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Shutdown threat damaging  
both sides

They came, they saw, they went home little the wiser.

Yesterday advocates, Capitol staffers and the political counterparts of car-crash voyeurs lined the gallery at Judge **Kathleen Gearin's** shutdown hearing in Ramsey County District Court to see what sort of terms the court would decree for Lights Out '11. Yet apart from the dismissal of a couple of motions that hardly anyone expected to prevail (Gov. **Mark Dayton's** request for a mediator, four GOP senators' request for an order compelling Dayton to call back the Legislature), they were to leave the day-long proceedings with no clue regarding the particulars.

But the day was filled to the brim with clues about the general thrust of Gearin's forthcoming opinion, which is now expected early next week. Gearin repeatedly stressed the "extremely serious" character of a constitutional separation-of-powers claim that would prevent courts from ordering any program of state spending not sanctioned by the Legislature; she went on at length about the horrors that would ensue for many Minnesotans if the court is forced to spell out the terms of a shutdown; she offered repeated admonitions to the attorneys to encourage their clients to "keep talking."

Most judges, in our experience, do not use phrases like "constitutional crisis" lightly. All in all, Gearin could scarcely have done more to warn legislators and the governor's office that the abyss they are contemplating could outstrip both sides' worst fears about social and political consequences.

As everyone hangs fire on Gearin's ruling, the immediate question is whether her painfully clear signals from the bench will add any urgency to the 11th hour deliberations of the two sides. We believe the response of local politics consultant **Magic 8-Ball** is as authoritative as any for the moment: **"Too soon to tell."** We'll get further perspective on the question as talks between lege leaders and the governor unfold -- or unravel -- today and this weekend. If they start arguing over the sorts of water bottles participants are allowed to bring, seasoned observers agree, then we'll know that agreement is not quite at hand.

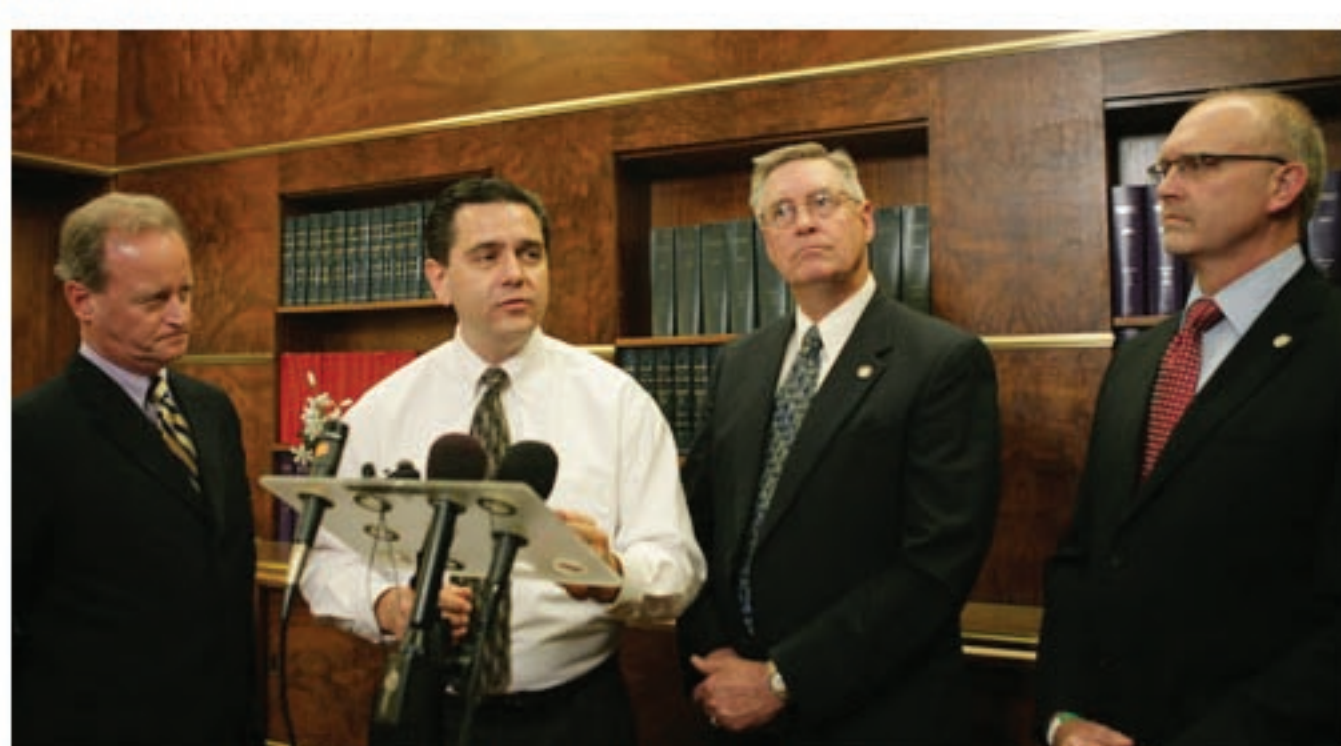
### The hearing: takeaway points

**The curious case of the Senate GOP filing:** One of the major questions as the shutdown petitions started flying was whether the GOP-controlled Legislature planned to get involved this time around; the Legislature only filed suits after the shutdown ended in 2005. And while neither chamber jumped at the opportunity immediately following Dayton and Attorney General **Lori Swanson's** petitions, they scheduled Rules Committee meetings and dispensed with the procedural requirements to pave the way for possible litigation. Eric Magnuson to argue any case they might make. The Senate, meanwhile, stayed quiet except for the four members of the GOP caucus -- **Sean Nienow, Roger Chamberlain, Scott Newman** and **Warren Limmer** (pictured left) -- who filed their Tom Bottern hinted at the constitutional approach already adopted by the four Republican senators: "The judicial branch does not have any specific or inherent authority under the Minnesota Constitution to order the executive and legislative departments to enter into mediation for purposes of enacting legislation appropriating money for the operations of the executive department," he wrote. But when Bottern stood in front of Gearin on Thursday, he mentioned nothing of the constitutional language included in their response, and argued only for the option to keep the lights on in the Legislature and governor's office in the event of a shutdown. By Bottern's account, people were reading too much into the Senate's response. Dayton Attorney **David Lillehaug** seemed perplexed by their line of argument, and later said, "I thought I knew what the Senate was arguing. There are irreconcilable differences in the Senate's position, saying the governor has no executive power in their response, but also taking no stance on [his] petition."

**House and Senate divided:** The House and Senate had quite different cases going into the hearing, but argued the same end to Gearin: Leave Dayton's proposed mediator out of the picture and keep the lights on in the Legislature in the event of a government shutdown. That was the gist of the House argument from the get-go. "The House is a political entity," Magnuson said during a courtroom recess. "It should not be in the business of constitutional litigation." But the Senate's response is laced with constitutional language, and the four GOP senators whose suit was dismissed are in talks with leadership on how to proceed. They will likely join with leadership on whatever action they take, Newman said, but the question remains as to whether the entire Senate will go the full-on constitutional route. Both Magnuson and Bottern noted that they are not taking a position on the petitions at this time, but retain the right to do so in the future. That's where the real divide between the two chambers could become evident, if the Senate does indeed push for the hardest possible shutdown and the House sides with one of the less severe petitions from the governor or attorney general.

**What Dayton wants:** Lillehaug's presentation to the court clarified Dayton's position on the terms of a shutdown: The governor's office would prefer to see no order from the court on the terms of a shutdown until one has already started. The governor possesses certain executive spending powers in the event of a crisis, Lillehaug argued, and if anyone would care to contest that point, the proper time to come to court would be after Dayton begins to exercise those powers on July 1.

**Gearin toes the constitutional line:** One striking note from both the morning and afternoon court sessions was Gearin's repeatedly expressed concerns about the constitutional question argued by the four senators. Most legal pundits pushed the argument aside early on, assuming Gearin wouldn't take it seriously. But Gearin repeatedly referred to the impasse as a "constitutional crisis" and pledged to "tread lightly" given important questions about the separation of powers. "It is the crisis of the day. But for one branch, whether it be the executive, whether it be the legislative or the judicial, to concentrate too much power in that branch does not honor our Constitution," she said. "The separation of powers is one of the most important doctrines... courts are always reluctant to get into separation of powers issues." While most lawyer-types in the courtroom yesterday felt she signaled an appetite to take on a less-expansive petition closer to the governor's, they were also surprised at how heavily she stressed the Constitution. "It's not out of the realm of possibility that she lands on something harder than anyone anticipated," a GOP lawyer observed Thursday. Gearin also noted that if she does appoint a special master to oversee a shutdown, as Swanson is arguing, that person would lack many of the prerogatives that fell to the special master in the 2005 partial government shutdown. "If there is a special master," she warned, "he will have far more restricted boundaries."



Sens. Limmer, Nienow, Newman, and Chamberlain

### Republicans think they're winning the budget fight

As we wrote last week, most legislative Republicans have remained confident that they would ultimately stare Dayton down in the budget fight. This week brought mixed reports about the GOP rank and file, clearly there is restlessness and tension among the natives as shutdown day slouches into view, but there is no discernible whiff of insurrection.

GOP leaders, meanwhile, are said to feel very good about the direction of things in the past week-plus. "Leadership is very confident that they're winning the debate," one old Republican hand told us the other day. We've even heard that some in leadership circles are convinced that the governor is on the verge of a wholesale capitulation.

GOP spirits have been buoyed by a series of developments:

- **Monday's KSTP/SurveyUSA poll.** The line of questioning was so different from those contained in recent surveys by the Star Tribune and Public Policy Polling that it's useless to try comparing them in most respects. But the lone apples-to-apples contrast between the polls -- a 10 point-plus drop in Dayton's approval rating, down to the low 40s -- was very encouraging to Republicans.

- **Dayton's amended court filing.** After bringing an initial petition in Ramsey County that pointed to extremely austere shutdown conditions, the administration subsequently went back to court to reverse itself on the harshest provision of all, which would have required health care providers to continue serving Medical Assistance clients without receiving any payments. That would have brought many facilities to their knees in a week to 10 days, and the scale of the pushback clearly forced a reconsideration. That Dayton failed to anticipate as much was a source of distress to many Democrats; when he changed his petition, Republicans saw it as reinforcing a number of their beliefs: that the shutdown stands to hit the governor's constituencies first and hardest, that Dayton's shutdown plan is ill-considered, and that the governor will fold under that pressure.

- **Rump caucus efforts.** Stribber **Baird Helgeson's** story in last Sunday's paper ("[DFL courting crossover votes](#)") brought some public light to the worst-kept secret at the Capitol, which is Dayton's beating of the legislative bushes for Republicans willing to break with their caucuses on new revenue. So far that effort has seemingly come to naught. (There is the downside of Dayton's refusal to call the Legislature back until a deal is in place: It stifles the kind of day-to-day ferment among legislators that can fuel rump caucus pressures.) And the rump scenario remains further complicated by the reluctance of many legislative DFLers to dive in on a revenue fix that could be used against them by Republicans in Election 2012. That equation could change with time, but most Republicans think the whole matter is a dead letter going forward.

Meanwhile, are legislative Republicans trying to double down on the Dayton administration's harsh shutdown terms, thought by many to be a device for stoking grassroots pressure on the GOP majorities? Many observers thought they detected as much in the Senate GOP brief filed late Wednesday; it appeared to argue that neither courts nor the governor had any authority to spend even emergency funds in a government shutdown. Such a gesture might suggest that Republicans are trying to turn the tables on a governor whose confidence they believe to be flagging. *You want pressure?* the brief seemed to say. *We've got your pressure.*

But that scenario, tidy as it is, seemed to be confounded in Senate counsel **Tom Bottern's** appearance before the court Thursday. As noted above, Bottern said that his clients were taking no position on the petitions of Dayton and Attorney General **Lori Swanson** in their bids for continuing government operations in a shutdown -- though he reserved the right to weigh in on the "core functions" question at a later date. The Senate petition, notably, did not ask the court to make any findings or orders on the basis of its position.

### And now a look back at last year's budgetary sausage making

On June 6 Pediatric Home Service, a company that provides in-home care to severely disabled kids, received a financial shock. The Roseville-based firm found out that it would not be receiving its monthly Medicaid payment from the Minnesota Department of Human Services -- which constitutes roughly 40 percent of its budget.

"It blindsided us," says **Michael Ruhs**, the company's managing director of corporate communications. "We just couldn't make sense of it."

Pediatric Home Service initially was under the impression that the lack of payment was due to the looming government shutdown and it began taking steps to stay financially afloat. The 200-employee firm furloughed 10 management employees for a week in order to cut costs. The firm also checked with vendors about delaying payments and worked with its bank to access additional credit.

But in reality the explanation for the missing payment related to the solution to last year's budget shortfall. In order to help balance the books, the Legislature shifted \$157 million in Medicaid provider payments from June to July -- pushing the cost into the next biennium. According to one health care lobbyist, the small provision in last year's bill got lost in the "crisis du jour" of 2010 budget negotiations, and even some legislators have asked, "Is it true that we did this?"

DHS posted information about the change in payments on its website and sent emails to providers telling them to check the site for updated information. But that message apparently failed to reach Pediatric Home Service and many other providers. "We can't imagine DHS just forgot about us," Ruhs says. "We just can't figure out why we weren't informed of something so critical."

Compounding the fact that many providers and associations weren't aware of the payment shift was confusion over what categories of services would or would not get paid.

**Denise Miller**, whose disabled son receives assistance from 10 nurses, said that for the first half of June, nurses affiliated with provider agencies got paid and private duty nurses did not. Though the department revised its criteria so that those who didn't get paid received a check Tuesday, Miller worries about the next month. The nurses are scheduled to be paid July 1, and if government shuts down, they'll be in limbo. "One of the nurses works 40 hours a week," Miller said, fretting about how long they can provide the life-sustaining care her son needs.

One of the hardest hit groups is pharmacists, according to **Julie Johnson** of the Minnesota Pharmacist's Association, who called the payment delay "devastating." She's been fielding calls from irate members, who will need to wait until June 30 to get paid. The group was caught unaware and assumed the payment shift was, instead, an early shutdown consequence. Some pharmacies receive a significant number of Medicaid payments, and because they operate on very thin margins, Johnson raised the specter of some rural pharmacies going out of business "not in a month but very shortly thereafter. People already go miles and miles for service in the corners of the state," she noted.

### Tweet MN: Sorting out "this Twitter thing"

One of the few undisputed bright spots to come out of the 2011 legislative session was the launch of [Tweet MN](#), a joint production of **Ben Golnik** (Golnik Strategies) and **Gregg Peppin** (P2B Strategies). As more and more of us are consuming and producing real-time news, Tweet MN offers a simple but robust tool to trace the contours of the online discussion in Minnesota politics.

Golnik told PIM that the concept was born through discussions at the Capitol. Lobbyists and political junkies who follow thousands of feeds wanted a smart way to distill the flow of voices. And online neophytes who've heard of "this Twitter thing" needed a clean, straightforward introduction to the ongoing dialogue. Working with a local designer and programmer, Golnik and Peppin produced a user-friendly interface that still conveys a comprehensive flow of data.

Since its April launch, feedback on Tweet MN has been very positive, Golnik says. We at PIM have seen the site open on many legislator's laptops while in session, perhaps the most telling testimonial to its usefulness. The design touches are what elevate the site's appeal: the column view separates the feeds of elected officials, media, and operatives (along with some parody accounts), the red-blue color code lets you know at a glance the political affiliation of the tweeter, and a note under each legislator displays their district and hometown. The site's an excellent example of molding what can be an unmanageable mountain of e-information into an undemanding tool, one in this case that keeps citizens and officials in step with the 24/7 conversation that is more and more a part of the political world.

Where else are you going to learn that Sen. **Mike Jungbauer** is still taking his 4 a.m. runs? Or that House K-12 Finance Chair **Pat Garofalo** is still mightily torqued off that the governor not only vetoed his bill but spelled his name wrong on the envelope bearing the veto letter?

### Remembering the political sideshows of '05

One difference between the 2005 shutdown environment and the present moment is the lack of aspirants for higher office. While Congresswoman **Michele Bachmann** and former Gov. **Tim Pawlenty** are running for president, neither is a factor in the political impasse under the state Capitol dome.

The scene in 2005 was quite different, with congressional and gubernatorial races on the horizon in 2006 that had already drawn entrants from the ranks of state legislators. Ways and Means Chair **Jim Knoblach** and Taxes Chair **Phil Krinklieb** were among the candidates won by the GOP endorsement to run for the open 6th Congressional District seat that was eventually run by Bachmann, who at the time was a state senator.

Pawlenty's bid to seek re-election in 2006 drew challengers from the DFL ranks at the Capitol. Senate Education Chair **Steve Kelley** entered the gubernatorial race in early June before the shutdown. And speculation was constantly swirling that Attorney General **Mike Hatch** would seek the DFL endorsement to challenge Pawlenty. The political tension was palpable when Hatch petitioned a Ramsey County judge to keep essential services operating during the shutdown and Pawlenty filed his own brief with the court (though the two sides, each for its own reasons, largely agreed that year). Hatch, along with DFL Sen. **Becky Lourey**, entered the DFL endorsement race later in the fall of 2005.

As in 2005, a U.S. Senate race lies on the horizon. But the only declared Republican candidate, **Dan Severson**, retired from the Legislature to run unsuccessfully for secretary of state. Sen. **Dave Thompson**, R-Burnsville, has been mentioned as a possible candidate for the U.S. Senate seat next year. But Thompson's intentions aren't yet known and he has kept his focus on the session, eschewing the sort of speechifying that Krinklieb and Knoblach mounded at times in 2005.

There was speculation about a handful of legislators entering the race against 1st term GOP U.S. Rep. **Chip Cravaack**. But the buzz fizzled as legislators like **Roger Reinert** and **Tony Lourey** took their names out of contention.

On the positive side, the legislative process hasn't been sidetracked by the political theater that attends seeking higher office in the midst of a contentious budget battle. But the lack of background noise and entertaining sport from an early-stage endorsement battle has made the budget impasse all the more grating to some onlookers.

### Bits & Pieces

On Monday the **Minnesota Chamber of Commerce** will hold its annual golf outing in the Brainerd area at Cragun's resort. Despite golf's preeminent status as the schmoosing sport of choice at the Capitol, we'll be interested to see if the impending government shutdown keeps lobbyists off the links and bivouacked in St. Paul instead. Among the top sponsors for the outing are lobbying shops **Messerli & Kramer** and **Lockridge Grindal Nauen**.

Long-time DFL Capitol staffer **Sean Rahn** started a new lobbying gig this week at Best Buy. Rahn was most recently a senior policy advisor for Gov. **Mark Dayton** on health care issues. He was previously legislative director for speaker **Margaret Anderson Kelliher**. Another former House DFL staffer, **Dan Pollock**, has replaced Rahn on the health and human services beat in the governor's office. Pollock was formerly Rep. **Tom Huntley's** committee administrator on the House Health Care and Human Services Finance Division. When DFLers lost their majorities in the Legislature in last year's election, Pollock was hired by Dayton's administration as legislative director for the state Department of Human Services.

**Dee Dee Myers** will keynote womenwinning's 29th annual fundraising luncheon on Tuesday at the Milwaukee Road Depot in Minneapolis (300 Washington Ave. S.). Gov. Dayton and U.S. Rep. **Betty McCollum** are also scheduled to address [the gathering](#). Admission is \$125.

Speaking of McCollum, the next evening she'll be holding a fundraiser at Pazzaluna in downtown St. Paul (360 Saint Peter St.) from 5:30 to 7 p.m.. Minimum donation is \$125.

Rep. **Michele Bachmann's** coming-out at last week's presidential debate has sparked a huge amount of national interest in the CD6 congresswoman. While she plans an Iowa kickoff for her campaign in a couple days, big profiles on her are generating buzz on the web. Last week, **Michelle Goldberg** at the Daily Beast chimed in with "[Bachmann's Unrivaled Extremism](#)," but it's **Matt Taibbi's** hostile "[Michele Bachmann's Holy War](#)" in *Rolling Stone* that has local bloggers and journo's riled today. We noticed right away that some passages sounded quite similar to those in **G.R. Anderson's** 2006 "[The Chosen One](#)" in City Pages. Sure enough, **Abe Sauer** at The Awl shows [where](#) Taibbi grabbed from City Pages and from **Karl Bremer** (Ripple in Stillwater / Dump Bachmann). Bremer [dressed Taibbi down](#) in a strongly worded post today.

Pioneer Press St. Paul schools reporter **Doug Belden** will be joining the ranks of the Capitol press corps. He is filling the long-open position vacated by **Jason Hoppin**, who returned to his native West Coast. That means Capitol-goers will see a little less of reporter **Dave Orrick**, who has been filling in on the political beat and is now taking his place as the paper's new outdoors reporter.

**Honoring Women Oldways** holds its third annual Garden Party at the Capitol's Suffrage Garden tomorrow from 9:00-12:30. U.S. Sen. **Amy Klobuchar** and Minnesota Senate Majority Leader **Amy Koch** have been invited to speak - though Koch's negotiation meetings may intrude. The \$50 per ticket [event](#) supports the nonprofit's middle and college-age mentoring programs. They also have their first annual silent auction online running through June 27.

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