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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Civil

In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota

Court File No. 62CV-11-5203

PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF

INTRODUCTION

The primary duty of the Attorney General is to enforce and uphold the mandates and protections set forth in the United States Constitution and the Minnesota Constitution. Indeed, the first act of the Attorney General is to take an oath to uphold the two constitutions. Minn. Const. art. V, § 6. In this capacity, Attorney General Lori Swanson brings this Petition to have the Court direct that the mandates and protections of the United States and Minnesota Constitutions be performed after June 30, 2011, in the event the current budget impasse is not resolved.

FACTUAL BACKGROUND

A budget impasse presently exists with respect to state funding, and monies have not been appropriated for almost all of the departments and agencies of state government for the fiscal year beginning July 1, 2011.[1] Without a state budget or court order providing for the continued provision of essential services by state government, the executive (as well as the judicial) branch of state government would completely shut down. Such a shutdown would

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[1] Only the Department of Agriculture, the Board of Animal Health, and the Agricultural Utilization Research Institute have been funded to date. *See* ch. 14 (S.F. 1016) § 3-5, 87th Sess. (Minn. 2011); 2011 J. Minn. House 2454; 2011 J. Minn. Senate 1396. In addition, there are standing appropriations which relate to a few executive branch functions. *See, e.g.*, Minn. Stat. §§ 126C.20 and 477A.03, subd. 2 (standing appropriation for certain aid to school districts and local governments). See also *infra,* note 9.

deprive Minnesota citizens of the rights guaranteed under the Minnesota and United States Constitutions, and the life, health, safety, and liberty of citizens would be profoundly and irreparably impacted. The following are just some of the consequences of a shutdown that will adversely affect the public interest.

For example, there are currently about 1,288 mentally ill patients entrusted to the care of the State of Minnesota, including patients with severe and profound developmental disabilities, schizophrenia, and psychotic disorders. Without a state budget or court order providing for the continued care of those patients, they would either have to be released or left unattended in state facilities.

There are currently more than 9,000 criminal offenders held in prisons operated by the State of Minnesota, approximately half of whom were convicted of crimes against persons. Without guards and personnel to provide for their security, housing, food, and care, these prisoners would have to be released, in violation of state sentencing statutes and court orders, jeopardizing the safety of the public.

There are also currently about 20,000 criminal offenders in the community who are being supervised by the State of Minnesota Department of Corrections because they were released from prison on supervised release, subject to state-imposed conditions of release. About 1,200 of them are high-risk offenders on intensive supervised release. If the State were to shut down, many of these offenders would be unsupervised. Moreover, even in counties where county agents are involved in supervision, offenders in the community who violate their conditions of release could not be arrested or reimprisoned, since the Minnesota Department of Corrections is the agency authorized to issue warrants, conduct revocation hearings, and reimprison released violators.

The 616 sex offenders who have been civilly committed to the State of Minnesota Sex Offender Program as sexually psychopathic personalities or sexually dangerous persons— all of whom have been determined by a court to be highly likely to reoffend or dangerous due to an inability to control their sexual impulses— would have to be released from State care. Likewise, predatory offenders, including Level III sex offenders, would be released from prison without risk level assessments, community notification, or screening by the State for possible civil commitment, since these functions are normally performed by the State of Minnesota Department of Corrections.

There are about 754 veterans—men and women who honorably served this country—in the care of the State's five veterans' homes. They are soldiers and service members who are "without adequate means of support and unable by reason of wounds, disease, old age, or infirmity to properly maintain themselves."[2] Some of these retired soldiers and service members suffer from diseases like Alzheimer's, dementia, and coronary and pulmonary disease. Others lost portions of their bodies while protecting our country, rendering them unable to protect themselves. Without funding to operate, these homes would have to shut down, leaving the veterans without care or services necessary to maintain their physical and mental health. All told, the State of Minnesota Department of Veterans Affairs is available to provide health care and other programs and services to about 400,000 Minnesota veterans and their families. This includes the State Soldier's Assistance Program, which provides emergency financial assistance to veterans, their dependents and their survivors, and dignified burial services at the Minnesota State Veterans Cemetery.

[2] Minn. Stat. § 198.022(1); Minn. R. 9050.0050.

Without a budget or court order, State Troopers would no longer be available to patrol and keep safe Minnesota highways. The State of Minnesota Bureau of Criminal Apprehension could not investigate crimes or provide forensic science services in criminal investigations.

The State of Minnesota Division of Homeland Security and Emergency Management—which, for example, coordinates the State's response in matters involving national security—could not operate. The State of Minnesota Department of Transportation could not respond to highway emergencies, such as vehicle collisions, barricade replacements, bridge damage and guardrail repair, potentially causing accidents on state highways.

Over 600,000 low income senior citizens, individuals with disabilities, pregnant women, and children and their parents rely on Medical Assistance. Without funding, their health could be jeopardized or disrupted, and the State would be in violation of its obligations to the federal government. Many of these people are low-income senior citizens in nursing homes. Low-income families with children would lose cash and food assistance benefits through the Minnesota Family Investment Program and Temporary Assistance to Needy Families program, leaving these households with little or no income to pay for basic life necessities during the economic downturn. People who are disabled or otherwise unable to work, including many who are homeless, would lose General Assistance benefits, which are funded with state dollars. Others would lose basic food assistance benefits.

A shutdown would preclude the State of Minnesota Department of Employment and Economic Development from distributing unemployment benefits to eligible Minnesotans in the

midst of the recession. In 2009, the Department paid benefits to over 800,000 applicants. New applicants for unemployment benefits would not have their applications processed.[3]

The State of Minnesota would be unable to respond to food-borne outbreaks like *E. coli* and *Salmonella,* and infectious diseases, like tuberculosis, which infected 135 Minnesotans last year. The Child in Need of Protection Services ("CHIPS") program, which protects children suffering from abuse or neglect, would lose state supervision and state funding.

A shutdown of government would even mean that the State would not be able to collect and deposit tax payments, further jeopardizing the State's fiscal situation. The State could also be inundated with lawsuits asserting various constitutional, statutory and breach of contract claims.

Although not part of this Petition, the absence of a state budget or court order would also profoundly impact law enforcement and civil justice if the courts could not operate. For instance, Minnesota would essentially have a "catch and release" criminal system. The police could arrest people, but they would have to let them go within 48 hours if there were no state court judge available to preside over a probable cause hearing.[4] There would also be no search warrants, since there would be no judges to authorize them. Individuals held in pretrial incarceration would have to be released or have the charges against them dismissed if there were no judges to give them speedy trials, as constitutionally required.[5]

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[3] Minnesota courts have long recognized that "[u]nemployment benefits are an entitlement protected by the procedural due process requirements of the fourteenth amendment." *Schulte v. Transp. Unlimited, Inc.,* 354 N.W.2d 830, 832 (Minn. 1984).

[4] Under Minn. R. Crim. P. 4.03, subd. 1, "a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of arrest." *See also County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (prompt judicial determination of probable cause required for warrantless arrest).

[5] U.S. Const. amend VI; Minn. Const. art. I, § 6 (right to a speedy trial).

The current budget impasse is similar to that which occurred in June 2001 and June 2005. In 2001, approval of this Court was sought to maintain the operation of the core functions of the executive and judicial branches of state government. This Court granted the relief sought, directing that funding be maintained for core functions of the executive and judicial branches. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C9-01-5725, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 29, 2001) ("*Executive Branch Core Functions 2001*"), and *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, No. C6-01-5911, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 29, 2001) ("*Judicial Branch Core Functions 2001*").

In 2005, approval of this Court was sought to maintain the operation of the core functions of the executive branch of government.[6] The Court again granted the requested relief. *See In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C0-05-5928, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 23, 2005) and subsequent Orders (filed June 30, 2005 and July 7, 2005) ("*Executive Branch Core Functions 2005*"). A copy of the Findings of Fact, Conclusions of Law, and Orders Granting Motion for Temporary Funding in both the 2001 and 2005 actions are attached as Exhibits 1, 2, and 4 to the Petition in this matter.

ARGUMENT

The requested relief should be granted for a number of reasons. First, citizens of Minnesota are entitled to certain rights and privileges under both the United States and

[6] In 2005, the legislature enacted funding for the judicial branch as part of a larger "Public Safety" appropriation bill. *See* Act of June 2, 2005, ch. 136. In 2001, the legislature had not enacted funding bills for either the executive or judicial branches.

Minnesota Constitutions that must be protected by the executive branch. Second, many government entities receive federal funding in connection with federal programs carried out by such entities. Such programs require regular payments and continued participation by the government entities. The Supremacy Clause of the United States Constitution mandates that participation in such programs by State and local governments continue regardless of the budget process. Third, based on the Minnesota Supreme Court decision in *State ex rel. Mattson v. Kiedrowski,* 391 N.W.2d 777 (Minn. 1986), as well as a proper construction of the Minnesota Constitution, the core functions of the executive branch of government must continue even in the absence of appropriated funds.

The Court has jurisdiction of this case to decide, based on the circumstances presented, the rights and responsibilities of the State constitutional officers who comprise the executive branch of government for the State of Minnesota. Indeed, the Court is authorized and obligated to adjudicate the respective powers and obligations of the branches of State government. *See, e.g., State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (recognizing the court's responsibility "to independently safeguard for the people of Minnesota the protections embodied in our constitution."); *In re McConaughy*, 106 Minn. 392, 416, 119 N.W. 408, 417 (1909) ("[T]he judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.").

The relief requested is limited and temporary in nature. The relief sought would only permit the continued operation of the core functions of the government entities as required by the United States and Minnesota Constitutions and, pursuant to the Supremacy Clause of the United States Constitution, by federal law, which mandates that certain actions be taken by the states.

Further, the relief requested is limited in duration and will remain in effect, at most, until July 30, 2011, unless the relief is extended by the Court.

I. UNLESS CORE SERVICES ARE PROVIDED, MINNESOTA CITIZENS WILL BE DEPRIVED OF THE RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

In *Executive Branch Core Functions 2001* and *Executive Branch Core Functions 2005*, the Court held that Minnesota citizens are guaranteed certain rights under both the United States and Minnesota Constitutions, and that those rights would be infringed "if executive branch agencies do not have sufficient funding to [continue to] discharge their core functions." *Executive Branch Core Functions 2005*, Concl. of Law 6, at 7; *Executive Branch Core Functions 2001*, Concl. of Law 6, at 7. The Court recognized that core functions of the executive branch "include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property."[7] *Executive Branch Core Functions 2005*, Concl. of Law 10, at 8; *Executive Branch Core Functions 2001*, Concl. of Law 10, at 8. *See also* Article I, Section 1 of the Minnesota Constitution which states that "government is instituted for the security, benefit and protection of the people . . . ."

Constitutional guarantees include the right of due process of law under both the Fourteenth Amendment to the U.S. Constitution and Article I, Section 7, of the Minnesota Constitution. In addition, Minnesota schools provide the constitutional guarantee of "a general and uniform system of public schools" with the assistance of substantial State aid. *Executive*

[7] For example, the Governor is constitutionally mandated to "take care that the laws be faithfully executed" and to ensure the citizens of Minnesota are secure and protected. *See* Minn. Const. art. I, § 1; art. V, § 3. Pursuant to this directive, one of the Governor's core functions is to continue to enforce the laws of the State of Minnesota requiring the protection of the health and safety of citizens, and the maintenance and protection of public property.

Branch Core Functions 2005, Concl. of Law 7, at 7; *Executive Branch Core Functions 2001*, Concl. of Law 7, at 7.

It is well-settled that states cannot abridge or ignore the constitutional rights of their citizens simply because funding has not been appropriated to meet those constitutional obligations. In *Watson v. City of Memphis,* 373 U.S. 526, 83 S. Ct. 1314 (1963), the Supreme Court reviewed a lower court's decision ordering the City of Memphis to immediately desegregate its public parks and other recreational facilities. As one of its defenses, the city claimed that it should be given more time to desegregate because a number of the recreational facilities would have to be closed because of the inadequacy of the present park budget. *Watson*, 373 U.S. at 537, 83 S. Ct. at 1320–21. The Supreme Court rejected this justification for delay by noting that "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Id.* at 537, 83 S. Ct. at 1321. *See also Abbott v. Burke,* ___ A.3d ___, 2011 WL 1990554, at *2 (N.J. May 24, 2011) (court held that state must fund a state constitutional right to education and reasoned that the state "may not use the appropriations power as a shield from its responsibilities.").

The lack of resources defense has also been rejected in other contexts. *See, e.g., Barker v. Wingo,* 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (delays in criminal justice process may violate defendants' due process rights, and overcrowded courts are not a defense); *Harris v. Champion,* 15 F.3d 1538, 1562-63 (10th Cir. 1994) (neither lack of funding for public defender system nor mismanagement of resources by public defender constitute acceptable excuses for lengthy delays in adjudicating direct criminal appeals); *Williams v. Bennett,* 689 F.2d 1370, 1387-88 (11th Cir. 1982) ("Defendants clearly may not escape liability [for an Eighth Amendment violation] solely because of the legislature's failure to appropriate requested

funds. . . . If . . . a state chooses to operate a prison system, then each facility must be operated in a manner consistent with the Constitution"); *Gates v. Collier,* 501 F.2d 1291, 1320 (5th Cir. 1974) ("shortage of funds is not a justification for continuing to deny citizens their constitutional rights."); *United States v. Terrell County*, 457 F. Supp. 2d 1359, 1367 (M.D. Ga. 2006) (recognizing lack of funds is not a defense or legal justification for the deprivation of constitutional rights).

In protecting the constitutional rights of citizens where funding is at issue, courts have even gone so far as to order tax increases. *See Stell v. Bd. of Pub. Educ. for the City of Savannah and the County of Chatham,* 724 F. Supp. 1384, 1405 (S.D. Ga. 1988) (federal court has broad equitable powers to remedy evils of segregation, including a narrowly defined power to order an increase in local tax levies on real estate, after exploration of every other fiscal alternative), (citing *Liddell v. State of Missouri,* 731 F.2d 1294, 1320 (8th Cir.)), *cert. denied,* 469 U.S. 816 (1984). *See Welsch v. Likins,* 550 F.2d 1122, 1132 (8th Cir. 1977) (finding state's constitutional requirements cannot be permitted to yield to financial considerations); *Jackson v. Bishop,* 404 F.2d 571, 580 (8th Cir. 1968) (holding constitutional requirements are neither measured by nor limited by financial considerations).

The absence of funding may not eliminate the constitutional rights of five million Minnesota men, women and children. The Court must provide the relief requested to ensure that constitutional protections continue to be afforded to the citizens of this State.

II. UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, THE STATE MUST ADMINISTER AND FUND FEDERAL PROGRAMS MANDATED BY CONGRESS.

The State has entered into a variety of agreements with the federal government pursuant to which federal programs are carried out by the State and local governments. Such programs include those providing public and medical assistance to needy persons. In addition to federal

funding, these programs require a certain level of state funding under the federal laws establishing such programs. *See Executive Branch Core Functions 2005*, Findings of Fact 8–9, at 4–5; *Executive Branch Core Functions 2001*, Findings of Fact 7–8, at 4–5.

The Supremacy Clause of the United States Constitution, Article VI, makes the United States Constitution and federal laws the supreme law of the land. *Testa v. Katt*, 330 U.S. 386, 67 S. Ct. 810 (1947). The laws of state government are subordinate to such federal requirements. As a result, the Supremacy Clause requires that payments be made and programs continue under the applicable federal laws regardless of whether any state appropriation has been made in connection with such programs.

In *Executive Branch Core Functions 2005* and *Executive Branch Core Functions 2001*, the Court held that "[t]he Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue." *Executive Branch Core Functions 2005*, Concl. of Law 8, at 7–8; *Executive Branch Core Functions 2001*, Concl. of Law 8, at 7. In numerous other cases involving budget impasses and public assistance payments, courts have ordered such payments to be continued despite the lack of any appropriation by the legislature. *See Coal. for Basic Human Needs v. King,* 654 F.2d 838, 841 (1st Cir. 1981) (ordering state to pay AFDC payments despite budget impasse and citing multiple decisions requiring states to pay to comply with state-federal cooperative federalism programs like AFDC and Medicaid); *Pratt v. Wilson,* 770 F. Supp. 539, 543–44 (E.D. Cal. 1991) (finding violation of federal law where state department of social services sent letter to county welfare directors advising that state would not release state or federal AFDC funds absent enactment of a state budget); *Ala. Nursing Home Ass'n v. Califano*, 433 F. Supp. 1325, 1330 (M.D. Ala. 1977) (recognizing inadequate funding does not excuse failure to comply with

federal Medicaid program standards); *Coal. for Econ. Survival v. Deukmejian,* 171 Cal. App. 3d 954, 957 (Cal. App. 2 Dist. 1985) (interim stay ordering state to refrain from withholding AFDC payments during budget impasse).

Of particular note is the case of *Knoll v. White,* 595 A.2d 665 (Pa. Commw. Ct. 1991). At issue in that case was a provision in the Pennsylvania Constitution pertaining to appropriations, which is virtually identical to that contained in the Minnesota Constitution. *See Knoll*, 595 A.2d at 668. When no appropriations were made by the Pennsylvania legislature, the *Knoll* court held that under the Supremacy Clause and federal law, Pennsylvania was required to continue making payments with respect to federally-based programs, including aid for dependent children, food stamps, and medical assistance. *Id.* at 668–69. The court held that the federal mandate, being supreme over the state constitutional requirement for appropriations authorization, required the continuation of such payments. *Id.* at 668.

In short, state government entities that participate in certain federal programs must continue to make payments and operate such programs.

III. THE CORE FUNCTIONS OF THE EXECUTIVE BRANCH CANNOT BE TERMINATED BY A BUDGET IMPASSE.

The Minnesota Supreme Court has held that one branch of government may not eliminate the core functions of another branch. *See State ex rel. Mattson v. Kiedrowski,* 391 N.W.2d 777 (Minn. 1986). At issue in *Mattson* was an act of the legislature which transferred most of the responsibilities of the State Treasurer to the Commissioner of Finance. *Id.* at 778. The legislature did not abolish the State Treasurer's position, but rather eliminated the budget of the treasurer and transferred to the Commissioner of Finance most of the State Treasurer's functions. *Id.*

The Minnesota Supreme Court held that the failure of the legislature to appropriate funds to the State Treasurer so that he could carry out the core functions of his office was unconstitutional. *Id.* at 782–83. The Court noted that Article III of the Minnesota Constitution discusses the distribution of the power of state government as follows:

> 'The power of government shall be divided into three distinct departments: legislative, executive and judicial. No power or persons belonging to or constituting one of these departments shall exercise any of the power properly belonging to either of the others except in the instances expressly provided in this constitution.'

Id. at 780 (quoting Minn. Const. art. III, § 1). The Court further noted that while Article V, Section 4 of the Minnesota Constitution provides that "[t]he duties and salaries of the executive offices shall be prescribed by law," that article does not authorize legislation that strips an office of all its independent core functions. *Id.* at 782. Because the legislative act at issue stripped the State Treasurer of his duties over the receipt, care and disbursement of state monies -- functions that constituted the very core of the Office of the State Treasurer -- the Court found the act to be unconstitutional. *Id.* at 782–83.

Mattson applies with equal force to this case. The Supreme Court noted that even though certain functions of the State Treasurer were preserved, the office "now stands as an empty shell." If there is no funding after June 30, 2011, the executive branch officials will essentially have no ability to operate and will effectively be nullified. The absence of funding will "strip [the executive branch offices] of all [their] independent core functions" as certainly as the legislative enactment did in *Mattson*. *See Executive Branch Core Functions 2005*, Concl. of Law 4, at 7 (holding that "[f]ailure to fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution"); *Executive Branch Core Functions 2001*, Concl. of Law 4, at 6–7 (same).

Mattson also recognized that the Minnesota Constitution provided that the Office of State Treasurer had certain inherent powers even if those powers were not expressly set forth in the Constitution. As the Court noted, Section 4 of Article V of the Minnesota Constitution simply states: "the duties and salaries of the executive officers *shall be prescribed by law*." *Id.* at 780 (emphasis added). Even with this express declaration in the Constitution that the Treasurer's duties were to be *prescribed by law*, meaning by legislative enactment, the Court held that there were implicit limits on the legislature's powers. *Id.* at 782. *See also Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners,* 241 N.W.2d 781, 784 (Minn. 1976) ("Obviously, the legislature could seriously hamper the court's power to hear and decide cases or even effectively abolish the court itself through its exercise of financial and regulatory authority. If the court has no means of protecting itself from unreasonable and intrusive assertions of such authority, the separation of powers becomes a myth.").

The *Mattson* and *Lyon County* decisions are consistent with decisions in other states. *See, e.g., Halvorson v. Hardcastle*, 163 P.3d 428, 439-40 (Nev. 2007) (finding that each branch of government has, "by virtue of its mere constitutional existence," the inherent authority to carry out its basic functions); *46th Circuit Trial Court v. County of Crawford*, 719 N.W.2d 553, 560 (Mich. 2006) (holding that separation of powers requires that each branch of government must be allowed adequate resources to carry out its constitutional responsibilities); *Case v. Lazben Fin. Co.*, 121 Cal. Rptr. 2d 405, 415 (Cal. Dist. Ct. App. 2002) (recognizing the legislature cannot act to defeat or impair another branch's exercise of its constitutional power or the fulfillment of its constitutional function); *Williams v. State Legislature of the State of Idaho,* 111 Idaho 156, 722 P.2d 465 (1986) (concluding that legislature cannot eliminate core functions of state auditor); *Bd. of Elementary & Secondary Educ. v. Nix*, 347 So.2d 147, 155 (La. 1977)

(holding that legislature may not prevent a branch of government from performing its constitutional function); *Jones v. State*, 803 S.W.2d 712, 715–16 (Tex. Crim. App. 1991) (recognizing the legislature violates the separation of powers doctrine if it unduly interferes with another branch); *O'Coin's, Inc. v. Treasurer of County of Worcester*, 287 N.E.2d 608, 612 (Mass. 1972) (finding that the legislature, through the exercise of its powers, may not prevent another branch from fulfilling its constitutional responsibilities); *Thompson v. Legislative Audit Comm'n*, 448 P.2d 799, 801-02 (N.M. 1968) (holding legislature cannot abolish the core functions of the constitutional office of state auditor); *Morris v. Glover*, 121 Ga. 751, 49 S.E. 786 (1905) (finding that legislature cannot expressly abolish the office of county treasurer and cannot indirectly accomplish the same result by transferring its duties to another office).

The *Mattson* and *Lyon County* decisions are also supported by long-standing U.S. Supreme Court precedent, which recognizes that the principle of separation of powers requires that each co-equal branch of government be free from control by the other branches. "The general rule is that neither department (of government) may . . . control, direct or restrain the action of the other." *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S. Ct. 597, 601 (1923). *See also O'Donoghue v. United States*, 289 U.S. 516, 530, 53 S. Ct. 740, 743 (1933) ("[E]ach department should be kept completely independent of the others-independent not in the sense that they shall not cooperate to the common end of carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to the coercive influence of either of the other departments."); *Humphrey's Executor v. United States*, 295 U.S. 602, 629-30, 55 S. Ct. 869, 874 (1935) ("The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed

and is hardly open to serious question. So much is implied in the very fact of the separation of the powers . . . .").[8]

The absence of appropriated funds cannot eviscerate the core functions of state government. Accordingly, the requested relief should be granted.

IV. FUNDAMENTAL PRINCIPLES APPLICABLE TO THE CONSTRUCTION OF THE MINNESOTA CONSTITUTION ALSO SUPPORT THE REQUESTED RELIEF.

The Court must give the constitution a practical, common sense construction so as to harmonize its various parts. *See, e.g., State ex rel. Mathews v. Houndersheldt,* 151 Minn. 167, 170-71, 186 N.W. 234, 236 (1922) ("The constitution must be read as a whole so as to harmonize its various parts."); *State ex rel. Chase v. Babcock,* 175 Minn. 103, 107, 220 N.W. 408, 410 (1928) (recognizing that constitution must "receive a practical, common sense construction."). In addition, "[t]he rules applicable to the construction of statutes are equally applicable to the constitution." *Clark v Ritchie,* 787 N.W.2d 142, 146 (Minn. 2010) (citing *Houndersheldt,* 151 Minn. at 170, 186 N.W. at 236).

In this case, there are competing constitutional provisions. On the one hand, Minnesota Constitution Article XI, Section 1 gives the legislature the power of appropriation, and on the other hand Article V, Sections 3 and 4 direct the constitutional officers to perform their respective core responsibilities. All constitutional officers take an oath to uphold the Minnesota

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[8] In *Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. Ct. App. 2007), a group of legislators petitioned for a writ of *quo warranto* challenging the constitutionality of the Commissioner of Finance's disbursement of funds pursuant to the district court's Order in *Executive Branch Core Functions 2005*. The court found the remedy of *quo warranto* to be inapplicable because the legislature had retroactively appropriated funds for the Commissioner's disbursements. *Id.* at 320 (holding that "*quo warranto* cannot be used to challenge the constitutionality of completed disbursements of public funds."). The court therefore declined to reach the merits, but stated that the legislature could avoid future judicial intervention to fund core services of a coordinate branch of government by enacting legislation to address a potential budget impasse. *Id.* at 323.

and United States Constitutions and to discharge faithfully the duties of their office. *Id.*, art. V, § 6.

Where, as here, a budget impasse exists that prevents the executive branch from performing its constitutional duties in the 2012-13 biennium, an inconsistency exists in the application of these constitutional provisions. The Court must therefore construe the Constitution to ascertain the framers' intent. *See, e.g., In re Minnesota Power & Light Co.*, 435 N.W.2d 550, 556 (Minn. Ct. App. 1989) (stating where statutes "appear inconsistent, the entire act should be construed so as to ascertain and effectuate its principal objective."). In so doing, it is presumed that the framers of the Minnesota Constitution did "not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1); *see, e.g., Minnesota Baptist Convention v. Pillsbury Acad.*, 246 Minn. 46, 57, 74 N.W.2d 286, 294 (1955) (rejecting an "absurd" construction of the Minnesota Constitution).

Although another branch holds the power of the purse, the framers undoubtedly never envisioned that would or could prevent the executive branch of government from carrying out its constitutional responsibilities. *See, e.g.*, Minn. Const. art. I, § 1 ("Government is instituted for the security, benefit and protection of the people . . . ."); art. III, § 1 (dividing the powers of government into three *independent* departments); *id.*, art. V, § 3 (stating Governor "shall take care that the laws are faithfully executed."). Such a construction would mean "that our state constitution is devoid of any meaningful limitation on legislative discretion" and would "do violence" to the framers' intent. *See Mattson*, 391 N.W.2d at 782-83. *See also Lyon County*, 241 N.W.2d at 784 (recognizing that "separation of powers becomes a myth," if one branch of government could "effectively abolish" another); *Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 223 (Minn. 1979) ("Notwithstanding the separation of powers doctrine, there has never

been an absolute division of governmental functions in this country, nor was such even intended.").

The operations of state government cannot completely shut down. As discussed *supra* at 2-5, a full shutdown would severely impact public safety; among other things, criminals, sexual predators, and those committed because they are mentally ill and dangerous would either be left unattended and uncared for, or released. A full shutdown would similarly impact citizens' health and human dignity; for example, disabled veterans and individuals with developmental disabilities who are cared for in State facilities would be discharged or left to fend for themselves. These results could not have been intended by the drafters of the Minnesota Constitution.[9] *See, e.g., Terminiello v. Chicago,* 337 U.S. 1, 37, 69 S. Ct. 894, 911 (1949) (Vinson C.J., dissenting) (stating that U.S. Constitution is not "a suicide pact.").

Numerous court decisions have construed state constitutions to avoid such results. *See, e.g., 46th Circuit Trial Court*, 719 N.W.2d at 560 ("Although the allocation of resources through the appropriations . . . authorit[y] lies at the heart of the *legislative* power . . . in those rare instances in which the legislature's allocation of resources impacts the ability of [another] branch to carry out its constitutional responsibilities, what is otherwise exclusively a part of the legislative power becomes, to that extent, a part of the [co-ordinate branch's] power."); *Williams,* 722 P.2d at 470 (construing the Idaho Constitution and framers' intent as prohibiting the

[9] Although the legislature appropriated funds for the Agriculture Department, the Board of Animal Health and the Agricultural Utilization Research Institute, and standing appropriations exist for school district and local government aid funding, see note 1, *supra,* the Commissioner of the Department of Management and Budget ("MMB") and other pertinent agencies may have no funding to provide the administration for those appropriations. Similar issues may exist with respect to the Minnesota State Colleges and Universities, which has appropriated tuition monies, Minn. Stat. § 136F.71, subd. 1, but there may not be an appropriation for MMB to administer the funds. Accordingly, even for appropriations in place for the upcoming biennium, a confined reading of the constitution may cause the appropriations to be without any practical effect.

legislature from reducing appropriations to a constitutional officer below the level necessary to carry out his core functions); *Nix*, 347 So.2d at 155 (holding legislature's reduction of education board's staff deprived board of its ability to perform its core functions and therefore was an unconstitutional violation of the separation of powers); *Thompson*, 448 P.2d at 801-02 (construing New Mexico Constitution and finding framers could not logically have intended legislature to abolish a constitutional office; thus, legislature's attempt to strip state auditor of core functions and reduce salary to $1.00 was unconstitutional); *Morris*, 49 S.E. at 787 (recognizing framers of Georgia Constitution established separate and distinct constitutional offices and never contemplated legislature had the power to render such offices an empty shell). *See also Fletcher v. Kentucky,* 163 S.W.3d 852, 968-69 (Ky. 2005) (invalidating governor's executive order appropriating funds, but holding that certain executive branch functions must be funded by the state treasurer even in the absence of a legislative appropriation); *id.* at 876-877 (Lambert, Chief Justice, concurring and dissenting in part) (stating the Kentucky Constitution "must be interpreted to further its purpose of supporting the endurance of a representative republic" and "[a]llowing the General Assembly to control the executive by way of the appropriations clause strikes at the heart of the purpose of separation of powers . . . . The logical extension of such an idea would be the destruction of government.").

The Minnesota constitution was drafted to effectuate the operation of government. A contrary construction is not only inconsistent with the *Mattson, Lyon County* and *Wulff* decisions, but is also unsupported by basic principles of constitutional interpretation.

By contrast, Petitioner's requested relief harmonizes the constitutional provisions regarding the legislature's right to appropriate and the executive branch's core functions, including the obligation to "take care that the laws be faithfully executed." Minn. Const. art. V,

§ 3. The requested relief is limited in nature, namely that if the budget impasse continues after June 30, 2011, the executive branch would only perform essential services under court order until the impasse is resolved. As a result, the operation of government will continue in a limited way with respect to core functions until a budget agreement is reached.

The constitutional mandate that the executive branch protect the rights of the citizens of the State of Minnesota must be given meaning, and the rights of the citizens must be protected. *See, e.g.,* Minn. Const. art. I, § 1 ("Government is instituted for the security, benefit and protection of the people . . . .").

CONCLUSION

For the above reasons, the Court should direct that the core functions of the executive branch of government continue to be performed and that payments be made for the performance of such functions.

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Respectfully submitted,

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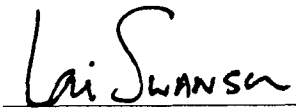

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