

FILED

September 15, 2017

**OFFICE OF
APPELLATE COURTS**

CASE NO. A17-1142

**STATE OF MINNESOTA
IN SUPREME COURT**

The Ninetieth Minnesota State Senate
and the Ninetieth Minnesota State House of Representatives,

Respondents,

vs.

Mark B. Dayton, in his official capacity as Governor of the
State of Minnesota, and Myron Frans, in his official capacity as
Commissioner of the Minnesota Department
of Management and Budget,

Appellants.

**ADDENDUM OF APPELLANTS
TO INFORMAL MEMORANDUM
IN RESPONSE TO ORDER OF SEPTEMBER 8, 2017**

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ADDENDUM

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Recommended Statewide Objectives 2011 Potential Minnesota Government Shutdown

Prepared by the Statewide Contingency Response Team
Commissioner of MMB Jim Schowalter, Chair

June 15, 2011

I. Planning Assumptions

- Agencies should plan to continue only priority one and two critical services;
- Agencies should plan minimal/necessary staffing levels for the priority one and two critical services.
- Agencies should include in their planning; personnel, resources (financial and others) and those support services that are both directly related to, and absolutely necessary to continue priority one and priority two critical services;

II. Statewide Priority Service Objectives

The State's Statewide Contingency Response Team (SCRT) has established five statewide objectives that must be met during a government shutdown. In order, they are:

- A. provision of basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans' homes, and residential academies and other state operated services;
- B. maintenance of public safety and immediate public health concerns;
- C. provision of benefit payments to individuals;
- D. preservation of the essential elements of the financial system of the government; and
- E. provision of *necessary* administrative and support services for the above goals.

III. Priority Service Definitions and Categories

In addition, the SCRT has established four statewide priority service definitions to meet the aforementioned objectives. All agencies must assign their services to the following four priority levels:

A. Priority 1 Critical Services (Immediate threat to public health and/or safety)

Services with critical/core activities that must remain uninterrupted. Generally, these would include agencies and facilities that operate 24-hours a day.



Categories:

- 1.0 Providing for security;
- 1.1 Medical care of inpatients and emergency outpatient care;
- 1.2 Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- 1.3 Continuance of transportation safety functions and the protection of transport property;
- 1.4 Protection of lands, buildings, waterways, equipment and other property owned by the government;
- 1.5 Care of prisoners and other persons in the custody of government;
- 1.6 Law enforcement and criminal investigations;
- 1.7 Emergency and disaster response or assistance;
- 1.8 Activities that ensure the production of power and the maintenance of the power distribution system;
- 1.9 A process for maintaining communication with agency personnel and the SCRT
- 2.0 Support/Administrative services to support the Priority 1 Critical Service.

B. Priority 2 Critical Services

(Disorder or a severe, statewide economic impact may develop if not delivered in a few days)

Services with critical/core activities that have a recovery time of 25 hours to five days that can be disrupted temporarily or might be periodic in nature, but must be re-established within a few days.

Categories:

- 2.0 Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government and systems to support these activities;
- 2.1 Contract performance where a suspension or termination could be regarded a material default, and that could result in substantial money damages against the state, and there is no dependency on substantial support from state resources that are not funded ("*substantial*" means *something more than merely cutting a check for payment, but rather entail the need for continued full time activity on the part of three or more full time employees*);
- 2.2 Activities having a severe and permanent negative financial impact to business or vulnerable populations or groups of individuals within Minnesota.
- 2.3 Support/Administrative services to support the Priority 2 Critical Service.

C. Priority 3 Critical Services

(Services required by law or rule that can be suspended by law or rule during an emergency)

Activities with a recovery time objective of six days to 30 days that can be disrupted temporarily but must be re-established sometime before the emergency or disruptive event is over (<6 weeks).

D. Priority 4 Critical Services

(Services that could be suspended during an emergency and are not required by law or rule)

Activities with a recovery time objective of 30+ days which can be deferred for the duration of a long-term event (6-8 weeks).

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 29 2001

By lg Deputy

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. C9-01-5725

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janceen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget (“OMB”) and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;

- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).

3. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people” Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a “general and uniform system of public schools.” Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The 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.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of prisoners and others in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. Esther Tomljanovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:

- a. July 23, 2001;
- b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

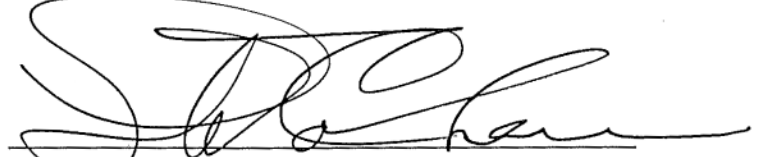
c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer, and
- f. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:



The Honorable Chief Judge Lawrence D. Cohen

Dated this 29th day of
June, 2001.

AG: 488383, v. 01

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. C6-01-5911

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 28, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the judicial branch of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on various public officials as indicated by the affidavits of service on file.

A hearing was held on June 29, 2001 in front of the undersigned Judge of District Court, sitting by special appointment of the Honorable Kathleen A. Blatz, Chief Justice of the Minnesota Supreme Court.

Appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing were as indicated on the record.

Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people” Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I.

3. The judicial branch of the State of Minnesota was established by the State Constitution and includes the Minnesota Supreme Court, the Minnesota Court of Appeals and Minnesota district courts.

4. Article VI of the Minnesota Constitution provides that the judicial branch of government have and perform certain core functions. The core functions involve the adjudication of cases. They include the obligations to promptly hear and decide criminal cases so that criminal defendants’ rights are secured, and public safety concerns are met. The core functions of the judicial branch also include all activities necessary for civil courts to function so that citizens may have a prompt remedy for wrongs and injuries, as guaranteed by Article I, section 8 of the Minnesota Constitution.

5. The affidavit of State Court Administrator Sue Dosal, submitted to this Court in support of Petitioner’s motion, adequately documents that the entire scope of services currently

performed by, and the responsibilities currently assigned to, the judicial branch are necessary to preserve the adjudicatory role and to perform the proper administration of justice as contemplated in the state constitution.

6. Any decrease in the ability of the judicial branch to handle cases and associated administrative matters would cause the judicial branch to be unable to carry out its core functions.

7. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate. This includes appropriations for the judicial branch.

8. The Minnesota Legislature ended its regular session on May 21, 2001 without approving appropriations for the judicial branch for the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not as yet resulted in any appropriations for the judicial branch.

9. Due to the lack of legislative appropriations, the judicial branch has insufficient funds to carry out its core functions as of July 1, 2001.

10. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the judicial branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).

3. Article III of the Minnesota Constitution provides that the powers of government shall be divided into three distinct departments: legislative, executive and judicial. Minn.Const. Art. 3, § 1. No branch is imbued with the power to nullify the core functions of the other. *See State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

4. There are no existing legislative-administrative procedures for funding the judicial branch in the event of the Legislature's failure to make appropriations prior to the beginning of a fiscal year.

5. The core functions of the judicial branch must be funded adequately for it to meet its obligations under the United States and Minnesota Constitutions.

6. Failure to fund the core functions of the judicial branch nullifies the judicial branch, which in turn contravenes the Minnesota Constitution.

7. The judicial branch has inherent judicial power to insure its self-preservation. *Clerk of Courts Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781 (Minn. 1976). Procedures have been established for the assertion of inherent judicial power. *Id.*

8. The relief requested in the petition for an order requiring the Commissioner of Finance and the State Treasurer to administer payments to the judicial branch for the funding of its core functions until appropriate Legislative appropriations have been finalized is necessary to the continued performance of the core functions of the judicial branch.

9. This Court has the inherent judicial power to order payment of such funds as are necessary to enable the judicial branch to carry out its core functions. *See Id.*

ORDER

1. The Minnesota judicial branch shall continue to perform the core functions of that branch as required by the Minnesota Constitution and the U.S. Constitution, and the State of Minnesota shall continue to pay for such services at the rate provided for in the fiscal year ending June 30, 2001.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of the judicial branch can be discharged.

3. Minnesota State Court Administrator Sue Dosal shall, consistent with the terms of this Order, determine what core functions are required to be performed by the judicial branch. She shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. The Honorable Esther Tomljanovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance with the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:

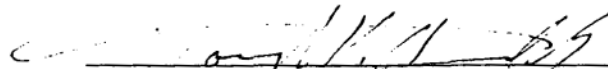
- a. July 23, 2001;
- b. The enactment of a budget by the State of Minnesota to fund the core functions of the judicial branch after June 30, 2001; or
- c. Further Order of this Court.

6. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

- a. The Honorable Jesse Ventura, Governor of the State of Minnesota,
- b. The Honorable Don Samuelson, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Pamela Wheelock, Commissioner of Finance,
- e. The Honorable Carol Johnson, Minnesota State Treasurer,
- f. The Honorable Mary Kiffmeyer, Minnesota Secretary of State,
- g. The Honorable Judith Dutcher, Minnesota State Auditor,
- h. The Honorable Robert Small, Acting U.S. Attorney for the District of Minnesota; and
- i. Sue Dosal, State Court Administrator.

7. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

BY THE COURT:



The Honorable Douglas K. Amdahl
District Court Judge

Dated this 29th day of June, 2001.

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FILED
Court Administrator

JUN 23 2005

By  Deputy

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. C0-05-5928

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 15, 2005, this Court issued an Order to Show Cause setting a hearing date of June 29, 2005 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2005. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. On June 15, 2005 Governor Tim Pawlenty filed a Motion to Intervene in the proceeding and requested that the hearing be held on June 23, 2005. The Petitioner agreed to move-up the hearing and so notified the 500 public officials as set forth in his Affidavit of Service. At the hearing on June 23, 2005, appearances were made by Attorney General Mike Hatch and by Eric Lipman, Esq., on behalf of Governor Pawlenty. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. Governor Tim Pawlenty is the Governor of the State of Minnesota. The parties stipulate that Governor Pawlenty may intervene in this matter.

3. The Minnesota Legislature ended its regular session on May 23, 2005 without approving appropriations for many of the executive branch officers and agencies for the fiscal year beginning on July 1, 2005. Exhibit 1 to the Affidavit of Mike Hatch contains a list of those agencies that were not funded. On May 24, 2005, Governor Tim Pawlenty convened the legislature in special session. The special session has not resulted in any appropriations for the remaining executive branch officers and agencies.

4. The Minnesota Constitution entrusts certain core functions to the executive branch of government. Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

5. The following Public Officials serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded by the legislature.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alice Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,

- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,
- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation, and
- 14) Peter Bell, Metropolitan Council.

6. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of boards, commissions and the like which act on behalf of state government and perform core functions, and which have not yet been funded.

7. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

8. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2005, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

9. Examples of the federal programs referenced in paragraph 7 include the following: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(9) and (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three

federal programs. See Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); and 256.01, subd. 2 (Medicaid Program) (2004).

10. Due to the lack of legislative appropriations, many of the executive branch agencies and the local units of Minnesota government have insufficient funds to carry out all of their core functions as of July 1, 2005. Any failure to properly fund core functions of the executive branch may violate the constitutional rights of the citizens of Minnesota.

11. In 2001 Attorney General Mike Hatch petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to the Affidavit of Mike Hatch submitted in support of this Petition.

12. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

13. Pursuant to the criteria referenced in paragraph 11 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

14. The Petitioner, Mike Hatch, has indicated that the State has ample financial reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2004) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2004).

3. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Under

Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people” Article I, Section 1. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2005.

7. The Minnesota Constitution requires that the State provide an adequate education through a “general and uniform system of public schools.” Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements continued participation in those programs is required once a State has

agreed to participate. The 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.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. Core functions also include functions required to be performed by the State under a federal contract or federal law.

ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. Core functions shall include, but are not limited to, the services set forth in the Core and Critical Functions List attached as Exhibit B to this Order. This Order does not approve or disapprove of the numbers of employees needed to carry out the core functions which are set forth in the List. Rather, State agencies and officials are mandated to employ the number of employees necessary to carry-out the core functions in a timely manner.

3. The Minnesota Commissioner of Finance, Peggy Ingison, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

4. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Special Master who shall determine whether the Commissioner of Finance should pay for such services.

5. The Honorable Edward Stringer is hereby appointed as Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

6. This Order shall be effective until the earliest of the following:

- a. July 23, 2005;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2005; or
- c. Further Order of this Court.

7. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

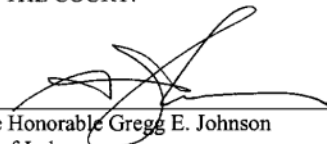
- a. The Honorable Tim Pawlenty, Governor of the State of Minnesota,
- b. The Honorable James Metzen, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Peggy Ingison, Commissioner of Finance, and

e. The Honorable Thomas Heffelfinger, U.S. Attorney for the District of Minnesota.

8. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

9. On Monday, July 11, 2005, at 9:30 a.m., the parties and Special Master will appear at a case management conference for the purpose of updating the Court as to the status of activities taken pursuant to this Order and the need for any further relief.

BY THE COURT:



The Honorable Gregg E. Johnson
Chief Judge
Ramsey County District Court

Dated this 23 day of
June, 2005.

AG: #1432476-v1

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator
JUN 29 2011
By Deputy

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. 62-CV-11-5203

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
MOTION FOR TEMPORARY FUNDING**

On June 15, 2011, this Court issued an Order to Show Cause setting a hearing date of June 23, 2011 on the motion of Petitioner Lori Swanson, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. Since then, various other submissions have been filed with the Court. Appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Governor motioned this Court to order mandatory mediation between the executive and legislative branches. The Court denied the motion orally and in a written order dated June 27, 2011. The Governor opposes the Attorney General's Petition for a court order directing core functions of the State of Minnesota to continue absent a budget agreement between the executive and legislative branches by June 30, 2011. The Governor asks this Court not to issue any further orders at this time arguing the issue is not justiciable. The Governor asserts that he is prepared to use his executive power without an appropriation or court order should the executive and legislative branches fail to reach a budget agreement.

2. The Court finds that the issue has “ripened” to the point where it needs to be ruled upon by the Court. *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc.*, 271 N.W.2d 445 (Minn. 1978).

3. The Attorney General petitioned this Court for an order directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. She also requests the Court appoint a Special Master. The Attorney General took no position on the motion for mediation but informed the Court she would participate if ordered to do so.

4. The Minnesota House opposed the request for court ordered mediation as unconstitutional. At the hearing, counsel for the House stated the House does not oppose the Attorney General’s Petition or the Governor’s position. The House specifically requested the Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The House also took the position that the issue before the Court is justiciable.

5. The Minnesota Senate concurred with the Minnesota House’s position on mediation. It takes no position on the Attorney General’s Petition and does not oppose the Governor or the Attorney General’s requests regarding what functions should be deemed essential. The Senate concurred with the House’s position regarding its request that this Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The Senate asks that this Court treat both legislative bodies the same.

6. Minnesota Senators Roger Chamberlain, Warren Limmer, Scott Newman, and Sean Nienow motioned this Court to intervene as parties. The Governor and the Attorney

General both opposed the motion to intervene. The House and Senate took no position on the issue. The Court denied the motion orally on June 23, 2011. The four senators were allowed to participate as *amicus curiae* regarding the issues raised in the Attorney General's petition.

7. The Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association and Minnesota Habilitation Coalition, Inc. motioned this Court to intervene as parties. The Governor, Minnesota House, Minnesota Senate and the Attorney General had no objection. Therefore, this Court granted intervention orally.

8. The Minnesota Workforce Council Association, the Associated General Contractors of Minnesota and Hennepin County also made motions to intervene. The Attorney General had no objection to the extent that the interveners did not raise new issues. The Governor had no objection to the motions. The House and Senate took no position on the issue. The Court took the motions under advisement.

9. Petitioner Lori Swanson is the Attorney General of the State of Minnesota and in that capacity she represents the public in all legal matters involving the State of Minnesota. She also represents the people of the State in a *parens patriae* capacity.

10. The regular session of the Minnesota Legislature ended on May 23, 2011. No legislation has been enacted appropriating funds for the executive branch officers and agencies (other than the Department of Agriculture, the Board of Animal Health and the Agricultural Utilization Research Institute) for the fiscal year beginning on July 1, 2011.

11. The legislature failed to pass a "lights on" bill that would have continued funding of executive branch core functions beyond 11:59 p.m. on June 30, 2011 before it adjourned.

12. The Governor has not called the legislature into special session in order to have it attempt to pass either a “lights on” bill or funding bills that would either have a two-thirds majority or be signed by the Governor.

13. After the 2005 shutdown, the Minnesota Court of Appeals stated that, “The legislature could prevent another judicially mandated disbursement of public funds without an authorized appropriation by, for example, creating an emergency fund to keep the government functioning during a budgetary impasse or enacting a statute setting forth the procedures to be followed during a budgetary impasse.” *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. App. 2007). The Court of Appeals emphasized that it is “the legislature and not the judiciary that has the institutional competency to devise a prospective plan for resolving future political impasses.” In the five years since the *Sviggum* decision was issued, no plan has become law.

14. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the five executive branch constitutional officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

15. Due to the lack of appropriations, the five constitutional officers of the State of Minnesota and the executive branch agencies will not have sufficient funds to carry out their core functions. The failure to properly fund critical core functions of the executive and legislative branches will violate the constitutional rights of the citizens of Minnesota.

16. In 2001 and 2005, the Attorney General petitioned this Court to preserve the operation of core functions of the executive branch of government after a budget was not enacted to fund state government. In those instances, this Court issued Orders providing for the

continued performance of the core functions of the executive branch constitutional officers, and that the State continue to pay for such functions performed after July 1, 2001 and July 1, 2005, respectively. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C0-05-5928 (Ramsey Co. D.Ct., filed June 23, 2005); *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001). In 2001 and 2005, the Court appointed a Special Master to assist in resolving issues relating to the Orders. The constitutional analysis that resulted in the judges in those cases granting the Attorney General's petition has not been the subject of appellate review. In both the 2001 and the 2005 cases, the Governor agreed with and joined in the Attorney General's request.

17. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

OMB Memorandum, *Agency Operations in Absence of Appropriations* (Nov. 17, 1981), available at http://www.opm.gov/furlough/OMBGuidance/Attachment_A-4.pdf (hereinafter "OMB Memorandum").

18. Pursuant to the criteria referenced in paragraph 14 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

OMB Memorandum.

19. Minnesota Constitution Article III, Section 1, regarding no branch exercising the powers of another, is not found in the United States Constitution. It is found in a number of state constitutions. It is an “unusually forceful command...” *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005).

20. Article I, Section 1, of the Minnesota Constitution states, “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent...” Other sections of the Constitution impose a variety of core functions upon the five constitutional officers which may not be abridged. *State ex rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

21. The Minnesota Constitution requires that the state provide a “general and uniform system of public schools.” Minn. Const. art. XIII, § 1. This requires that the state finance an “adequate” level of education that is uniformly available to all students. This constitutional provision makes funding education a critical core function of government.

22. The Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to an intergovernmental compact agreement or congressional mandate.

23. The State of Minnesota has reserves at this time sufficient to fund core functions of the executive branch, and the executive branch could continue to operate core functions if it had access to those funds.

24. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2011, the State will violate the Supremacy clause of the U.S. Constitution. These agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens.

25. Examples of the federal programs referenced in paragraph 17 include the following: the Supplemental Nutrition Assistance Program (referred to herein as the Food Stamp Program), 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* 7 U.S.C. § 2020(a); (d), (e)(2), (3) & (9); 42 U.S.C. § 602(a)(1), (4); 42 U.S.C. § 1396a(a)(9), (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit

costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g); 42 U.S.C. § 609; 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); 256.01, subd. 2 (Medicaid Program). The Attorney General also has certain obligations under federal law (as well as state law) with respect to the Medicaid Program. *See, e.g.*, 42 U.S.C. § 1396b(q) (investigate and prosecute Medical Assistance fraud); Minn. Stat. § 256B.12 (original jurisdiction for Medicaid fraud). The Supremacy Clause of the United States Constitution requires the State of Minnesota to fulfill these agreements with the United States government requiring the State to make payments to individuals or local governmental units, or to undertake administrative duties on behalf of or in cooperation with the federal government. The duty to fulfill these agreements, et cetera, constitute core functions for state government under the United States Constitution.

26. Budget impasses in the absence of state funding appropriations do not permit a state to forego its obligation to fund certain federal programs. *Coalition for Basic Needs v. King*, 654 F.2d 838 (1st Cir. 1981). The Supremacy Clause of the United States Constitution, Article VI, clause 2, makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386 (1947).

27. The Governor requested in his pleadings that if the Court did decide to issue an order other than to mediate, said order should be based on the Governor's determination of what

priority critical services must be continued. The Governor created a Statewide Contingency Response Team (SCRT) chaired by the Commissioner of the Department of Management and Budget, to establish statewide objectives in the event of a shutdown. The Court agrees with the Governor that the following critical core functions of government should continue to be funded after June 30, 2011 even if there is no resolution of the present funding dispute between the executive and legislative branches:

1) Basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans homes, and residential academies and other similar state-operated services.

2) Maintenance of public safety and immediate public health concerns.

3) Provision of benefit payments and medical services to individuals.

4) Preservation of the essential elements of the financial system of the government.

5) Necessary administration and supportive services, including but not limited to computer system maintenance, internet security, issuance of payments.

28. The Court has attached as Exhibit A the document entitled, "Recommended Statewide Objectives, 2001 Potential Minnesota Government Shutdown and Recommended Priority 1 and Priority 2 Critical Services." The Court has made some minimal changes in the document submitted by the Governor. The Court agrees with the Governor that the Court's order regarding continuing funding for core functions of the government should focus on the critical services discussed in Exhibit A. It agrees that those functions are critical.

29. Any order of this Court allowing the Commissioner of the Department of Management and Budget to issue checks and process funds to pay for core functions and

obligations that the State has pursuant to the Supremacy Clause of the United States Constitution should limit itself to only the most critical functions of government involving the security, benefit, and protection of the people.

30. There have been numerous motions to intervene and motions to participate as amicus curiae filed because of the issues raised in this case. The briefs and letters submitted represent many programs, agencies, and contracted private businesses that will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws appropriating funds. It has been argued compellingly that many of these programs and entities are beneficial to the people of the State, provide services that may aid citizens in working their way out of poverty, may provide jobs for private industry, may improve the state infrastructure, may result in benefits that help working class people obtain and maintain employment, and provide a myriad of other benefits to the State. In light of Article XI, the Court believes that the negative impact of a government shutdown on these programs does not justify a court in over-extending its authority. In light of Article XI of the Minnesota Constitution, the Court must construe any authority it has to order government spending to maintain critical core functions in a very narrow sense. Discretionary appropriations are the province of the legislature, not the courts.

31. Numerous Minnesota non-profit organizations have filed to either intervene in the proceedings or to participate as amicus curiae. They provide services to vulnerable clients. These clients may suffer hardships and fail to make the progress of which they are capable without the assistance of these non-profits. Some non-profit entities will not survive without state appropriations. Neither the good services they provide nor the fact that they may cease to

exist without state funding is sufficient cause to deem their funding to be a critical core function of government and to overcome the constitutional mandate in Article XI.

32. The Court finds that “core functions” that are critical enough to require court-ordered funding despite Article XI are far less in number and breath than proposed by the Attorney General and those seeking amicus curiae status.

33. Except for TANF programs, the child care assistance programs discussed in the memorandum of the amici Coalition of Child Care Providers and Supporters are not critical core function programs that would justify this Court in ordering funding despite the lack of legislative appropriations as required by Article XI.. Child care programs that are funded under the TANF program should continue to be funded. Not to do so would violate the Supremacy Clause of the United States Constitution. The Court is aware that not funding non-TANF child care assistance may cause extreme hardship to low income working parents, increase the public assistance rolls because some of these people will have to leave the workforce in order to care for their children, and may lessen the opportunities for low income children to succeed in school. These likely consequences can only be avoided by the exercise of legislative and executive branch discretion in settling the budget issues.

34. The Horsemen’s Benevolent and Protective Association brief in support of its motion to intervene or file an amicus curiae brief argues that if they are not able to have racing after June 30, 2011, the race meet will be destroyed, and that the reputation of the Minnesota race meet will be permanently blemished, and future race meets will be jeopardized. Nothing was presented that leads the Court to believe that their assertions are anything less than true. If the Court were to order funding of regulatory activities necessary to allow future race meets to take place, it would, in effect, be ruling that the regulation of horse racing is a core function of

government. Regulation of horse racing is not a core function of government. The Court is granting the motion to intervene so that the Horsemen's Benevolent and Protective Association make seek emergency review by an appellate court. The only practical and legal remedy that would save the Association from the damage caused by the failure of other branches of government to resolve their differences is obtainable only by the governor calling a special session and the legislature passing appropriations bills that are capable of becoming law.

35. The appointment of a Special Master will help promote judicial economy and efficiency. A Special Master creates an orderly process to resolve requests for, or objections to, funding, thereby preventing the necessity for multiple individual lawsuits to be filed and adjudicated. *See, e.g.*, Minn. R. Civ. P. 1 (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); Minn. R. Civ. P. 53.01 (authorizing appointment of special master). *See also* 9C Wright & Miller, Federal Practice and Procedure: Civil §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims).

36. The Governor's Statewide Contingency Response Team decided to recommend that the only critical core functions of the Minnesota Zoological Gardens are feeding the animals, and keeping the animals, the exhibits, and the zoo property safe, secure, and healthy. The Court agrees with that determination and also would add that it is necessary to fund whatever staff is necessary to make sure that none of the animals can escape and become a danger to the public. The Court recognizes that this will cause significant harm to the zoo as the 4th of July weekend and the rest of the summer are the busiest times of the year. It further recognizes that this will significantly reduce the receipts of the zoo. Those concerns need to be recognized and resolved by actions of the executive and legislative branches, not by the judicial branch. The operations

of a zoo, even when in large part paid for by admission charges and other receipts, is a critical core function of government sufficient to overcome the requirements of Article XI.

37. The Minnesota Association of General Contractors takes the position that certain construction projects and activities of their members are core functions necessary for the government to continue to fund. This Association asserts the continued funding of all state construction contracts is an essential or critical government function due to the perilous economic condition of the State's construction industry and the general harm to citizens that suspension of design and construction contracts would cause. In its brief, the Association cites the Lafayette Bridge as an example of a critical core government function necessary to protect the life, health, and safety of its citizens. The Court agrees that any part of a contract which keeps the bridge from collapsing does constitute a critical core function that needs to be funded. It does not agree that replacement of the bridge constitute a critical core function necessary to protect the life, health, and safety of its citizens. A government shutdown may result in increased expenses for road projects that may be funded constitutionally in the future. The Court has no reason to disagree with the assertions of the Association that a government shutdown will significantly delay completion of present projects, increase costs and put numbers of employees out of work. The delay in construction and increased costs that will likely happen as a result of a government shutdown will be because of the executive and legislative branches failing to resolve the budget issues. Those things do not justify the Court in ordering the funding of non-critical core functions and thereby violating Article XI of the Minnesota Constitution.

38. Even though the State has promised to pay for certain projects such as road construction, that does not justify the court ordering payment under those contracts without a specific legislative appropriation. As stated in *County of Beltrami v. Marshall*, 135 N.W.2d 749

(Minn. 1965), “A legislative appropriation is always a prerequisite to state liability. The mere creation of a liability on the part of the state, or promise of the state to pay, if the statute may thus be construed, is of no force in the absence of an appropriation of funds from which the liability may be discharged.”

39. The court agrees with the position of the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the City of St Paul regarding Local Government Aid legislation. These funds have already been lawfully appropriated and should be paid on schedule. This is also true regarding previously lawfully appropriated payments to School Districts.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when she determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minnesota Statutes Chapter 484, and venue is proper in this Court pursuant to Minnesota Statutes Section 542.01.

3. The Minnesota Constitution must be read as a whole and each provision interpreted in the context of the entire document and the provisions of the U.S. Constitution. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” However, the Minnesota Constitution also provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their offices. Article V, Section 1 “implicitly places a limitation on the power of the legislature” so that the core functions of the executive branch officers, and their performance

of those functions, may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Failure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution. *See* Minn. Const. art. III, § 1 (dividing the powers of government into three distinct departments); *Mattson*, 391 N.W.2d at 782 (holding that implicit limitation on legislative authority prevents abolishment “of the independent functions inherent in an executive office.”). *See also Clerk of Court’s Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another).

4. The core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. All constitutional officers take an oath to support the constitutions of the United States and the State of Minnesota and to discharge faithfully the duties of their constitutional offices. Minn. Const. art. V, § 6. Core functions include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property.

5. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements, continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI,

clause 2, mandates that any funds paid by the State as a result of participation in these federal programs must continue.

6. The Senate and House (Legislative Branch) must be funded sufficiently to allow them to carry out critical core functions necessary to draft, debate, publish, vote on and enact legislation.

ORDER

1. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for the performance of the critical core functions of government as set forth in this Order.

2. Hennepin and Ramsey Counties motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow them to participate as *amicus curiae*.

3. Jenni Taylor's motion to intervene is denied as her position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow her to participate as *amicus curiae*.

4. SEIU Local 284 Kids First MN, Sharon Born, Terry Bicknell, and Rebecca Hall's motion to intervene is granted as their position regarding programs that are not funded as part of federal pass-through funding agreements is not adequately represented by other parties. The federal pass-through funds part of the Minnesota Child Care Assistance program is adequately represented by the petitions of the Attorney General and the Governor. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

5. The Minnesota Horsemen's Benevolent and Protective Association's motion to intervene is granted as their position is not adequately represented by existing parties.

6. Minnesota Workforce Council Association's motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow the Association to participate as *amicus curiae*.

7. Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association, and Minnesota Habilitation Coalition, Inc.'s motion to intervene are granted by agreement of the parties. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

8. The motion of the League of Minnesota Cities, Coalition of Greater Minnesota Cities, and the City of St. Paul to intervene is granted because their position that critical government aid (LGA) funds have already been appropriated by action of the Legislature and approval by the Governor is not adequately represented by existing parties.

9. The motion of the Minnesota Zoological Garden to intervene is granted as their position is not adequately represented by existing parties.

10. The motion of Associated General Contractors of Minnesota to intervene is granted as their interests are not adequately represented by existing parties.

11. The Commissioner of the Department of Management and Budget is also authorized to make payments necessary to carry out the critical core functions of the executive and legislative branches consistent with Exhibit A and the findings of fact and conclusions of

law contained in this order. He is also ordered to fund programs where funding is mandated by the Supremacy clause of the U.S. Government and make payments such as LGA payments that have already been lawfully appropriated.

12. Any requests to participate as amicus curiae not previously addressed in this order are granted.

13. The Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, is hereby appointed as Special Master to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application of this Order. The fees and expenses of the Special Master shall be paid by the State of Minnesota, the Commissioner of the Department of Management and Budget. Expenses shall include the costs of whatever staff she deems necessary to fulfill her duties as a Special Master. Information regarding how to set up a hearing before the Special Master will be made available as soon as possible on the State Court and Second Judicial District websites

14. This Order shall be effective until the earliest of the following:

- a. July 31, 2011, which may be extended by the Court;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or
- c. Further Order of this Court.

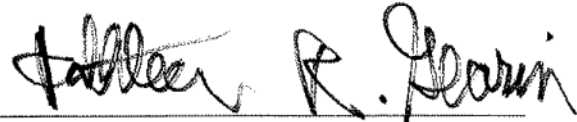
15. Petitioner shall serve by U.S. Mail a copy of this Order on the persons and entities who were served the Order to Show Cause dated June 15, 2011 and all other persons who have filed submissions in this proceeding.

16. Nothing in this order shall be construed as prohibiting the Commissioner of OMB from funding resources necessary to respond to an unforeseen emergency that would place

the public or public property in immediate danger. The governor may obtain such funds on an emergency basis. If requested by a party, the need for continuation of such emergency funding will be reviewed by the Special Master.

BY THE COURT:

Dated: 6-29-11



The Honorable Kathleen R. Gearin
Chief Judge
Ramsey County District Court

FILED
Court Administrator

STATE OF MINNESOTA
COUNTY OF RAMSEY

JUN 28 2011
By CW Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
TEMPORARY MANDATORY
INJUNCTIVE RELIEF**

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

62-CV-11-5361

On June 21, 2011, this Court issued an Order to Show Cause setting a hearing date of June 27, 2011, on the motion of Petitioners Minnesota Judicial Council and Attorney General Lori Swanson for an Order of this Court directing that the judicial branch of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. The Order to Show Cause was served on various public officials as indicated by the affidavits of service on file.

A hearing was held on June 27, 2011, with the undersigned Judge of District Court, sitting by special appointment of the Honorable Lorie Skjerven Gildea, Chief Justice of the Minnesota Supreme Court.

Appearances were indicated on the record.

Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Petitioner Minnesota Judicial Council is the administrative policy-making authority for the Minnesota Judicial Branch. The purpose of the Council is to govern the judicial branch through the establishment and monitoring of administrative policies designed to achieve an accessible, fair, and timely system

of justice statewide, and to ensure that the judicial branch functions as an independent and accountable branch of government.

2. Petitioner Lori Swanson is the Attorney General of the State of Minnesota. The Attorney General has the authority under the Minnesota Constitution, Minnesota statutes, and Minnesota common law to represent the State and its interests in all matters before the Court. The Attorney General also represents the people of the State in a *parens patriae* capacity.
3. The affidavit of State Court Administrator Sue Dosal submitted to this Court in support of Petitioners' motion adequately documents that the entire scope of services currently performed by, and the responsibilities currently assigned to, the judicial branch are necessary to preserve the adjudicatory role and to perform the proper administration of justice as contemplated in the U.S. and Minnesota Constitutions.
4. Article XI, Section 1 of the Minnesota Constitution provides that "[n]o money shall be paid out of the treasury of the state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to pass bills appropriating money for the Minnesota government to operate, subject to approval by the Governor. This authority includes appropriations for the judicial branch.
5. As of today's date, there has been enacted no appropriation to fund the judicial branch in the 2012-13 biennium. The judicial branch has insufficient funds to meet its constitutional obligations as of July 1, 2011. It is undisputed that the State has adequate financial reserves to temporarily continue funding the courts at the level of the 2011 fiscal year. The subparts of the judiciary are interdependent to such a degree that it is impracticable to attempt to rank or prioritize individual functions. For example, judges cannot hear cases without staff to prepare the files and record the proceedings, and criminal cases may not proceed for defendants represented by the public defender's office without appearances by attorneys funded under the judiciary budget umbrella. For meaningful function of the judiciary, funding is necessary at the present funding rate. There has been no challenge to the assertion in the affidavit of the State

Court Administrator that the entire scope of services performed by the judicial branch is necessary to perform the courts' constitutional functions.

6. The tenor of the immediate request for relief by Petitioners sounds in the equitable seeking of temporary injunctive relief. The general expectation is that the legislative and executive branches will eventually enact an appropriation for the judicial branch. It is possible that the parties may seek clarification or amendment of this order or that an evidentiary hearing may be needed. Accordingly, the Court considers those factors set forth in Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

- a) Nature and background of the relationship between the parties.

The record adequately describes the position of the judiciary, one independent branch of government seeking to maintain funding from the legislative and executive co-equal branches of government, so as to enable the judiciary to continue fulfilling its constitutional duties.

- b) Relative harm if relief is denied, compared with that inflicted if relief is granted.

If the courts are not funded, the basic, essential constitutional rights of the public would be unprotected and fail. The consequences would be irreparable and inestimable. If funding is temporarily ordered at the level authorized for the 2011 fiscal year, there would be no immediate negative unmanageable monetary effect upon the legislative or executive branches.

- c) Likelihood of Petitioners eventually prevailing on the merits.

The issues are primarily legal in nature rather than factual. They have been adequately argued by capable counsel, and the Court has carefully considered them in reaching the legal conclusions herein favorable to the Petitioners. Similar arguments would likely be made at any future evidentiary hearing.

- d) Aspects of the fact situation permitting or requiring consideration of public policy expressed in statutes.

This case involves an interpretation of statutory and, more substantially, constitutional provisions that on their face are not in harmony. Again, however, able counsel have as officers of the court well raised the arguments presumably available at any further evidentiary hearing.

- e) Administrative burdens involved in judicial supervision and enforcement of a temporary order.

The implementation of the temporary order would be self-executing and require little if any court supervision.

In summary, the totality of the factors strongly favors the granting of temporary mandatory injunctive relief.

CONCLUSIONS OF LAW

The Court's conclusions are divided into these portions: Public Constitutional, Inherent Powers of the Court, and Reconciliation Matters.

Public Constitutional

1. The Constitutions of the United States and Minnesota provide the following non-exclusive protections to the citizenry:
 - a) The right to be protected from any deprivation of life, liberty, or property without due process of law; or the denial of equal protection of the laws. U.S. Const. amend. XIV, § 1.
 - b) The right to receive from the government "security, benefit and protection." Minn. Const. art. I, § 1.
 - c) The right to enjoy the common rights and privileges of any citizen, unless deprived of them by law. Minn. Const. art. I, § 2.
 - d) The right to a prompt remedy, without delay, for all injuries and wrongs. Minn. Const. art. I, § 8.
 - e) The right of defendants to due process of law, including a speedy public trial, and bail. U.S. Const. amend. VI; Minnesota Const. art. I, §§ 5-7.
2. What are some examples of the expected effects of closure of the judicial function? They would include elimination of legal right of law enforcement to hold in custody persons accused of violent crimes, to require psychopathic sexual

offenders to continue in secure treatment facilities, to grant and enforce the thousands of Orders For Protection issued annually to protect physically abused family members, and to grant emergency orders removing minor children from unsafe and threatening environments.

3. Such failures would constitute an abandonment of the constitutional rights of Minnesota citizens, and requires the Court to act to protect the public to fulfill its charge under the Federal and State Constitutions. See State v. Askerooth, 681 N.W.2d 353, 362 (Minn. 2004):

“It is our responsibility as Minnesota’s highest court to independently safeguard for the people of Minnesota the protections embodied in our Constitution.”

4. Continuance of the operation of the courts is a constitutional right of Minnesota citizens.

Inherent Powers of the Court

5. The Minnesota Constitution in Article III, Distribution of the Powers of Government, provides:

Section 1. Division of powers. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

6. Article VI of the Minnesota Constitution establishes in detail the organization and description of the judicial branch.
7. Complete absence of funding of any of the three branches of government would effect the withering of that branch, contrary to the clear intent of the Minnesota Constitution. See Clerk of Court’s Compensation for Lyon County v. Lyon County Comm’rs, 308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976).
8. At the motion hearing, remarks by the attorneys for the parties indicated that the executive branch intended to authorize expenditures of certain executive costs if an appropriations bill is not passed. It is likewise necessary to provide emergency funding to the judicial branch to enable it to discharge its duties under the Minnesota Constitution.

Reconciliation Matters

9. The Minnesota Constitution in Article XI, Appropriations and Finances, provides:

Section 1. Money paid from state treasury. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

10. The argument is advanced that the literal reading of Article XI would prohibit the order herein. Whether the order of the Court herein constitutes “an appropriation by law” may be reasonably argued. But it may not reasonably be disputed that if the courts cease to function, the result will be the irreparable violation of the many other constitutional rights of Minnesota citizens.

11. It is one of the fundamental duties of the courts to weigh rules, statutes, and now, constitutional provisions, that appear to be irreconcilable, and attempt to reconcile and harmonize them.

That process in this case leads to the conclusion that the rigidity of Article XI, when the traditional processes of government have failed, must temporarily give way to the safety and protection of Minnesotans.

ORDER

1. The Minnesota Judicial Branch shall continue to perform the functions of that branch necessary to fulfill its obligations, and to ensure citizens’ rights, under the Minnesota Constitution and the U.S. Constitution. The State of Minnesota shall continue to pay for such services at the rate provided for in the fiscal year ending June 30, 2011.

2. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for such obligations so that the functions of the judicial branch can be discharged.

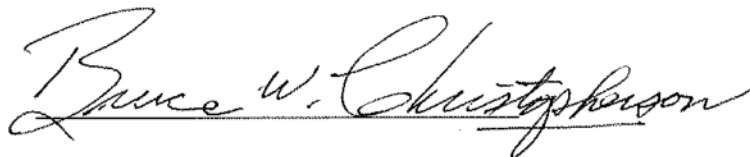
3. This order shall be effective from July 1, 2011, until the earliest of the following:

1) July 30, 2011, unless extended by the Court;

- 2) The enactment of a budget by the State of Minnesota to fund the functions of the judicial branch after June 30, 2011; or
- 3) Further order of this Court. The Court retains jurisdiction to shorten, extend, clarify, or otherwise amend the terms of this order, and to conduct any further evidentiary hearings deemed necessary.
4. The undersigned waives any claim for compensation from funds authorized by this order for any personal services necessary to be rendered after June 30, 2011, in this proceeding.
5. Petitioners shall serve by U.S. Mail a copy of this order to the persons and entities listed in Exhibit A attached to this order.

BY THE COURT:

Dated: June 28, 2011



Bruce W. Christopherson
Judge

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 17 2011

By JRL Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 02CV-11-5361

PETITION

Petitioners Minnesota Judicial Council and Attorney General Lori Swanson petition the Court as follows:

PARTIES

1. The Minnesota Judicial Council is the administrative policy-making authority for the Minnesota Judicial Branch. The purpose of the Council is to govern the Judicial Branch through the establishment and monitoring of administrative policies designed to achieve an accessible, fair and, timely system of justice statewide, and to ensure that the Judicial Branch functions as an independent and accountable branch of government.

2. Lori Swanson is the Attorney General of the State of Minnesota. The Attorney General has the authority under the Minnesota Constitution, Minnesota Statutes and Minnesota common law to represent the State and its interests in all matters before the Court. The Attorney General also represents the people of the State in a *parens patriae* capacity.

3. Article VI, section 1 of the Minnesota Constitution vests the judicial authority of the State of Minnesota in a supreme court, a court of appeals, and a district court. The supreme court has appellate jurisdiction in all cases and original jurisdictions in certain cases. Minn. Const. Art. VI, § 2. The court of appeals has "appellate jurisdiction over all courts, except the supreme court, and other appellate jurisdiction as prescribed by law." *Id.* District courts have

“original jurisdiction in all civil and criminal cases and [has] appellate jurisdiction as prescribed by law.” *Id.* art. VI, § 3.

4. Jurisdiction in this action is based upon Minn. Stat. § 484.01 (2010). Venue is appropriate in this district under Minn. Stat. § 542.01.

FACTUAL AND PROCEDURAL BACKGROUND

5. Article XI, section 1 of the Minnesota Constitution provides that “No money shall be paid out of the treasury of this State except in pursuance of an appropriation by law.” The State has not enacted a state budget for the fiscal year beginning July 1, 2011.

6. The judicial branch of the State is constitutionally required to perform services that cannot be abridged by the legislative and executive branches. Some of these functions are identified in the Minnesota Constitution; others are identified in the United States Constitution.

7. STATE CONSTITUTION: Core Functions of the Judicial Branch: The Minnesota Constitution imposes a variety of functions upon the judicial branch that may not be abridged by the legislative and executive branches. *See State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). The judiciary is empowered to hear all legal actions, civil or criminal. The judiciary is ultimately responsible for ensuring the rights of Minnesota citizens under the Bill of Rights in the State Constitution, Article I, and ensuring that other provisions of the Constitution are followed. The criminal courts are responsible for ensuring the rights of criminal defendants. *See* Minn. Const. Art. I, §§ 4-7 & 10-12. The civil courts are responsible for ensuring that each Minnesota citizen receives “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.” Minn. Const. Art. I, § 8.

8. U.S. CONSTITUTION: Core Functions of the Judicial Branch: In addition, the Fourteenth Amendment of the United States Constitution mandates that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” The judicial branch is ultimately responsible for ensuring that the State complies with this amendment. The judicial branch is also responsible for guaranteeing that the State ensures the rights of criminal defendants under the United States Constitution, Amendments IV-VII, and the other rights of citizens under the Bill of Rights of the United States Constitution. *See, e.g.*, Amendment I (guaranteeing freedom of speech, of the press, of religion, of the right of assembly, and the right to petition the government for redress of grievances).

9. In 2001, the Court directed that funding be maintained for the judicial branch. *See 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 Cty. Dist. Ct., June 29, 2001), attached hereto as Exhibit 1.

10. A failure to approve the expenditure of funds by the judiciary as of July 1, 2011 will have severe adverse consequences for the State and its citizens.

11. A failure to provide appropriations for the operations of the judiciary violates the separation of powers set forth in the Minnesota Constitution by preventing the judiciary from carrying out its constitutional obligations. The judiciary has authority on its own to order the other departments of government to provide sufficient resources for the judiciary to function. *See Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs*, 241 N.W.2d 781

(Minn. 1976). This authority should be exercised by this Court in ordering sufficient funds for the judiciary to carry out its functions.

12. The Commissioner of the Department of Management and Budget administers the payment of obligations of the State.

13. The State treasury contains ample funds to continue the operation of the judicial branch after June 30, 2011. Indeed, the legislative and executive branches have already agreed as to the amount that should be appropriated for the Supreme Court, Court of Appeals and trial courts in Minnesota for FY 12-13.

Wherefore, Petitioners seeks the following relief:

1) A conclusion that, pursuant to the separation of powers doctrine of the Minnesota Constitution, the State of Minnesota shall pay for such services required for the judicial branch of state government to operate in order that it can continue to fulfill its obligations under the Minnesota Constitution and the U.S. Constitution.

2) An Order that the Commissioner of the Department of Management and Budget shall issue checks and process such funds as necessary to pay for such obligations of the State of Minnesota.

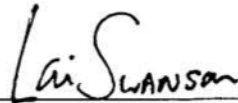
3) Such other relief as the Court deems appropriate.

Dated: June 17, 2011

Respectfully submitted,

MINNESOTA JUDICIAL COUNCIL

LORI SWANSON
Attorney General
State of Minnesota



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ATTORNEYS FOR PETITIONERS


FILED
Court Administrator

STATE OF MINNESOTA

JUN 17 2011

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 62CV-11-5361

**PETITIONERS' MEMORANDUM IN
SUPPORT OF MOTION FOR RELIEF**

The Minnesota Judicial Branch exists to provide the five million citizens of Minnesota with access to justice. This constitutional mandate must not “shut down.” In order to ensure that that does not happen, the Minnesota Judicial Council and the Attorney General bring this petition seeking judicial relief in the event that the political branches are not able to reach resolution on the judicial branch budget before June 30. The Minnesota Judicial Branch has every hope that the political branches will come to resolution on the judicial branch budget, especially in light of the apparent consensus as to the funding for the next biennium for the Supreme Court, Court of Appeals and the trial courts in Minnesota.¹ Notwithstanding the progress toward agreement, the appropriation for the judicial branch has not been enacted into law. Instead, funding for all levels of court and all parts of the judicial branch runs out on June 30. The filing of this petition was therefore necessary to ensure that there is not a breach of the Minnesota Constitution’s promise to all Minnesotans—that they would have access to justice that is delivered promptly and without delay.

¹ See Senate Counsel, Research and Fiscal Analysis, *Public Safety Budget Tracking FY 2012–13, Senate File 958* (2011), http://www.senate.leg.state.mn.us/departments/fiscalpol/tracking/2011/PS_Public%20Safety%20Conference.pdf.

FACTUAL BACKGROUND

Without a state budget or court order providing for the funding of its services, the judicial branch of state government would shut down. Such a shutdown would 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 that will adversely affect the public interest if the judicial branch of government is shut down.²

The absence of a state budget or court order would profoundly impact law enforcement and criminal justice if the courts could not operate, and undermine citizens' constitutional rights. 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 functioning court system to conduct probable cause hearings.³ Individuals held in pretrial incarceration would have to be released or have the charges against them dismissed if courts are not operating and able to provide speedy trials, as constitutionally required.⁴ Moreover, without functioning appellate courts, defendants would not have their appeals as of right.⁵ And, without

² See also Affidavit of Sue Dosal, State Court Administrator, attached as Exhibit 1 to this Memorandum.

³ 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).

⁴ U.S. Const. amend VI; Minn. Const. art. I, § 6 (right to a speedy trial). See also Minn. R. Crim. P. 6.06 (in misdemeanor cases with speedy trial demand, trial must begin within 60 days, and if defendant is in custody, then trial must begin within 10 days or defendant must be released subject to nonmonetary release conditions); Minn. R. Crim. P. 11 (setting forth timeline of hearings).

⁵ See, e.g., Minn. R. Crim. P. 28.02, subd. 2 ("A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. ch. 590."); Minn. R. Crim. P. 29.02, subd. 1 ("A defendant may appeal

public defenders, defendants will not have counsel as required by the United States Constitution and Minnesota Constitution.⁶ This would have a serious impact on criminal justice in Minnesota. In 2010 alone, 1,066 individuals were charged with sex crimes, and 2,788 were charged with felony domestic assault.

The absence of the civil courts would also cause serious harm to citizens and deprive citizens of their constitutional rights. Among other things, Minnesotans would lack access to prompt adjudication of orders for protection, child custody, child support, child protection, and adoption and other family law matters. In 2010, 11,502 individuals sought orders for protection from domestic assault; in 4,114 actions, courts were asked to protect a child thought to be in harm's way; and 68 actions were brought to civilly commit sex offenders at the end of their prison terms. Additionally, businesses and individuals would lose access to judicial resolution of their claims, including those that require prompt action, such as temporary restraining orders or preliminary injunctions, and claims that require court filings within specified periods of time.

The Petitioners hope that the budget impasse will be resolved through the political process and a shutdown avoided. But in the event that a budget is not enacted into law for the judicial branch, Petitioners seek judicial relief like that ordered by this Court in 2001. During that budget impasse, the Attorney General sought approval of this Court to maintain the operation of the core functions of the judicial branch of state government. This Court granted the relief sought, directing that funding be maintained for the functions of the judicial branch. *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

as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder.”).

⁶ Minn. Const. Art. I, § 6; *Gideon v. Wainwright*, 372 U.S. 335 (1962); *State v. Nordstrom*, 331 N.W.2d 901, 903 (Minn. 1983).

Funding (Ramsey Co. D. Ct., June 29, 2001) (“*Judicial Branch Core Functions 2001*”), attached as Exhibit 1 to the Petition in this matter. If the political branches cannot reach agreement to resolve the present budget impasse, this Court should adhere to its precedent and ensure that Minnesota continues to have a functioning justice system.

ARGUMENT

In the event that the budget impasse is not resolved, 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 Minnesota Constitutions that must be protected by the judicial branch. Second, 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 judicial branch of government is entitled to continue even in the absence of appropriated funds. And, the judicial branch has inherent authority to continue its operations to fulfill its constitutional obligations. *In Re The Matter of the Clerk of Court’s Compensation for Lyon County. v. Lyon County. Comm’rs*, 241 N.W.2d 781, 784 (Minn. 1976)

The Court has jurisdiction to decide, based on the circumstances presented, whether the judicial branch will continue, absent an appropriation for the fiscal year beginning July 1, 2011. 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 in nature. The relief sought would permit the continued operation of the judicial branch as required by the United States and Minnesota Constitutions and the Court's inherent authority. 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 THE JUDICIAL BRANCH CONTINUES OPERATING, MINNESOTA CITIZENS WILL BE DEPRIVED OF THE RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

In *Judicial Branch Core Functions 2001*, the Court held that “[f]ailure to fund the core functions of the judicial branch nullifies the judicial branch, which in turn contravenes the Minnesota Constitution.” *Judicial Branch Core Functions 2001*, Concl. of Law 6, at 4. In so holding, the Court also noted that Article VI of the Minnesota Constitution provides that the function of the judicial branch “involve[s] the adjudication of cases,” including the prompt adjudication of both civil and criminal cases. *Id.*, Findings of Fact 4, at 2.

The judicial branch protects the rights of Minnesota citizens under the United States and Minnesota Constitutions. For example, the judicial branch upholds the mandate of the 14th Amendment of the U.S. Constitution. U.S. Const., amend. XIV, § 1 (no state shall “deprive any person of life, liberty, or property, without due process of law”). It also enforces the provisions of the Minnesota Constitution, including those contained in the Bill of Rights, such as article 1, section 2 (“No member of this state shall be . . . deprived of any of the rights or privileges secured to any citizen thereof...”); article 1, section 6 (right to speedy and public trial by an impartial jury); article 1, section 7 (due process of law for criminal defendants); article 1, section 8 (right to civil redress for injuries or wrongs “promptly and without delay”); article 1, section 13 (just compensation when private property is converted to public use”).

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 permitting the City of Memphis additional time to desegregate some of 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 ultimate responsibility for overcrowded courts rests with the government); *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) (“the defenses of fund shortage and the inability of the district court to order appropriations by the state legislature, have been rejected by the federal courts”); *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).

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. THE MINNESOTA JUDICIAL 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 functions. *Id.* at 780-81. 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 judicial branch will essentially have no ability to operate and will effectively be nullified. “Any decrease in the ability of the judicial branch to handle cases and associated administrative matters would cause the judicial branch to be unable to carry out its core functions,” and would nullify the judicial branch as certainly as the legislative enactment did in *Mattson*. See *Judicial Branch Core Functions 2001*, Findings of Fact 6, at 3; see also *id.*, Concl. of Law 6, at 4 (“Failure to fund the core functions of the judicial branch nullifies the judicial branch, which in turn contravenes the Minnesota Constitution.”).

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: “[t]he 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.”).

In addition to the principle that one branch of government cannot effectively abolish another branch of government, it is also well-settled that the Minnesota judiciary possesses inherent authority to preserve its existence, including the authority “to protect itself, to enable it to administer justice whether any previous form of remedy has been granted or not.” *Lyon County*, 241 N.W.2d at 784 (further noting that “[a]t bottom, inherent judicial power is grounded in judicial self-preservation.”); *see also State v. Chauvin*, 723 N.W.2d 20, 24 (Minn. 2006) (affirming district court’s use of sentencing jury post-*Blakely* because it was necessary to carry out legislative sentencing scheme and vindicate defendant’s jury trial right even though not expressly permitted by legislation); *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1982) (noting that inherent power of court extends to ordering expungement by court officials and agents). Although ultimately reversing a district court order that set the minimum annual salary of the clerk of court higher than what was set by the county, the Minnesota Supreme Court recognized in *Lyon County*, that the judiciary has the inherent authority “to compel the payment of public funds for *judicial* purposes.” 241 N.W.2d at 785 (emphasis added). That is, of course, the very authority at issue in this petition.

In a subsequent case, the Minnesota Supreme Court summarized the principles of inherent authority identified in *Lyon County*: “a court has inherent judicial authority to engage in activities that are (1) necessary (2) to achieve a unique judicial function (3) without infringing on

equally important legislative or executive functions.” *Chauvin*, 723 N.W.2d at 24. These established principles identified by the Minnesota Supreme Court support this Court’s use of inherent power to compel payment of public funds for judicial purposes.

First, as noted above, the functions of the judiciary—both civil and criminal—are constitutional requirements that cannot be abrogated. Permitting itself to continue its judicial function is a practical necessity that goes to the heart of separation of powers. *See Lyon County*, 241 N.W.2d at 784 (noting that “[a]t bottom, inherent judicial power is grounded in judicial self-preservation.”).⁷ Second, the adjudication of civil and criminal cases is a function that has been expressly and constitutionally reserved to the judicial branch. Minn. Const. art. VI, §§ 1-3. And, finally, because this petition seeks relief only in the event that the legislative and executive branches fail to act, there is no unnecessary infringement on the authority vested in those branches. In short, granting this petition is in accord with the principles of inherent judicial authority established in *Mattson* and *Lyon County*.

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) (stating that separation of powers requires that each branch of government

⁷ The courts in Minnesota are not unique in recognizing that they may have to exercise their inherent power to compel payment of their operating expenses. Indeed, in certain instances, such responsibility has been broadly applied by the judicial branch to establish the overall budget of the court. *See, e.g., Carlson v. State ex rel. Stodola*, 220 N.E.2d 532 (Ind. 1966); *In the Matter of the Mandate of Funds for the Gary City Court v. City of Gary*, 489 N.E.2d 511 (Ind. 1986); *Mower v. Rusk*, 618 P.2d 886 (N.M. 1980); *In the Matter of the 1987 Essex County Judicial Budget Impasse*, 533 A.2d 961 (N.J. 1987); *McCain v. Grant Parish Police Jury*, 440 So.2d 1369 (La. Ct. App. 1983); *Beckert v. Warren*, 439 A.2d 638 (Pa. 1981); *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971).

must be allowed adequate resources to carry out its constitutional responsibilities); *Case v. Lazben Fin. Co.*, 121 Cal. Rptr. 2d 405, 415 (Cal. 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 the 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, 787 (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 co-operate 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

As set forth herein, the judicial branch protects the constitutional rights of Minnesota citizens, and the absence of appropriated funds cannot eviscerate the core functions of the judicial branch of state government. Accordingly, the requested relief should be granted.

III. 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

⁸ In *State ex rel. 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.

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. On the other hand, Article I sets forth certain constitutional rights belonging to Minnesotans, including the right to trial by jury, speedy trial, due process, privilege against self-incrimination, redress of injuries or wrongs, prohibition against unreasonable searches and seizures, and religious freedom. Minn. Const. Art. I, (bill of rights). Likewise, Article VI establishes the judicial branch and vests judicial power of the State in the supreme court, court of appeals, and district courts. Minn. Const. Art. VI, § 1.⁹

Where, as here, a budget impasse exists that prevents the judicial 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., Minn. Baptist Convention v. Pillsbury Acad.*, 246 Minn. 46, 57, 74 N.W.2d 286, 294 (1955) (rejecting an “absurd” construction of the Minnesota Constitution).

⁹ Article VI, Section 13 also requires a clerk of the district court in each county. And, Article VI, Section 2 requires the Minnesota Supreme Court to appoint “a clerk, a reporter, a state law librarian, and other necessary employees.”

Although another branch holds the power of the purse, the framers undoubtedly never envisioned that that power would or could prevent the judicial branch of government from carrying out its constitutional responsibilities or depriving Minnesotans of their constitutional rights. 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 judicial branch cannot shut down. As discussed *supra* at 2-3, a shutdown would severely impact criminal justice, the public safety, and the constitutional right of all Minnesotans to the provision of timely access to justice; among other things, Minnesota’s law enforcement would effectively become “catch and release,” and speedy trial demands (and other required criminal proceeding timelines) would be impossible to meet, requiring the release of criminal defendants. These results could not have been intended by the drafters of the Minnesota Constitution. *See, e.g., Terminiello v. Chicago*, 337 U.S. 1, 37, 69 S. Ct. 894, 911 (1949) (Jackson, 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, n. 4 (construing the Idaho Constitution and framers’ intent as prohibiting the legislature from reducing “appropriations to a constitutional officer below the level necessary to carry out the constitutional duties of the office.”); *Nix*, 347 So.2d at 155 (holding legislature’s reduction of education board’s staff deprived board of its ability to perform its constitutional functions and therefore was unconstitutional); *Thompson*, 448 P.2d at 800-02 (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, 868-69 (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, C.J., 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. Minn. Const. article I, section 1 (“Government is instituted for the security, benefit, and protection of the people. . . .”). 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, Petitioners' requested relief harmonizes the constitutional provisions.

CONCLUSION

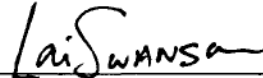
In the infancy of our State, Minnesota's first Chief Justice wrote, "all must regard as matter of pride and gratulation, that in this state no one, not even the worst felons, can be denied the right to simple justice." *Davis v. Pierse*, 7 Minn. 13, 23 (Gil. 1, 11) (1862). To ensure that this inspiring command remains reality, and based on the analysis set forth above, the Court should order the State to continue to fund the judicial branch of government.

Dated: June 17, 2011

Respectfully submitted,

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