

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

ROBERT CARNEY, JR., on behalf of
himself and all others similarly
situated

Plaintiff,

v.

State of Minnesota and Ward
Einess, Minnesota Commissioner of
Revenue

Defendants.

Court File No.

VERIFIED CLASS ACTION
COMPLAINT

Plaintiff Robert Carney, Jr., on behalf of himself and all others
similarly situated brings this action against Ward Einess, Minnesota
Commissioner of Revenue ("Commissioner of Revenue") and the State of
Minnesota ("State"). Based upon personal knowledge, information, belief,
and the investigation and research of his counsel, Plaintiff alleges as
follows:

NATURE OF THE ACTION

1. Robert Carney, Jr. brings this action on behalf of himself and all others similarly situated.

2. 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).

3. 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.

JURISDICTION AND VENUE

4. Actions against a public officer(s) "for acts done by virtue of the office ... shall be tried in the county in which the cause of action arose." Minn. Stat. § 542.03(1) (2008). This action is appropriately venued in Ramsey County.

THE PARTIES

5. Plaintiff, Robert Carney, Jr. is a resident of the State of Minnesota who on or after July 1, 2009, made a political contribution of \$50.00 to the Fifth Congressional District Green Party and thereafter sought a refund which was denied as a direct result of defendants' actions.

6. Defendant Ward Einess is the Commissioner of Revenue for the State of Minnesota.

I. UNALLOTMENT APPLIED TO THE POLITICAL CONTRIBUTION REFUND PROGRAM

A. BACKGROUND

7. The State of Minnesota is facing an anticipated budget shortfall for the current biennium. Governor Tim Pawlenty has chosen to invoke the procedure of unallotment to unilaterally balance the budget at his sole discretion. The Governor's authority for the unallotment powers is found in Minn. Stat. § 16A.152 (2008). The relevant portion of the law reads:

(b) an additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the

commissioner [of Finance] is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.

Minn. Stat. § 16A.152(4)(b).

8. The use of unallotment to balance the state budget is not without limit. The Governor and the officers of the executive branch are required to operate within the bounds of the law. In eliminating the Political Contribution Refund ("PCR"), the Commissioner of Revenue has violated the laws of Minnesota and his conduct must be restrained. Also, damages equal to the denied tax refunds, along with interest, must be awarded to the plaintiff class.

B. POLITICAL CONTRIBUTION REFUND

9. The State of Minnesota operates a campaign financing system which permits candidates to receive money from check-offs on Minnesota tax forms in exchange for the candidate's agreement to abide by specific limits on campaign expenditures. Minn. Stat. §§ 10A.25(10)(a), 10A.322(1)(a) (2008). Abiding by the spending limits is advantageous to political candidates because it affords them the opportunity to solicit contributions from more supporters due to the availability of the political

contribution refund. Under the PCR program, a Minnesota taxpayer who contributes to a campaign or candidate can claim a refund of up to \$50 per year (or \$100 per couple). Minn. Stat. § 290.06(23). Upon receipt of a private contribution, the candidate is required to give a receipt to the contributor, who files it along with a state required form with the Commissioner of Revenue.

10. In constructing this framework of public financing, the State sought to promote a reduction in the possibility for corruption that may arise from large campaign contributions, and a diminution in the time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning. The PCR facilitates this goal by encouraging political participation while mitigating the contributor's financial commitment.

11. The legislature has created statutory protections to ensure the survival of the PCR program. Under Minn. Stat. § 270C.435 (2008), the legislature protected the contribution refunds by ensuring that refunds are not subject to "execution...or other legal process, except as provided by law." Furthermore, the legislature promoted the timely delivery of

refunds by subjecting late refunds to interest rates. Minn. Stat. § 290.06(23). These legislative protections demonstrate that the PCR program is an important aspect of our political process.

12. The State interest behind the PCR program has been recognized as a “compelling interest” by the United States Supreme Court and a court of the Eighth Circuit. *See Carver v. Nixon*, 72 F.3d 633, 635 (8th Cir. 1995) (citing *Buckley v. Valeo*, 424 U.S. 1, 25- 27 (1976)). Compelling state interests are given great deference in our legal system.

C. ELIMINATION OF THE POLITICAL CONTRIBUTION REFUND

13. On June 16, 2009, Governor Pawlenty announced his proposed unallotment plans for the 2010-2011 biennium. Among the Governor’s proposals was the unallotment of \$10.4 million which would have otherwise supported refunds under the PCR program. The proposal included a two year elimination of the PCR for contributions received between July 1st, 2009 and June 30th, 2011.¹ The proposal went into effect

¹ See June 18, 2009 memo from Beth Kadoun, Assistant Commissioner of the Minnesota Department of Revenue, regarding the proposed unallotment of funds for PCR, available at: <http://www.cfboard.state.mn.us/unallotment.pdf> (last visited July 22, 2009).

on July 1st, 2009 and the Plaintiff and Class members were then summarily barred from receiving their anticipated tax refunds.

14. Under the current law, a contributor has until April 15, 2010 to file the PCR form for all contributions made in 2009. However, Governor Pawlenty's unallotment plan has nullified all refunds on contributions made on or after July 1st, 2009 even when the PCR form is filed within the timeframe required by the statute. In essence, a contributor can follow all the procedures set forth in the statute and nevertheless be denied the statutorily mandated refund. The Commissioner of Revenue's denial of refund requests amounts to a change in tax law that harms both political contributors and candidates.

D. ELIMINATION OF THE POLITICAL CONTRIBUTION REFUND IS NOT SUPPORTED BY LANGUAGE IN §§ 16A.152(4)(b), 290.06(23), AND 270C.435.

15. The Governor is only empowered to "defer or suspend prior statutorily created obligations." Minn. Stat. §16A.152(4)(a). However, the direct effect of the unallotment plan is the elimination of the statutorily-created PCR tax refund as of July 1, 2009. The Minnesota Department of Revenue has described the plan as an "elimination" of the PCR.

16. The legislature anticipated that tax refund payments may possibly be delayed. Minnesota Statutes § 290.06(23) contains a directive that the Commissioner must include interest on payments paid after June 15th of the calendar year following the calendar year in which the contribution was made.

17. Under Minnesota tax law, “no amount of a tax refund ...to a taxpayer is assignable or subject to execution, levy, attachment, garnishment, lien foreclosure, or other legal process except as specifically provided by law.” Minn. Stat. § 270C.435 (2008). The PCR refund is in fact a “tax refund.” The legislature has also included “political contribution refunds” within their definition of a “tax refund.” Minn. Stat. § 270A.03(7) (2008). Thus, the PCR payment cannot be altered by any legal process unless there is a law which specifically mandates such action.

18. The unallotment statute does not include tax refunds and thus PCR refunds are not subject to unallotment. The Governor has no statutory basis for eliminating the PCR tax refund.

E. THE COMMISSIONER OF REVENUE DOES NOT HAVE THE AUTHORITY TO ALTER TAX LAW

19. The State's action, in effect, grants the Commissioner of Revenue the discretion to eliminate PCR payments. In essence, the State is giving the Department of Revenue the power to alter the tax law. By placing an arbitrary date restriction on contribution refunds, the Department of Revenue is raising taxes on a certain subset of the population.

20. The State's proposed plan amounts to a tax increase by removing a well-established tax refund from the campaign financing plan. The repeal of a mandated tax refund constitutes a tax increase. Consequently, the State's conduct amounts to an unauthorized tax increase.

21. The State is bestowing policy-making duties on an administrative officer. The first sentence on the PCR form, instead of encompassing the entire year, now reads:

Complete this form to claim a refund of contributions made between January 1 through June 30, 2009, to Minnesota political parties and candidates for Minnesota state offices.

22. The Commissioner of Revenue has changed the language on the PCR form. Because the PCR form and PCR program deal directly with tax policy, the Commissioner's conduct constitutes a unilateral change in tax law.

23. It is not within the discretion of the Commissioner of Revenue to alter the tax code or disregard the mandates of tax law even if the Governor so directs.

F. WITHHOLDING REFUND FORMS IS A CLEAR VIOLATION OF § 290.06(23)(d)

24. The Commissioner of Revenue cannot effectuate the State's unallotment plan by denying PCR form requests from campaigns. Under § 290.06(23)(d) the commissioner is affirmatively mandated to "make copies of the [PCR] form available to the public and candidates upon request."

25. By denying requests for PCR forms, the Commissioner of Revenue has violated Minnesota law. The Commissioner's role in relation to the PCR forms is strictly administrative. The mere fact that the Commissioner performs the clerical duty of sending and receiving these forms does not give him the discretion to alter their contents or the statutory procedure that governs refunds.

**G. WITHHOLDING REFUND FORMS FRUSTRATES
ACCESS TO VALUABLE PUBLIC INFORMATION
GUARANTEED BY § 290.06(23)(f)**

26. A significant policy consideration involved in the legislative enactment of the PCR program was the elimination of corruption or the appearance of corruption in the campaign finance system. Accordingly, the legislature included a provision that required the Commissioner of Revenue to report the total number and aggregate amount of political contribution refunds made on behalf of candidates and parties. Minn. Stat. § 290.06(23)(f). This data is explicitly gathered for public use.

II. INJURIES TO THE CLASS

27. As a result of the aforementioned, Plaintiff and the Class members have been damaged and will continue to suffer damages including, but not limited to:

1. Depriving the Plaintiff and the putative class of the anticipated political contribution refund.
2. Erecting a barrier to campaign contributions that would have been made if the political contribution refund was assured.

3. Loss of the ability to participate in the political process without incurring financial loss.
4. Loss to the public of information concerning campaign contributions.

III. CLASS ACTION ALLEGATIONS

28. Plaintiff Robert Carney, Jr. brings this action on behalf of himself and all others similarly situated pursuant to Minn. R. Civ. P. 23.01.

The class of persons which Plaintiff seeks to represent is defined as:

All individuals who made a political contribution on or after July 1, 2009 and have been or will be denied a refund under the PCR program as a result of the Governor's unallotment plan.

29. This case is properly brought as a class action under Rule 23.01 of the Minnesota Rules of Civil Procedure for the reasons set forth in the following paragraphs.

30. Numerosity under Minn. R. Civ. P. 23.01(a). The members of the Class are so numerous that separate joinder of each member is impracticable. According to various media reports, Governor Pawlenty believes that eliminating the PCR will save roughly \$10 million per

biennium. This suggests that there are more than 100,000 Minnesotans who make political contributions under the PCR program.

31. Commonality under Minn. R. Civ. P. 23.01(b). The common questions of law shared by the Class include, but are not limited to:

1. Whether tax refunds can be denied under Minn. Stat. § 16A.152.
2. Whether the refusal to process form requests is a valid exercise of executive power.
3. Whether Plaintiff and members of the putative Class are entitled to injunctive relief against the State.
4. Whether Plaintiff and the putative Class have suffered damages.

32. Typicality under Minn. R. Civ. P. 23.01(c). The Plaintiff's claim is typical of the Class because the State has altered the tax policy as it relates to all contributors in the PCR program.

33. Adequacy of Representation under Minn. R. Civ. P. 23.01(d). Plaintiff is an adequate representative of class. He has made a political contribution and has been denied his refund. He has retained competent

and experienced class counsel and commits to the resolution of the important issues raised in the Complaint.

34. Predominance under Minn. R. Civ. P. 23.02(c). Questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the class and a class action is superior to other methods available for the fair and efficient adjudication of the controversy raised in this Complaint.

COUNT I

VIOLATION OF MINNESOTA STATUTES §§ 16A.152, 290.06, AND 270C.435

35. Plaintiff and the Class re-allege the allegations in paragraphs 1-34 above as if fully set forth herein.

36. Defendants' conduct violates the mandates and procedures of Minnesota Statutes §§ 16A.152, 290.06, and 270C.435.

37. Plaintiff and the Class have been denied their statutorily mandated tax refunds.

38. As a result, Plaintiff and Class members are entitled to injunctive relief and the statutorily mandated refund.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. That this case be declared to be a class action.
2. That Robert Carney, Jr. be designated by the Court as the class representative.
3. That the law firm of Chestnut & Cambronne, P.A. be designated as counsel for the class.
4. That the class be awarded political contribution tax refunds required by law along with interest.
5. 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.
6. That the counsel for the class be awarded attorneys fees and all costs incurred in the prosecution of this action from the common fund to be created by their efforts and pursuant to Minn. Stat. § 15.472(a) (2008).

Dated: July 23, 2009

CHESTNUT & CAMBRONNE, P.A.

By 

Karl L. Cambronne, #14321

Bryan L. Bleichner, #0326689

Gary K. Luloff, #0389057

3700 Campbell Mithun Tower

222 South Ninth Street

Minneapolis, MN 55402

(612) 339-7300

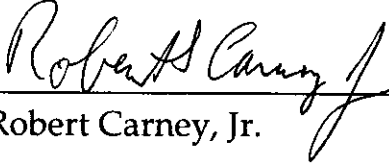
Fax (612)336-2940

ATTORNEYS FOR PLAINTIFFS

**ACKNOWLEDGMENT REQUIRED BY
MINN. STAT. SECTION 549.211**

I hereby acknowledge that, pursuant to Minn. Stat. Section 549.211 costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find I acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted and unfounded position solely to delay the ordinary course of the proceedings or to the harass, or commit a fraud upon the Court.


Dated: July 23, 2009


Robert Carney, Jr.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

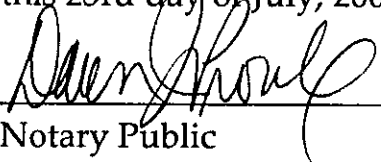
V E R I F I C A T I O N

Robert Carney, Jr., being first duly sworn upon oath, deposes and says that he is the Plaintiff in the foregoing proceeding, that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except those matters therein stated upon information and belief, and as to such matters he believes them to be true.



Robert Carney, Jr., Plaintiff

Subscribed and sworn to before me
this 23rd day of July, 2009.



Notary Public

