as a Constitutional issue violations of the Separation of Powers

doctrine. A motion for a Temporary Restraining Order was made by Plaintiffs in the *Brayton* case. District Court filings for the *Brayton* case are online on the home page of the Second Judicial District. See <http://www.courts.state.mn.us/district/2/>

On December 30, 2009, Judge Gearin granted the TRO in *Brayton*, and in a Memorandum accompanying the Order, affirmed the Constitutionality of the unallotment statute, but went on to state: "It was the specific manner in which the Governor exercised his unallotment authority that trod upon the constitutional power of the Legislature, and the Legislature alone, to make laws that, in the Court's opinion, was unconstitutional." See <http://www.courts.state.mn.us/district/2/>, click on "2009 Unallotment Litigation", and then on December 30, 2009 Motion for Temporary Restraining Order. Both parties stipulated to an entry of final partial judgment on behalf of Plaintiffs, and the Supreme Court accepted the case for accelerated review, as requested by the Defendants.

On January 11, 2010, the last day of the 90 day period for action on the motions heard at the October 13, 2009 motion hearing, and subsequent to the December 31, 2009 deadline for making contributions in 2009 pursuant to the Minnesota Political Contribution Refund program, Judge Gearin issued an order denying Appellant's motion for injunctive relief, and granting Respondent's motion to dismiss. In an attached Memorandum, Chief Judge Gearin commences: "This lawsuit unlike the *Brayton* case involves only the issue of whether the Political Contribution Refund (PCR) program is subject to unallotment by the Governor. The plaintiff argues that the unallotment of funding for political contribution refunds is substantively outside the authority of the Governor to unallot. He does not raise the constitutional issues previously ruled upon by this court in the *Brayton* case."

Chief Judge Gearin's Memorandum continues: "While some sweeping constitutional arguments were made in the Plaintiff's responsive memorandum to the State's motion to dismiss, the Complaint did not contain a constitutional challenge to the way the Governor unallotted. Specifically, the issue of whether the way the Governor unallotted the PCR program violated the separation of powers doctrine was not pled. The Court agrees with the arguments made by the Attorney General's Office on behalf of the Governor that it would not be fair to deny a motion to dismiss based on claims that were not asserted in the Complaint and not argued in the initial Plaintiff's memorandum." See January 11, 2010 Order, Memorandum, page 2-3. Regarding Appellant's arguments based on Statute, Chief Judge Gearin's Memorandum addresses questions of statutory interpretation, but holds in favor of Respondent for each question addressed. In contrast to Chief Judge Gearin's holding for Respondents regarding Constitutional issues raised by Appellant, there is no suggestion in Chief Judge Gearin's Memorandum that any of Appellant's claims regarding Statutory interpretation, taken individually, or taken as a whole, fail because they were not raised with sufficient specificity in the Complaint.

Also on January 11, 2010, Appellant held a news conference in the Rotunda of the State Capitol, announcing he was a candidate for Governor of Minnesota, and was seeking the Republican party endorsement and nomination; he had announced in an earlier news release he would run in the primary with or without endorsement. On June 1, 2010, Appellant filed for Governor in the Republican primary, and will be on the August 10, 2010 primary ballot.

On March 15, 2010, the Minnesota Supreme Court heard the appeal of Chief Judge Gearin's Order in *Brayton*, granting the Plaintiff's motion for a Temporary Restraining Order.

On May 5, 2010, the Minnesota Supreme Court held 4-3 in favor of the Plaintiff/Respondents in *Brayton*.

The Supreme Court's Opinion, written by Chief Justice Magnuson, stated: "This case presents questions about the authority of Minnesota's executive branch under Minn. Stat. § 16A.152, subd. 4 (2008), to reduce allotments in order to avoid deficit spending. The Ramsey County District Court held that use of the statutory "unallotment" authority to reduce funding for the Minnesota Supplemental Aid—Special Diet Program in the circumstances of this case violated separation of powers principles. We affirm, although on different grounds." See *Brayton v Pawlenty*, page 2.

The Supreme Court's *Brayton* opinion was based on statutory interpretation, and did not reach Constitutional questions. The Court first determined that the unallotment statute was ambiguous, and then proceeded to "...apply canons of construction to discern the Legislature's intent," guided by Minn. Stats. §§ 645.16, 645.17(2), and 645.17(3). See *Brayton v Pawlenty*, page 11-12. After a review of the budget process, the Court concluded (See *Brayton v Pawlenty*, page 18):

"In the context of this limited constitutional grant of gubernatorial authority with regard to appropriations, we cannot conclude that the Legislature intended to authorize the executive branch to use the unallotment process to balance the budget for an entire biennium when balanced spending and revenue legislation has not been initially agreed upon by the Legislature and the Governor. Instead, we conclude that the Legislature intended the unallotment authority to serve the more narrow purpose of providing a mechanism by which the executive branch could address unanticipated deficits that

occur after a balanced budget has previously been enacted."

Appellant notes the Supreme Court's conclusion is consistent with Appellant's position regarding statutory interpretation, as stated in the pleadings (See Plaintiff's Answer to Defense Motion to Dismiss, p. 13-14):

"An analysis of the unallotment statute establishes the clear intent of the legislature that this process is a kind of 'mid-course correction' or 'safety value' for budgets that begin in balance, but become unbalanced through revenues that are less than expected."

The Supreme Court's opinion in *Brayton* concludes (See *Brayton v Pawlenty*, page 21):

"Because the legislative and executive branches never enacted a balanced budget for the 2010-2011 biennium, use of the unallotment power to address the unresolved deficit exceeded the authority granted to the executive branch by the statute. We therefore affirm the district court's conclusion that the unallotment of the Special Diet Program funds was unlawful and void."

"Affirmed."

This opinion was filed May 5, 2010, twelve days before the day (May 17, 2010) "prescribed for adjournment" of the Legislature's Regular Session. See Minnesota Constitution, Art. IV, Sec. 12. The opinion had an immediate and profound effect on the remainder of the Legislative session. Multiple attempts were made to effect a balanced budget -- now the prerequisite for the legal use of unallotment. The last attempt was HF0001, "Omnibus State Budget Bill", the first and only bill passed during a one day Special Session called for May 17, 2010 -- the day "prescribed for adjournment". The Legislature had attempted to prepare and pass this bill during the Regular Session -- however, as midnight of

May 16, 2010 came and went, a conclusion was apparently reached that a Special Session would obviate the Minnesota Constitutional's prohibition of passage of a bill on the day "prescribed for adjournment".

The full text of that Constitutional provision, from Article IV, is:

*"Sec. 21. **PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED.** No bill shall be passed by either house upon the day prescribed for adjournment. This section shall not preclude the enrollment of a bill or its transmittal from one house to the other or to the executive for his signature."*

HF0001 of the First Special Session of 2010 includes the following provision (see <http://www.house.leg.state.mn.us/>, then select Bills -- text, status, and search):

"Sec. 3. Laws 2010, chapter 215, article 13, section 6, is amended to read:..."

*"Sec. 4. **REFUNDS AND CREDITS.**"*

"Subdivision 1. Political contribution credit. 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."

It is apparent that if this language is controlling law in Minnesota, there is no funding for the PCR program in the current biennium. Appellant would then have no cause of action, and no basis for proceeding further with this lawsuit. However, Appellant submits there are at least two compelling reasons for concluding that the above language is Constitutionally void.

First, with respect to the time period before enactment of HF0001, this language would operate as an ex post facto law; and as such is unconstitutional and void. See Minnesota

Constitution, Art. I, Sec. 11. ATTAINDERS, EX POST FACTO LAWS AND LAWS
IMPAIRING CONTRACTS PROHIBITED.

Second, because HF0001 was passed on the day "prescribed for adjournment", the entire bill is null and void. Notice that Art. IV, Sec. 21 of the Minnesota Constitution, cited above, makes *no distinction* between a Regular Session and a Special Session of the Legislature. Rather, it designates *a day* -- the day "prescribed for adjournment" -- and forbids passage of a bill by either house of the Legislature *on that day*.

ARGUMENT

A. Appellant's Complaint sets forth a legally sufficient claim for relief.

This case presents an unusual situation. Subsequent to the October 13, 2009 Motion Hearing and the January 11, 2010 Order to Dismiss, the Minnesota Supreme Court issued *Brayton v Pawlenty*, an opinion that is point-on precedent, directly, conclusively and affirmatively addressing the question: does Appellant's Complaint set forth a legally sufficient claim for relief? Accordingly, this argument will be limited to demonstrating the direct, point-on connection between the question resolved in *Brayton v Pawlenty* and the present case. Should Respondents continue to argue for dismissal, or alternatively summary judgment, Appellant will address such claims further in a reply brief.

1. *Brayton v Pawlenty* is point-on precedent for Appellant's cause of action.

As discussed above, the Minnesota Supreme Court first determined that the unallotment statute was ambiguous, and then proceeded to "...apply canons of construction to discern the Legislature's intent,..." *Brayton v Pawlenty* turns on a question of statutory construction. See *Brayton v Pawlenty*, page 11-12. The Court's Syllabus states in its entirety (See *Brayton v*

Pawlenty, page 2):

"The executive branch exceeded its authority under Minn. Stat. § 16A.152, subd. 4 (2008), by using that statute to balance the budget through reducing allotments before the budget-making process was completed."

"Affirmed."

The Court's opinion concluded:(See *Brayton v Pawlenty*, page 21):

"Because the legislative and executive branches never enacted a balanced budget for the 2010-2011 biennium, use of the unallotment power to address the unresolved deficit exceeded the authority granted to the executive branch by the statute. We therefore affirm the district court's conclusion that the unallotment of the Special Diet Program funds was unlawful and void."

"Affirmed."

This conclusion clearly applies to the entirety of Governor Pawlenty's 2009 unallotments. The absence of "... a balanced budget for the 2010-11 biennium,..." allows for no distinction between or among unallotments, at least from July 1, 2009 to the May 17, 2010 passage of HR0001 in the first Special Session of the 2010 Legislature. HR0001 will be addressed separately below.

As noted above, Appellant's Complaint cites with specificity the Statute constructed by the Supreme Court in *Brayton*, stating: "Defendants' conduct violates the mandates and procedures of Minnesota Statutes §§ 16A.152,..." See Complaint, page 14.

Appellant's pleadings commence to construct Stat. §16A.152, in a way parallel to, but less extensive, than as undertaken by the Supreme Court in the *Brayton* opinion. Appellant

states (see Plaintiff's Answer to Defense Motion to Dismiss, p 13-4) :

"...this much can be said: it seems doubtful that a spending plan for the PCR that eliminated the program for the current biennium is consistent with legislative intent."

"From these provisions of § 16A.14 it is evident that the unallotment power of Minn. Stat. § 16A.152 subd. 4(b) must be based on events that occur after the start of the biennium; then and only then do Defendants have the power of unallotment. Instead of following the clear statutory intent to make mid-course corrections to balance revenues after the start of the biennium, it appears Defendants prospectively 'unallotted' funds that had never been allotted in the first place. Defendants therefore exercised authority not granted to them by the Legislature or under the Constitution of the State of Minnesota."

"An analysis of the unallotment statute establishes the clear intent of the legislature that this process is a kind of 'mid-course correction' or 'safety valve' for budgets that begin in balance, but become unbalanced through revenues that are less than expected."

In short:

- Appellant cites with specificity Minn. Stat. § 16A.152 in the Complaint.
- The Minnesota Supreme Court's opinion in *Brayton* turns on the issue of constructing Stat. § 16A.152.
- Appellant's pleadings include a construction of 16A.152 that parallels the *Brayton* opinion. Specifically, both the *Brayton* opinion and Appellant's pleadings articulate the principle that Legislative intent requires that unallotment cannot be used if the State's biennial budget does not begin in balance.
- Appellant's cause of action, as stated in the Complaint: "Defendants' conduct

violates the mandates and procedures of Minnesota Statutes §§ 16A.152,...", is explicitly affirmed by the Minnesota Supreme Court's own Syllabus in *Brayton*, which states: "*The executive branch exceeded its authority under Minn. Stat. § 16A.152, subd. 4 (2008), by using that statute to balance the budget through reducing allotments before the budget-making process was completed.*"

2. HR0001, passed by both Houses of the Legislature on May 17, 2010 during the first Special Session of 2010, is Constitutionally null and void with respect to Applicant's cause of action

As noted above, with respect to Appellant's claimed PCR refund of \$50, filed in 2009, the HR0001 provision: "... *the political contribution refund does not apply to contributions made after June 30, 2009, and before July 1, 2011...*" is in fact an Ex Post Facto Law, and is consequently unconstitutional. See Minnesota Constitution, Art. I, Sec. 11. **ATTAINDERS, EX POST FACTO LAWS AND LAWS IMPAIRING CONTRACTS PROHIBITED.** As of the Minnesota Supreme Court's May 5, 2010 *Brayton* order, all of Governor Pawlenty's 2009 unallotments were, and are, null and void. The Legislature *cannot* go back and *retroactively cancel* the legal obligation of the State to pay Appellant's 2009 PCR refund for \$50. For this reason alone, Appellant's cause of action remains..., the statutorily created obligation of the State to pay Appellant the refund remains..., and neither can be extinguished without violating the Ex Post Facto prohibition.

Appellant will address in detail the unconstitutionality of HR0001 with respect to the prohibition against passing a bill on the day of adjournment. The entirety of HR0001 is null and void in consequence of this violation of the Constitution, as a question separate from the Ex Post Facto question. See Minnesota Constitution, Art. IV, Sec. 21, and below.

3. This Court must reverse the District Court's January 11, 2010 Order to dismiss.

Appellant states (See Plaintiff Answer to Defense Motion to Dismiss, p 6):

"In reviewing cases dismissed for failure to state a claim upon which relief can be granted, the only question before us is whether the Complaint sets forth a legally sufficient claim for relief. It is immaterial for our consideration here whether or not the Plaintiffs can prove the facts alleged. N. States Power Co. v. Franklin, 265 Minn. 391, 394, 122 N.W.2d 26, 29 (1963) This standard is normally difficult for a defendant to overcome,..."

Respondents asserted Appellant's "claim fails because the unallotment of funding for political contribution refunds in this biennium was authorized by section 16A.152". See Motion to Dismiss, page 1.

Obviously, in light of the *Brayton* opinion, the unallotment of funding for political contribution refunds in this biennium was not authorized by section 162.152! The application of a controlling precedent to a case doesn't get much more clear and precise than this one.

In the light of the *Brayton* opinion, which of course is *subsequent* to the District Court's January 11, 2010 Order to Dismiss, Appellant must state that he cannot understand how Respondents can, in good faith, now *continue* to claim that the District Court's Order to Dismiss Appellant's case should not be reversed. If Respondents persist in this position, Appellant will respond with a reply brief.

In the light of the *Brayton* opinion, "... [Appellant's] Complaint sets forth a legally sufficient claim for relief...", per *N. States Power Co. v. Franklin*. Therefore, this Court must reverse the District Court's January 11, 2010 Order to Dismiss Appellant's case for failure to

state a cause of action.

B. This Court should issue a preliminary injunction, and/or grant other relief to make whole Appellant and other Minnesota taxpayers who have been deprived of their rights as provided for in Minn. Stat. § 290.06(23).

1. Preliminary statement

This lawsuit has inevitably been entwined with both the *Brayton* case, and with the question of what the Pawlenty Administration and the Legislature would do during the 2010 Legislative Regular Session respecting both unallotment generally, and the PCR program in particular. In filing this Brief two weeks subsequent to the adjournment of the Legislature's 2010 Regular Session (and the first Special Session), there is a benefit in having a full view of relevant subsequent events, which, as demonstrated, *have* in fact impacted both the context and status of this case. Appellant will file a Motion for a preliminary injunction as soon as possible. In this brief, Appellant will lay the groundwork for establishing why justice will be served by granting injunctive relief, and/or other relief.

Applicant wants to also note here that had HR0001 of the first Special Session of the 2010 Legislature been passed by both houses a day later, or a day earlier, or more generally on *any other day of the year*, neither Applicant, nor anyone else, would have a basis *going forward* for claiming a PCR refund in this biennium. However, at least one serious issue would still remain unresolved: what relief would be appropriate to make whole those individuals who were wrongfully and illegally induced not to participate in the PCR program by the Pawlenty Administration, up to the time of the Legislature's action to discontinue funding for the program going forward? This question is not the focus of Applicant's current efforts, which are undertaken with limited resources. But this issue may require final resolution at some point.

2. HR0001 of the first Special Session of the 2010 Legislative is unconstitutional, null and void due to a violation of Art. IV, Sec. 21 of the Minnesota Constitution, which forbids passage of a bill by either House of the Legislature on the day "prescribed for adjournment".

HR0001 was passed by both Houses of the Minnesota Legislature on Monday, May 17, 2010. The Legislature was described by news reports as "segueing" into a Special Session, called by Governor Pawlenty, after it was unable to pass a similar or identical bill introduced in the Regular Session before Midnight. It seems evident that Governor Pawlenty called the special session to avoid having the bill passed during the Regular Session on May 17th. Appellant suggests that an evidentiary affidavit could be prepared for the Court, if needed, to clarify this point. However, as noted, the Minnesota Constitution's Art. IV, Sec. 21 prohibition *makes no distinction* between a Regular Session and a Special Session.

Art. IV, Sec. 21 of the Minnesota Constitution states:

*"Sec. 21. **PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED.** No bill shall be passed by either house upon the day prescribed for adjournment. This section shall not preclude the enrollment of a bill or its transmittal from one house to the other or to the executive for his signature."*

Regarding "...the day prescribed for adjournment...", it is evident this refers to Art. IV, Sec. 12., which states in its entirety (with emphasis added for the key sentence):

*Sec. 12. **BIENNIAL MEETINGS; LENGTH OF SESSION; SPECIAL SESSIONS; LENGTH OF ADJOURNMENTS.** 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. After meeting at a time prescribed by law, the legislature may adjourn to another time. "Legislative day" shall be defined by law. A special session of the legislature may be called by the governor on extraordinary occasions.

The sentence from Sec. 12 shown in bold above *prescribes* the day for adjournment.

This conclusion is inescapable, based on these considerations:

First, the Art. IV, Sec. 21 phrase: "... the day prescribed for adjournment..." must be given some meaning -- it would otherwise be surplus.

Second, while at many points the Minnesota Constitution provides for defining and doing things by law, no such provision is made in Sec. 21 with respect to defining "... the day prescribed for adjournment."

Third, the sentence in bold from Sec. 12 above is the only Constitutional language that functions to prescribe a specific day for adjournment of a regular session.

Therefore, according to the Minnesota Constitution, "... the day prescribed for adjournment..." is, per Sec. 12, the "...first Monday following the third Saturday in May of any year." In 2010, the third Saturday in May was May 15th, and the day prescribed for adjournment is Monday, May 17th. Again, if it is felt an evidentiary affidavit is required to establish that "the day prescribed for adjournment" is as presented above, such an affidavit can be prepared.

Of course, once the meaning of "... the day prescribed for adjournment..." is established for Art. IV, Sec., 21, no wiggle room remains with respect to any claim that a bill passed on that day is not a violation of the Minnesota Constitution. Here it is... again... but with one

clarifying improvement... the actual date for 2010 is substituted (and just in case... for Dictionary fans... here's Webster's Third New International: "upon -- 1: ON". Upon means ON. OK?)

"No bill shall be passed by either house [on May 17, 2010]."

For the year 2010, that is what Art. IV, Sec. 21 *means*. Respondents -- or anyone -- can stare at the original sentence, or the improved 2010-only version, as long as they want. That sentence is as plain and simple as a sentence can be. It makes no distinction between a Regular Session and a Special Session.

Least there be any doubt that this Constitutional provision is real and enforceable, in the final analysis, *Knapp vs O'Brien*, 288 Minn. 103, 179 N.W.2d 88 removes such a doubt, but only after a coffee stain or two.

This 1970 case turns on the constitutionality of a bill passed by the Senate on the 120th calendar day of the session, then the "... day prescribed for the adjournment of the two houses..." per what was then "art. 4, s 22", identical in effect to the current Art. IV, Sec. 21. The text of "art. 4, s 22" was included in its entirety in the Court's opinion, so the Court obviously thought this language was relevant to the decision.

The Westlaw Syllabus for *Knapp vs O'Brien* (it is not clear to Appellant if this is the Court's Syllabus, an actual date is injected in brackets) states in part:

"...bill passed by Senate on [May 26, 1969, the] 120th calendar day, exclusive of Sundays, which was day prescribed for adjournment was unconstitutional under provision that no bill shall be passed by either House upon date prescribed for adjournment."

Appellant agrees this is a fair statement of the opinion, but the opinion itself has some twists, and does not appear to state the holding as explicitly as the Syllabus. Nonetheless, a pot of coffee and a round brown stain or two later, the following analysis emerges, per Westlaw (page numbers are per the Westlaw printout):

The *Knapp vs O'Brien* Opinion states (p. 3):

*"On the basis of the stipulation of facts, the trial court granted respondent's motion for summary judgment on the grounds that *106 L. 1969, c. 1125, was passed by the Senate after the expiration of the 120 legislative days exclusive of Sundays permitted by the constitution and was therefore unconstitutional and void. This appeal followed."*

"The question raised here is what is a legislative day within the meaning of Minn. Const. art. 4, s 1."

"Appellants contend that 'legislative day' means any day on which the Legislature actually meets, while respondent contends that a legislative day is any day on which the Legislature may meet, which includes each calendar day from the day of convening, excluding only Sundays."

The *Knapp vs O'Brien* Opinion had earlier noted (p. 3):

"The Journal of the Senate shows that May 26, 1999, was the 102nd day of actual sessions."

The focus of the Court's Opinion was establishing first that Minnesota had a history of establishing (and presumably enforcing) provisions that limited the length of Legislative sessions, and then that by longstanding convention, and by Attorney General opinions typically ratified by each Legislature, the number of legislative days was determined by reference to the

calendar, starting with the first day of the Session, and excluding Sundays -- holidays had also been excluded earlier.

The Appendix of this Brief (there is only one page, it is at the end of the brief), calculates Legislative Days per the *Knapp vs O'Brien* Opinion, using calendar days from the first day of the 1969 Session, excluding only Sundays. The Appendix demonstrates that May 26th was the 120th Legislative Day of the 1969 session, and was therefore the "day prescribed for adjournment," per the Constitutional limitation on Legislative days -- the only reference by which a "... day prescribed for the adjournment of the two houses..." could be determined at that time.

The *Knapp vs O'Brien* Opinion concluded (p 8):

"The trial court came to the right conclusion and must be affirmed. In view of our decision on the decisive issue of the case, we do not reach the other questions raised by the appeal."

Notice that the Trial Court had held, not that the bill was passed on "... the day prescribed for the adjournment...", but that it was passed on the 122nd day of the Session, per the Senate's calendar. Thus, according to the Trial Court, the Constitutional violation was not passing a bill on the day prescribed for adjournment, but exceeding the number of days allowed for a Regular Session.

The *Knapp vs O'Brien* Supreme Court's opinion was very explicit in rejecting the interpretation, advanced by the Appellants, that the Senate's record, showing 122 session days, should be relied on. One might wonder: why would the Appellants be arguing for a construction that would demonstrate that they exceeded the number of Constitutionally

permitted Legislative Days? The answer is apparent from the Court's focus on how Legislative Days should be counted, and on the history of Minnesota's evident intent to have Legislative Sessions of limited length. Had Appellants prevailed, they would not have *just* avoided the question of a violation of the prohibition against passing a bill on "... the day prescribed for the adjournment of the two houses." They would have *also* established a precedent that the Legislature could, in effect, not just cover the clock, but cover the calendar as well -- exceeding the Constitutional limitation on the length of a session.

In holding that Legislative Days should be calculated as calendar days from the start of a Regular Session, excluding Sundays, the *Knapp vs O'Brien* Court determined, as shown in the Appendix, that the law in question in the case was, in fact, the result of a bill that was passed on May 26, 1969, the day prescribed for adjournment. In affirming the District Court's conclusion -- but not its reasoning -- we can only conclude that the violation of the Constitutional prohibition against passing a bill on "...the day prescribed for the adjournment of the two houses..." was so obvious to the Court -- and everyone -- that it was not necessary to do more than affirm the District Court's conclusion, which was that the Law in question was unconstitutional. Upon examining the Court's opinion and applying a process of elimination, it is evident that the law could not be unconstitutional for any *other* reason than that it violated the prohibition against passing a bill on "... the day proscribed for the adjournment of the two houses."

The Minnesota Constitution has subsequently been amended to determine the "day prescribed for adjournment" not with reference to a number of Legislative Days, but with reference to the Calendar. The current Art. IV, Sec. 21 references only "... the day prescribed

for adjournment," and does not refer to "...the adjournment of the two houses." Taken together, these provisions establish a bright line -- a date that can be calculated without any possible ambiguity -- beyond which Legislative Regular Sessions may not continue.

But why, one might wonder? What *practical basis* is there for forbidding a Special Segue Session from doing what the 2010 "Segue Special Session" is claimed to have accomplished?

Consider this quote from the *Knapp vs O'Brien* Court's opinion, during the 1970 Minnesota Supreme Court's survey of the history of Regular and Special Sessions. It's from page 5, and it's a message from Governor Elmer Anderson to the 1961 Legislature:

"WHEREAS basic appropriation and revenue measures needed to provide for the operation of our state government for the next biennium and other matters of importance have not been enacted during the regular session of the legislature, creating an extraordinary occasion therefore,"

"NOW, THEREFORE, I, Elmer L. Anderson, Governor of the State of Minnesota, do hereby summon the Legislature and the members thereof to convene in extra session on Monday the 24th of April, 1961 at eleven o'clock in the forenoon of that day, at the Capitol in Saint Paul, Minnesota."

"It is my hope that in the week between the close of the regular and the opening of the extra session the members can get some sorely needed rest and also visit extensively with their constituents to get a clear understanding of how our people want the extra session to resolve the revenue problem."

Compare that approach -- founded on *respect* for a co-equal branch *and for the people*

who serve in that branch -- to the one just witnessed in Saint Paul this past May. Applicant was at the Legislature every day for the last week, including the day of the "Segue Special Session." Applicant witnessed the incredible hours that were put in by Legislators during this time, especially in the days immediately before adjournment. After multiple marathon sessions, the Governor, back from his Saturday fishing trip, called the "Segue Special Session" early Monday morning, on May 17th. There were news reports that sometime in the night one Legislator had fainted, hit his head on the floor, and was taken to the hospital. Under these circumstances, the question must be asked: Why did the Governor insist that this dazed group of people -- *people...*, many elderly -- must be marched through another sleepless night, herded into their chambers -- or pens -- and forced to immediately pass HR0001? Why not follow Governor Anderson's 1961 approach -- allow them a week for "sorely needed rest" -- then reconvene them?

To understand the answer, just imagine yourself as a Legislator... amidst and among this herd of beaten, bedraggled humanity. After days of sleep deprivation, in the early morning hours of another sleepless night, you are told that if you vote for HR0001, you can head immediately to a warm, quiet bed. You are told that this was the agreement made between your leaders and the Governor. Will you do it -- or resist? Applicant submits the fight was out of this group, and it was driven out by deliberate sleep deprivation, carried out over days. With time to rest, recover, recharge -- the Legislature might have thought differently, and acted differently.

That's why.

As Appellant sees it, that's what the end of the last session, and the so-called "Segue

Special Session" amounted to. Appellant can only see this as a fundamental *abuse* of the Legislature and the Legislative process -- abuse carried out primarily by a Governor who has a history of abusing the Legislature -- and has been provided a weekly forum on WCCO radio, produced and controlled by the Governor's staff -- not by any news staff -- to carry out this program of abuse.

It is this *abuse* of the Legislature that Art. IV, Sec. 21 of the Minnesota State Constitution is *designed and intended to prevent*. Regular sessions are *not* intended to "segue" into special sessions, and they never have prior to 2010 -- this is *not* part of the design of our Constitutional system. The *Knapp v O'Brien* Court's opinion found one instance of a Special Session that was called by Governor LeVander for the afternoon of the day *following* adjournment of the Regular Session. The *Knapp v O'Brien* survey found nothing comparable to Governor Pawlenty's 2010 Pajama Party.

Abuse.

That is the practical basis. This is among the reasons *why* our Constitution *forbids* enacting a law by means of the 2010 "Segue Special Session" we have all just witnessed.

As Appellant sees it, both the illegal unallotments carried out by the Governor in 2009, and the abusive treatment of the Legislature on and before May 17, 2010, are part and parcel of an on-going assault of the Legislative branch, carried out by the Executive branch.

Much has been made of the "political question" doctrine. Appellant of course acknowledges the validity of this doctrine -- is in fact quite fond of the doctrine. Appellant is in fact a Republican, and insists that Courts should *not* engage in judicial activism. However... *however...* in the present case regarding the "Segue Special Session" -- as with the 2009

unallotments -- the Governor has again *overstepped in such an extreme way* that the "political question" doctrine is not at issue. Rather, a bright line in our State's Constitution is at issue. The Governor -- in his effort to stampede a group of dazed, exhausted Legislators -- has pushed, urged, bullied, and in the final analysis *caused* them to pass a bill on *the one day of the year* where our Minnesota Constitution *forbids this*.

There is no "political question" here -- rather, there is *a clear, flagrant Constitutional violation*. A bright line has been crossed. We all see it. The question is: What is *this Court* going to do about it?

Thus..., when rested and when refreshed..., when the coffee stains on Westlaw printouts are brown dry..., the prohibition (Art. IV, Sec. 21) and the precedent (*Knapp vs O'Brien*, 288 Minn. 103, 179 N.W. 2d 88) *remain and abide*, along with this conclusion:

HR0001 of the first Special Session of 2010 is unconstitutional, null, and void due to a violation of Art. IV, Sec. 21 of the Minnesota Constitution, which forbids passage of a bill by either House of the Legislature on the day "prescribed for adjournment".

3. Some plain talk about this case, Justice, Rights, and Rule 103.04

Appellant commenced this Brief pitching some highflauten runestones about Justice, and claiming -- audaciously -- that individual Minnesotans have some kind of a Constitutional right to "justice".

Specifically, Appellant cited from the Minnesota Constitution, Article I (the Minnesota Bill of Rights):

"Sec. 8. **REDRESS OF INJURIES OR WRONGS.** Every **person** is entitled to a

certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and **to obtain justice freely and without purchase, completely and without denial, promptly and without delay**, conformable to the laws."

Applicant believes that this right of **persons** (notice: **not** just Minnesota citizens) "... to "...obtain justice..." is *real*, and *enforceable*. Applicant plans to promptly file a motion for a preliminary injunction, seeking, in part, to *enforce* this Constitutional right for both Appellant and others similarly situated.

To conclude this Brief, Appellant offers a "plain language" statement of what "justice" *means* in the present case. This is intended to make sense to regular people, because *justice should make sense to regular people*. As part of this "plain language effort", Appellant, acting pro se, will drop the "disembodied intellect" mask of "Appellant", and will write using words like "I", "my", "we", and so forth. So... here *we* go.

I brought this lawsuit when I heard that Governor Pawlenty -- *my* Governor, the person *I* voted for in 2006 -- planned to unallot, and "eliminate" the PCR program. I have always thought this was a good program. In fact, in 2006, when I developed a "Minnesota Republican State Legislator's Contract with Voters", I featured the PCR program as one of my eight points.

The PCR program is a way to reduce the domination of our politics by big money. Individual citizens, friends, acquaintances, can contribute relatively small amounts to campaigns, including for the Minnesota Legislature. People can be elected to the Legislature who *aren't* dependent on special interests, lobbyists, and so forth.

This program has worked.

When I interviewed then House Speaker Steve Sviggum about my "Legislator's Contract" in 2006, he told me that *every member* of the House Republican Caucus participated. Here's a transcript from the interview, I have it all on videotape (emphasis added):

Carney: *Let's take a look at 5. "Special interest money is poison, it leads to interest group politics. However, money in politics is constitutionally difficult or impossible to ban."*

Sviggum: *Can't do it... it's called the first amendment.*

Carney: *Freedom of speech, yeah.*

Sviggum: *It's called the first amendment.*

Carney: *It's a real dilemma.*

Sviggum; *It's a real problem, it is. But the first amendment is worth standing up for.*

Carney: *Oh, it is. But you know, in Minnesota... the rest of this says: "The best option is public campaign financing, including both income tax checkoffs and [the PCR] the current Minnesota option for individuals to receive a rebate for their contribution of up to \$50." The internet offers a great opportunity to break down money-driven politics. What do you think about that in particular? What do you think might be happening in politics with the internet, with the ability to have a video distributed over the internet, which sounds like it's happening this year.*

Sviggum: *the internet allows the opportunity for great information and facts to get out there. I think it allows the opportunity for more informed voters, because of the access to information, access to votes, access to positions. I'm not sure exactly how that relates to the money, because obviously people who run for office still want to get their message*

out, through the radio, through TV, through direct mail, through buying gas so you can go from one end of the district to the other to knock on doors, I mean, those are all very important. I personally, in my campaign, don't accept special interest monies. I accept no PAC monies. The Sviggum volunteer committee has turned back, over the number of years I've served, I bet you over a quarter of million dollars I've turned back to special interest groups.

Now that doesn't mean they're bad. Because I think everybody watching this video, today, tonight, whenever they're watching, Bob, I think every one of them, persons, citizens, including myself, including my wife, I can point to a special interest they have. Either they're a fire fighter, and they're represented down by the Capitol by the state fireman's association. Or they're a policeman, represented here by the peace officer's association. Or they're a teacher, and represented by Education Minnesota, or they're a farmer, and represented by farm bureau, or they're a rural person, and represented by the rural education association. Or they happen to be from the Minneapolis area, and they're represented by the Minneapolis Education Association. I think every person, watching this has certain interests. And those interests are represented here at the Capitol. That isn't bad in itself. The money sometimes gets to be questionable, because it seems like you're almost buying votes, you're almost buying access, or you're buying positions of people who want to be your pawns, you know, special interest groups... they'd love to control me or any other legislator, because they'd love to have pawns down here, voting for them, right? That they can control. I refuse to be a pawn of anybody. As you can probably tell right now.

Carney: *It seems to me it's much more of a problem at the national level.*

Sviggum: *Because the money's bigger, Bob, the money's bigger, the different sides, you know, in Minnesota we, you know, every campaign for the House of Representatives, you know the maximum amount you can spend is like, \$28,000, whatever, and most of us spend far less than that.*

Carney: *Now, for the house and the senate, there are these maximum spending limits, and the public financing, and the \$50 checkoff [rebate]. My understanding is that almost all of the legislative campaigns are within those limits.*

Sviggum: *They are, in fact I can tell you, all Republican campaigns have been within those limits. The only ones to exceed them have been Democrats, have been out to buy offices, or spend more than the campaign limit. If you don't stick within that campaign limit, that \$28,000, whatever it is right now, \$29,000, if you don't stick within that, and sign a form with the ethical practices, fair and campaign practices board, then your contributors do not get the \$50 and \$100 back, in their form the political contribution refund, the rebate that you're talking about. And also, if you don't stay within that spending amount, you don't get the public subsidy money either.*

Carney: *So would you be fair to say you think that as a system for public financing it's working pretty well for the state?*

Sviggum: *I think it's working pretty well. I think, it allows every individual, an opportunity to participate in the process, you know, with the credit that we have, you know, most folks aren't aware of the fact that they could send a state candidate, now it's only for state candidates, fifty bucks, and get it all back from the State of Minnesota.*

Most people aren't aware of the contribution refund, but you can take part, be a part of the process, you don't have to be a millionaire to do it, and I think that's a pretty grass roots type of campaign fundraising, which is pretty important to Minnesota. Now, I will also tell you, Bob, from my perception, I don't want to go to full, 100% public funding of campaigns, either. I think full, 100% funding of campaigns kind of erodes a little bit, the credibility, or the respect of the individual, you know, should get from voters in order to run for office. So I raise, personally, most of us in the Legislature, raise, maybe, half of our money, in relationship to the public subsidy agreement, or PAC money, I don't take any of those, and then the rest comes from individuals.

Carney: *That's... it seems to me that is going pretty well at the state level.*

That's a pretty good rundown of how the PCR program works -- or worked -- as part of Minnesota's unique system of campaign finance.

As part of his 2009 unallotments, Governor Pawlenty appears to have set out to destroy the PCR program. So far, he's succeeded.

Our politics is already dominated by big money, and the trend with the U.S. Supreme Court's opinion in *Citizens United* doesn't look good. The court held in that case that corporations can spend money from their treasury to directly promote and support candidates. The Minnesota campaign finance system has been a real oasis in a desert of big money control of politics. This model can and should be extended to other states. Instead, Governor Pawlenty is trying to destroy it, and the Legislature is frankly going along with him. There was only a short time from the Minnesota Supreme Court's decision in *Brayton*, ruling that Governor's 2009 unallotments were illegal, to the end of the 2009 Regular Session. So, it was frankly

impossible for the Legislature, in that amount of time, to go through every program that was affected by declaring illegal almost \$3 billion in unallotments.

And this is where the injustice comes in. Governor Pawlenty has effectively seized control of the policy making and priority setting that is the main job of the Legislature. As citizens, *you and I have a right* to participate in the PCR program -- assuming that the Special Session's "Omnibus Budget Bill" is unconstitutional -- and it *is* unconstitutional! The PCR program is established in Minnesota law. It is the Governor's Constitutional duty to "faithfully execute" the law. As individuals, and as a group of civic minded people, you and I have a right to our PCR refunds, and a right to prevent big money from totally taking over the Legislature and our state politics.

Delay has already moved us all past the deadline for participating in the PCR during the year 2009. We don't know what the effect of that was. Would Tom Rukavina have been the DFL nominee? I know for a fact he was interested in joining my case in 2009. How many Legislative campaigns might have formed in 2009 and 2010 --including grass root citizens' campaigns by Tea Party folks -- if the PCR had not been illegally "eliminated" by Governor Pawlenty in mid-2009? We'll never know. Serious damage to our political system has been done by Governor Pawlenty's illegal action. We, as Minnesotans -- but more fundamentally as **persons** -- have a State Constitutional **right to a certain remedy in the laws** to correct for the injustice and wrong that has been done.

Looking forward now, when the Governor of the state breaks the law, and takes away our legal right to participate in the PCR program, *you and I have a Constitutional right*, according to our Minnesota Constitution, *to stop the Governor from breaking the law*, and to

use the PCR program according to Minnesota Law. That's what this case is about.

Our right to justice -- to immediately *stop* Governor Pawlenty from breaking the law -- is from Article I in the Minnesota Constitution. Here it is *again* -- I present and highlight it *again* -- I beat on it like a drum -- so people can not just read it, but **hear** it:

"Sec. 8. **REDRESS OF INJURIES OR WRONGS.** Every **person** is entitled to a **certain remedy in the laws** for all injuries or wrongs which he may receive to his person, property or character, and **to obtain justice freely and without purchase, completely and without denial, promptly and without delay**, conformable to the laws."

The refund you and I are entitled to -- based on money you and I contribute under the PCR program -- is *property*. When the Governor of Minnesota *takes away our property* -- refuses to pay the PCR program refunds that are owed to us -- we have a "certain remedy in the laws". That remedy is an immediate injunction, issued by a Minnesota Appellate Court, ordering the Pawlenty Administration to stop interfering with the PCR program -- ordering the Governor to *make the required forms available on the internet, and to pay the refunds* when we Minnesota taxpayers -- *you and I* -- turn in our refund forms to the Department of Revenue.

There's an old saying: "justice delayed is justice denied." We are in the middle of an election season *right now*. You and I, as Minnesota taxpayers, have a right to participate in the PCR program *right now* -- before it is too late in the 2010 election campaign for us to make a difference.

Again, we are talking about *justice*.

Rule 104.03 for our Minnesota Appellate Courts says an Appellate Court can: "...take

any other action as the interest of justice may require." That power of the Courts comes directly from our Minnesota Constitution, Article I, Sec. 8. **Our Minnesota Appellate Courts have the power and the duty to act, to make sure that Governor Pawlenty cannot carry out an injustice against the people of Minnesota by illegally taking away our legal right to participate in the PCR program.**

I personally -- and you and I as persons who are Minnesota taxpayers -- have a Constitutional right to an injunction from a Minnesota Appellate Court. This injunction must be granted "...completely and without denial, promptly and without delay,..." That's what our State Constitution says. This right is *real*, and I personally am demanding that the Minnesota Court of Appeals *enforce* this Constitutional right of the **people** of Minnesota.

And let's be clear about two more things.

First, if you are a person living in Minnesota, you can't avoid paying at least \$50 in taxes over a relatively short time. Until the Legislature legally appropriates it for something else, this money is *your* money, and it's *my* money. It's money *we* paid to the State of Minnesota, one way or another, often through sales taxes. The PCR law says when we make an eligible contribution, we, *as taxpayers*, have a right to be refunded *the money that was formerly known as "ours"*. *Our property*. That's what we're talking about. It's *not* "the Government's money". It's *our* money.

Second, the Governor is *not* the Legislature. Our *Legislators* are our Representatives. The Governor is *not* our representative -- he's our Governor. When *our* money -- our property, *collected as taxes* -- is illegally taken from us by someone or something *other* than the Legislature, we have a term for this. We call it:

"Taxation Without Representation."

And we have a phrase for what's been done -- given to us by Boston politician James Otis at the time of the American Revolution:

"Taxation Without Representation is Tyranny."

I will be contacting everyone who is running for the Legislature, for Constitutional offices, and everyone else I can think of. I will of course be sending out news releases. We have free speech, the internet, and youtube -- all parts of a system that is *intended* to "establish justice." I hope others will be willing to submit an evidentiary affidavit to this Court, joining in my demand to stop what amounts to the action of a *tyrant* -- *not* the action of a *Governor* in "... a republican form of government..." -- in illegally attacking the PCR program and withholding *our* money -- *your* money and *my* money -- collected as taxes. Governor Pawlenty is failing in his Constitutional duty to faithfully execute the laws. He is illegally and unilaterally trying to destroy the PCR program, and to take down our whole Minnesota system of campaign finance with it. He *must* be stopped, and he *will* be stopped.

In short:

Justice.

"Big money" control of our political system.

Defending our unique, free-speech-preserving Minnesota campaign finance system.

Executive usurping of core legislative authority -- legislation by executive order.

Sleep deprivation.

Abuse.

Taxation Without Representation.

Tyranny.

The Rule of Law.

Our right to petition **our** government for a redress of grievances.

That's what this case is about.

CONCLUSION

This Court should reverse the District Court's January 11, 2010 Order to Dismiss Appellant's case, as Appellant has clearly demonstrated a cause of action per *N. States Power Co. v. Franklin, 265 Minn.*, with particular reference to the point-on precedent: *Brayton v Pawlenty*.

This Court should hold that provisions of HR0001, the only bill passed during the first Special Session of 2010, are unconstitutional, null and void respecting the PCR, because HR0001 is an Ex Post Facto law, in violation of the Minnesota Constitution, Art. I, Sec. 11.

ATTAINDERS, EX POST FACTO LAWS AND LAWS IMPAIRING CONTRACTS PROHIBITED.

This Court should hold that HR0001 of the first Special Session of 2010 is unconstitutional, null, and void, as it violates the Minnesota Constitution, Art. IV, Sec. 21.

PASSAGE OF BILLS ON LAST DAY OF SESSION PROHIBITED.

This Court should stand by for a Motion for a preliminary injunction, and should be prepared to act on it both expeditiously and in light of *Dahlberg Bros., Inc. v. Ford Motor Co.*, and of Rule 103.04, which authorizes the Court to "...take any other action as the interest of justice may require."

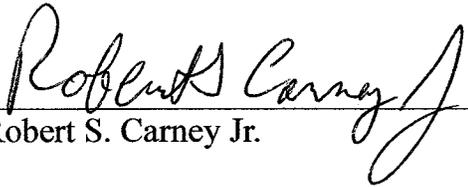
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Signed: 
Robert S. Carney Jr.

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