

STATE OF MINNESOTA

OFFICE OF  
APPELLATE COURTS

IN COURT OF APPEALS

JAN 12 2010

Deanna Brayton, Darlene Bullock, Forough  
Mahabady, Debra Branley, Marlene Griffin and  
Evelyn Bernhagen, on behalf of themselves and  
all others similarly situated,

**FILED**  
APPELLANTS' STATEMENT  
OF THE CASE

Respondents,

Trial Court Case No. 62-CV-09-11693

vs.

Appellate Court Case No. A10-64

Tim Pawlenty, Governor of the State of Minnesota,  
Thomas Hanson, Commissioner, Minnesota  
Department of Management and Budget, Cal  
Ludeman, Minnesota Department of Human  
Services, and Ward Einess, Commissioner,  
Minnesota Department of Revenue,

Appellants.

**1. Court or agency of case origination and name of presiding judge or hearing officer.**

Ramsey County District Court, Second Judicial District; the Honorable Kathleen R.  
Gearin, Chief Judge of District Court.

**2. Jurisdictional statement.**

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal: Minn. R. Civ. App. P.  
103.03(a).

Date of entry of judgment or date of service of notice of filing of order from  
which appeal is taken: The judgment was entered January 8, 2010.

Authority fixing time limit for filing notice of appeal (specify applicable rule or  
statute): Minn. R. Civ. App. P. 104.01, subd. 1.

Date of filing any motion that tolls appeal time: None.

Date of filing of order deciding tolling motion and date of service of notice of  
filing: None.

(B) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? No.

If no, did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01? Yes.

If yes, provide date of order: The order for entry of a final partial judgment was filed January 8, 2010.

**3. State type of litigation and designate any statutes at issue.**

Civil. Minn. Stat. § 16A.152.

**4. Brief description of claims, defenses, issues litigated and result below.**

This appeal concerns the validity of the executive branch's reduction of the unexpended allotments of the appropriations available to fund payments under the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program in the current biennium of July 1, 2009 to June 30, 2011. Under the unallotment statute, Minn. Stat. § 16A.152, the executive branch reduced funding for the MSA-SD program effective November 1, 2009, by \$2.133 million for FY 2010 and \$3.2 million for FY 2011. This was part of a larger set of unallotments made by the executive branch under section 16A.152 to address an approximate \$2.7 billion deficit in the State's biennial budget.

Respondents are six Minnesota residents who qualify for payments under the MSA-SD program. They filed this lawsuit on November 3, 2009, against Appellants, who are the Governor and the Commissioners of the Departments of Management and Budget, Human Services, and Revenue. In their amended complaint, Respondents claim that the unallotment of funding for the MSA-SD program is unlawful because it does not comply with applicable statute and violates separation of powers under the Minnesota Constitution. Respondents' amended

complaint also challenges the validity of the unallotment that reduces funding for renters' property tax refunds in FY 2011, the second year of the biennium.

On November 6, 2009, Respondents filed a motion for a temporary restraining order to require Appellants to restore the unallotted funding for the MSA-SD program, based on the claim asserted in their amended complaint. On November 12, 2009, Appellants filed a motion to dismiss the amended complaint. Appellants argued that the challenged unallotments are authorized by section 16A.152 and do not violate separation of powers.

After extensive briefing by the parties, Respondents' motion was heard on November 16, 2009. That same day, a committee of the House of Representatives voted 14-8 to authorize submission of an amicus brief in support of Respondents. A letter in opposition to the filing of the amicus brief was submitted by a member of the House committee on November 16, 2009. With the district court's permission, the amicus brief was filed on November 20, 2009.

The district court granted Respondents' motion in an order filed on December 30, 2009. The order was based solely on the court's legal conclusion that the unallotment of funding for the MSA-SD program does not comport with section 16A.152 and separation of powers.

Based on the order granting Respondents' motion, the parties stipulated to the denial of Appellants' motion to dismiss, and entry of final judgment for Respondents under Minn. R. Civ. P. 54.02, on the claim that the unallotment of funding for the MSA-SD program effective November 1, 2009, is unlawful. The judgment requires Appellants to immediately restore the funding with respect to that unallotment.

As stated in the order for judgment, the court directed the entry of judgment under Rule 54.02 because "[i]mmediate appellate review" is "appropriate and in the public interest." The court further reasoned that "[a]n expeditious final judicial decision of the claim will assist the

executive and legislative branches in determining their respective authority regarding the State's current budget crisis.”

This appeal from the judgment followed. Appellants have also filed a petition for accelerated review in the Supreme Court, with a motion for expedited consideration of the petition, and motions for expedited review in both the Supreme Court and the Court of Appeals.

**5. List specific issues proposed to be raised on appeal.**

1. Is the unallotment of funding for the Minnesota Supplemental Aid-Special Diet program authorized by Minn. Stat. § 16A.152?
2. Does the unallotment of funding for the Minnesota Supplemental Aid-Special Diet program violate separation of powers under the Minnesota Constitution?

**6. Related appeals.**

List all prior or pending appeals arising from the same action as this appeal. If none, so state. None.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state. None.

**7. Contents of record.**

Is a transcript necessary to review the issues on appeal? No.

**8. Is oral argument requested?**

Yes. If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? No.

**9. Identify the type of brief to be filed.**

Formal brief under Rule 128.02.

10. **Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.**

LORI SWANSON  
Attorney General

ALAN I. GILBERT  
Solicitor General

JOHN S. GARRY  
Assistant Attorney General

JEFFREY J. HARRINGTON  
Assistant Attorney General

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1450

ATTORNEYS FOR APPELLANTS

GALEN ROBINSON  
DAVID GASSOWAY  
Mid-Minnesota Legal Assistance  
430 First Avenue North, Suite 300  
Minneapolis, Minnesota 55401  
(612) 332-1441

RALONDA J. MASON  
Mid-Minnesota Legal Assistance  
830 W. St. Germain, Suite 300  
P.O. Box 886  
St. Cloud, Minnesota 56302  
(320) 253-0121

ATTORNEYS FOR RESPONDENTS

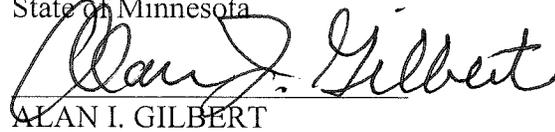
PATRICK D. ROBBEN  
General Counsel to Governor  
Tim Pawlenty  
Office of Governor

130 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St Paul, Minnesota 55155  
(651) 282-3705

ATTORNEY FOR APPELLANT  
GOVERNOR TIM PAWLENTY

Dated: January 12, 2010

LORI SWANSON  
Attorney General  
State of Minnesota



ALAN I. GILBERT  
Solicitor General  
Atty. Reg. No. 0034678

JOHN S. GARRY  
Assistant Attorney General  
Atty. Reg. No. 0208899

JEFFREY J. HARRINGTON  
Assistant Attorney General  
Atty. Reg. No. 0327980

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1450

ATTORNEYS FOR APPELLANTS

Dated: January 12, 2010



PATRICK D. ROBBEN  
General Counsel to Governor Tim Pawlenty  
Office of Governor  
Atty. Reg. No. 0284166

130 State Capitol  
75 Rev. Dr Martin Luther King Jr. Blvd.  
St Paul, MN 55155  
(651) 282-3705

ATTORNEY FOR APPELLANT  
GOVERNOR TIM PAWLENTY

AG: #2567675-v1