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FILED
Court Administrator

STATE OF MINNESOTA

JAN 11 2010

DISTRICT COURT

COUNTY OF RAMSEY

By *[Signature]* Deputy

SECOND JUDICIAL DISTRICT

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

Plaintiffs,

vs.

File No. 62-CV-09-8663

ORDER

State of Minnesota and Ward Einess,
Minnesota Commissioner of Revenue,

Defendant

The above-entitled matter came on for hearing before the undersigned on October 13, 2009, pursuant to a motion for the temporary injunction filed by the Plaintiffs, and a motion for summary judgment and to dismiss filed by the defendants.

Gary Luloff and Dennis Johnson appeared on behalf of the Plaintiffs. Solicitor General Alan Gilbert and Assistant Attorney General John Garry represented the Defendants.

Based upon the files, records, and proceedings herein, the Court makes the following order.


IT IS ORDERED that:

1. The plaintiff's motion for temporary injunction is denied.
2. The defendant's motion to dismiss is granted.

3. The attached Memorandum is incorporated into and made a part of this Order.

BY THE COURT:

Date: 1-11-10


Kathleen Gearin
Chief Judge of District Court

MEMORANDUM

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. See *Brayton v. Pawlenty*, No. 62-CV-09-11693 (Minn. Dist. Ct. Dec. 30, 2009), available at http://www.mncourts.gov/Documents/2/Public/Civil/1%20pawlenty%2012209/Plaintiff_Motion_for_Temporary_Restraining_Order___Granted.pdf. In his complaint the Plaintiff asserts that the PCR is a "tax refund" and therefore protected from unallotment by Minn. Stat. §270C.435. They argue that by unallotting the unexpended 10.4 million dollars that had been allotted by the Legislature for PCR in the July 1st, 2009 to June 30th, 2011 biennium he exceeded his authority under Minn. Stat. §16A.152 Subd. 4(B).

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 Plaintiffs' memorandum.

The issue of whether the PCR program is within the scope of what the Governor has the authority to unallot requires the Court to interpret a number of statutes. The first statute that requires interpretation is Minn. Stat. §16A.152 Subd. 4(B). The issue is whether this statute gives the Governor authority to unallot the PCR program. This Court believes that the ruling in *Rukavina v. Pavlenty*, 684 N.W. 2d 525, at 534 (Minn. App. 2004) is controlling on that issue. That case held that the Governor's unallotment authority reaches "any prior transfers from the general fund and does not except transfers to special funds previously earmarked for specific programs." (italics added) Based on the plain language of this statute and the *Rukavina* case, the Court finds that unallotment of funding for the PCR program is substantively within the authority given by Subd. 4(B) of §16A.152.

The next statute that requires interpretation is Minn. Stat. §270C.435 which states that "no amount of a tax refund or other payment payable by the Commissioner to a tax payer is assignable or subject to execution, levy, attachment, garnishment, lien foreclosure, or other legal process, except as specifically provided by law." Plaintiffs believe that this statute exempts the PCR program from unallotment. The Court agrees with the argument of the Defendants that the PCR program is a campaign financing

assistance program, not a tax program such as individual income taxes. These refunds are not a refund for payment of taxes or fees imposed by state law but for contributions made to political candidates or parties. Minn. Stat. §290.06, Subd. 23.

Plaintiff cited *Rosentiel v. Rodriguez*, 101 F.3d 1544, at 1555 (8th Cir. Minn. 1996) in support of his argument. While the precise quotation contained in the plaintiff's brief is correct, the quote is taken out of context. The plaintiff takes a quote from the case where the court says "tax refund" as proof that the court found the PCR program to be a tax refund program; however throughout the case the court continuously uses the term "contribution refund," with the majority opinion using that term nineteen times and the dissent using the term sixteen times. Contrary to the plaintiff's assertion, the *Rosentiel* case is not about whether the PCR program is a tax refund, nor does the court rule on that issue; instead *Rosentiel* is about the constitutionality of Minnesota's campaign finance laws in that it violates freedom of speech. In short, *Rosentiel* is of no help in the present dispute.

The Plaintiff in effect argues that Minn. Stat. §270C and Minn. Stat. §290.06, Subd. 23 should be interpreted in a way that exempts the PCR program from unallotment. The Court disagrees and therefore has granted the Defendants' motion to dismiss. Much of the plaintiff's argument discusses the merits of the PCR program. Those discussions involve policy decisions, not legal decisions. Policy decisions are best left to other branches of government.

KG

