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JAN 12 2010
FILED

Trial Court Case No. 62-CV-09-11693
Appellate Court Case No. A10-64

STATE OF MINNESOTA

IN SUPREME COURT

Deanna Brayton, et al.,

Respondents,

vs.

Tim Pawlenty, Governor of the State of Minnesota, et al.,

Petitioners.

PETITION FOR ACCELERATED REVIEW

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TO: The Supreme Court of the State of Minnesota.

Petitioners Governor of the State of Minnesota and Commissioners of the Minnesota Departments of Management and Budget, Human Services and Revenue request accelerated review by the Supreme Court of the above-entitled matter.

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 (2008), 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.

The district court entered judgment for Respondents on their claim that the unallotment of funding for the MSA-SD program is unlawful. The court concluded that the unallotment does not comport with section 16A.152 and separation of powers. Its reasoning implicates the validity of the other unallotments made for this biennium.

Respondents agree that the Court should grant accelerated review of this appeal.

I. STATEMENT OF LEGAL ISSUES.

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?

II. STATEMENT OF THE CASE.

The district court's decision was based on the public records regarding the unallotments and its analysis of the law. The relevant facts are not in dispute.

A. Unallotments By The Executive Branch.

The statute authorizing the executive branch to unallot funding is Minn. Stat. § 16A.152 (2008). The law provides in relevant part as follows:

> Subd. 4. Reduction.
>
> (a) If the commissioner [of Management and Budget] determines that probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the biennium will be less than needed, the commissioner shall, with the approval of the governor, and after consulting the Legislative Advisory Commission, reduce the amount in the budget reserve account as needed to balance expenditures with revenue.
>
> (b) An additional deficit shall, with the approval of the governor, and after consulting the legislative advisory commission, be made up by reducing unexpended allotments of any prior appropriation or transfer. Notwithstanding any other law to the contrary, the commissioner is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions

See also Minn. Stat. § 16A.011, subd. 4 (2008) (defining "appropriation" as "an authorization by law to expend or encumber an amount in the treasury"); *id.*, subd. 3 (defining "allotment" as "a limit placed by the [Management and Budget] commissioner on the amount to be spent or encumbered during a period of time pursuant to an appropriation").[1]

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[1] Statutory references to the Commissioner of Finance are now to the Commissioner of Management and Budget, the agency into which the Department of Finance was merged.

Pursuant to section 16A.152, the Commissioner of Management and Budget, Tom Hanson, determined in June 2009 that probable receipts for the general fund would be less than anticipated and that the amount available for the July 1, 2009 to June 30, 2011 biennium would be less than needed; the budget reserve account was drawn down to zero and an approximate $2.7 billion deficit remained in the general fund; and then Commissioner Hanson, with the approval of the Governor and after consulting with the Legislative Advisory Commission, reduced unexpended allotments to eliminate this remaining deficit. Petitioners' Appendix ("A") at A31-A104. Commissioner Hanson also notified the legislative budget committees of the approved unallotments within fifteen days. *See* A92-A104; Minn. Stat. § 16A.152, subd. 6.

B. Unallotment Of Funding For The MSA-SD Program.

The unallotments included funding for the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program. A88. MSA-SD is part of the broader Minnesota Supplemental Aid ("MSA") program. The MSA program, which is administered by the Department of Human Services ("DHS"), provides for State-funded monthly cash payments to supplement federal Supplemental Security Income benefits for certain individuals. *See* Minn. Stat. §§ 256D.33-256D.54 (2008). MSA-SD provides for supplemental payments for certain medically prescribed diets. *Id.*, § 256D.44, subd. 5(a).

MSA-SD was not funded by a separate appropriation specific to that program, but rather as part of a general appropriation to DHS for all the various MSA grants. Minnesota Session Laws 2009, chapter 79 (House File 1362), article 13, section 3,

subdivision 4(j); A120. In the current biennium, the general appropriation to DHS for all MSA grants is $33.93 million for FY 2010 and $35.191 million for FY 2011. *Id.*

Commissioner Hanson reduced the allotment of the FY 2010 DHS appropriation for MSA grants by $2.866 million, and the allotment of the FY 2011 DHS appropriation for MSA grants by $4.3 million, or approximately 8% and 12.2% of total MSA funding for FY 2010 and 2011, respectively. A93. These unallotments represent a reduction in MSA-SD funding of $2.133 million for FY 2010 and $3.2 million for FY 2011. A88.[2] The effect of the unallotments was to eliminate funding for MSA-SD payments for the period of November 1, 2009 through June 30, 2011. *Id.*

C. Lawsuit.

Respondents are six Minnesota residents who qualify for payments under the MSA-SD program. They filed this lawsuit against Petitioners on November 3, 2009. 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. A1-A27. 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. *Id.*

On November 6, 2009, Respondents filed a motion for a temporary restraining order to require Petitioners to restore the unalloted funding for the MSA-SD program, based on the claim asserted in their amended complaint. On November 12, 2009,

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[2] The remaining reduction in the FY 2010 and FY 2011 allotments of the MSA appropriation this biennium was for funding of emergency MSA grants. A88, A93, A120.

Petitioners filed a motion to dismiss the amended complaint. They 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 by the district court, Chief Judge Kathleen R. Gearin, 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.[3]

D. District Court Decision.

The district court granted Respondents' motion in an order filed on December 30, 2009. A141-A152. 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. *Id.* The court's reasoning calls into question the validity of the other unallotments made to address the approximate $2.7 billion deficit in the State's budget this biennium. *Id.* In addition, as the court noted, the November 2009 Economic Forecast projects a further deficit of about $1.2 billion this biennium, beyond the approximate $2.7 billion deficit addressed by the unallotments already made. A132.

Based on the order granting Respondents' motion, the parties stipulated to the denial of Petitioners' motion to dismiss, and entry of final judgment for Respondents

[3] The briefs filed in the district court are posted on the Second Judicial District's website, at *www.mncourts.gov/district/2/?page=3775.*

under Minn. R. Civ. P. 54.02, on the claim that the unallotment of funding for the MSA-SD program is unlawful. A153-A158. The judgment requires Petitioners to immediately restore the funding with respect to that unallotment. *Id.*

The district court concluded as follows in its order for judgment:

> There is no just reason for delay of entry of judgment on Plaintiffs' claim that the unallotment of funding for the MSA-SD program is unlawful. Immediate appellate review of this claim is appropriate and in the public interest. The claim implicates the lawfulness of other unallotments made for the current biennium. An 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.

A157.

The notice of appeal from the judgment to the Minnesota Court of Appeals was filed on January 12, 2010. Along with this petition, the Governor and the Commissioners of Management and Budget, Human Services and Revenue have filed a motion for expedited consideration of the petition and a motion requesting the Court to set an expedited schedule for briefing and oral argument upon granting accelerated review.

III. ARGUMENT.

This case clearly meets the criteria for accelerated review because it (1) satisfies the criteria for further review under Minn. R. Civ. App. P. 117, subd. 2; and (2) "is of such imperative public importance as to justify deviation from the normal appellate procedure and to require immediate determination in the Supreme Court." Minn. R. Civ. App. P. 118, subd. 1. Indeed, Respondents and the district court agree that this case warrants immediate and expedited review by the Supreme Court.

A. The Question Presented Is An Important One Upon Which The Supreme Court Should Rule.

This criterion applies here in two respects. First, the scope of the authority to reduce allotments is important in general. The Legislature has provided this authority in Minn. Stat. § 16A.152 to permit the executive branch to prevent budget deficits. *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004) ("The entire statutory scheme [in Minn. Stat. § 16A.152] is designed to enable the commissioner of finance, with approval of the governor and after consultation with the legislative advisory commission, to compensate for deficits in the general fund."), *rev. denied* (Minn. Oct. 19, 2004); *see also Minnesota Fed'n of Teachers v. Quie*, No. 447358, at 4 (Second Jud. Dist. Feb. 27, 1981) ("The statute in question is a clear enunciation of the intent of the legislature that the State of Minnesota must not indulge in deficit financing, and that expenditures can never exceed income during any fiscal period.") (A130).

Second, the use of the unallotment authority this biennium is particularly important given the size of the current budget crisis. As noted, the deficit for this biennium was approximately $2.7 billion when the unallotments were made, with now a projected additional deficit of about $1.2 billion. The Minnesota Constitution does not permit the State's biennial budget to remain in deficit. *See* Minn. Const. art. XI.

B. A Decision By The Supreme Court Will Help Develop, Clarify Or Harmonize The Law.

This criterion also supports this Court's review. The district court's decision creates the potential for confusion about the scope of the executive branch's unallotment authority under Minn. Stat. § 16A.152 and the validity of its exercise for this biennium.

The plain language of section 16A.152 has always been viewed as constitutional under the separation of powers doctrine. *Rukavina,* 684 N.W.2d at 535 (recognizing that the statute "does not represent a legislative delegation of the legislature's ultimate authority to appropriate money, but merely enables the executive to deal with an anticipated budget shortfall before it occurs"); *see also Quie*, No. 447358 (Second Jud. Dist. Feb. 27, 1981) (upholding constitutionality of prior version of the statute) (A130). Indeed, the district court acknowledged that the statute is constitutional. A144. The principle that the plain language of a statute controls is also longstanding. *See, e.g, Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826-28 (Minn. 2005).

Nevertheless, the district court held that the unallotment of funding for the MSA-SD program does not comply with section 16A.152 and violates separation of powers. The district court did so without analyzing the statutory language and the applicable principles of statutory interpretation and construction. Review by the Supreme Court would help settle the potential confusion this decision creates and avoid potential harm to the State and its citizens if the legal uncertainty of the scope of the unallotment authority is not resolved expeditiously.

1. The resolution of the question presented has possible statewide impact.

The resolution of the State's current budget crisis concerns and affects the entire State and all its citizens. Moreover, the unallotment authority applies to "any prior appropriation." Minn. Stat. § 16A.152, subd. 4(b). Thus, the exercise of this authority necessarily can affect programs throughout the State. The MSA-SD program is a

statewide program and the unallotment of its funding this biennium is not restricted to a certain region of the state. A88. Other unallotments made for this biennium likewise apply to appropriations for statewide programs. A85-A91, A93-A94.

2. The question is likely to recur unless resolved by the Supreme Court.

As noted in the district court's order for judgment, the claim at issue "implicates the lawfulness of other unallotments made for the current biennium." A157. Thus, there is uncertainty regarding the validity of the unallotments and the district court's decision may give rise to lawsuits challenging some of the other unallotments made to address the deficit this biennium. Resolution of the matter now by the Supreme Court will conserve the scarce resources of the judiciary, the State and potential future litigants. There is no reason for the Court to await further lawsuits before deciding this case.

C. This Case Is Of Such Imperative Public Importance As To Justify Deviation From The Normal Appellate Procedure And To Require Immediate Determination In The Supreme Court.

In ordering entry of judgment, the district court stressed that immediate appellate review is "in the public interest" and that an expeditious final appellate decision "will assist the executive and legislative branches in determining their respective authority regarding the State's current budget crisis." A157. Respondents also agree that this case warrants immediate review by the Supreme Court.

Time is of the essence in this case because the district court's decision implicates the validity of other unallotments made by the executive branch to eliminate the approximate $2.7 billion deficit in the State's budget for the current biennium of July 1,

2009 to June 30, 2011. Moreover, as noted in the district court's decision, an additional deficit of $1.2 billion for the biennium has been projected in the November 2009 Economic Forecast. The legislative session begins February 4, 2010, and ends by May 17, 2010. Minn. Const. art. IV, § 12. The first year of the biennium ends June 30, 2010.

A deficit in the State's biennial budget becomes increasingly difficult to resolve as the months pass and less of the biennium remains. Reductions in spending are more difficult to plan and absorb, and less effective financially, when they have to be compressed and implemented over a shorter period of time. This is especially so when the reductions are of the size required by the historic budget crisis with which the State is faced in the current biennium.

Immediate review is even more imperative here than it was in *State v. Philip Morris USA, Inc.*, 713 N.W.2d 350 (Minn. 2006), where the Court granted accelerated review of a district court decision that created a potential deficit in the State budget by the district court's invalidation of the Health Impact Fee. *Id.* at 352-55. The potential gap in the State budget in that case was large, on the order of $400 million, *see* State's Brief, No. A05-2540, 2006 WL 1650621, *37 (Feb. 9, 2006), but is dwarfed by the size of the budget deficit that the State is addressing in this biennium. In short, this appeal is precisely the sort of "extraordinary" case for which accelerated review exists. Comment, Minn. R. Civ. App. P. 118.

For these reasons, Petitioners request an order granting accelerated review of this appeal now pending in the Court of Appeals.

Dated: January 12, 2010

Respectfully submitted,

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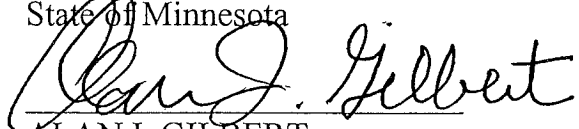

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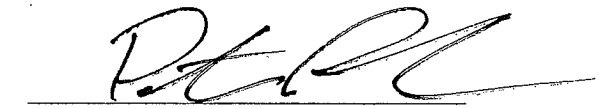

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