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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

Plaintiffs,

vs.

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,

Defendants.

Court File No. 62-CV-09-11693
Chief Judge Kathleen R. Gearin

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Plaintiffs seek a temporary restraining order ("TRO") to extend funding for the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program beyond November 1, 2009, the effective date for the unallotment of that program. A TRO is an extraordinary equitable remedy which can only be granted under very limited circumstances. Plaintiffs have not demonstrated their entitlement to a TRO.

FACTS

A. Unallotments By The Executive Branch.

The statute authorizing the executive branch ("the Administration") 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 Minnesota 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 [Minnesota Management and Budget] commissioner on the amount to be spent or encumbered during a period of time pursuant to an appropriation").[1]

In accordance with section 16A.152, subd. 4, the Minnesota Management and Budget ("MMB") Commissioner, Tom Hanson, determined 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 a large deficit remained in the general fund; and then Commissioner Hanson, with the approval of

[1] Statutory references to the Commissioner of Finance are now to the Commissioner of Minnesota Management and Budget, the agency into which the Department of Finance was merged. *See* Minnesota Session Laws 2009, ch. 101, § 109 (directing revisor of statutes to make this change).

the Governor and after consulting with the Legislative Advisory Commission, reduced unexpended allotments to eliminate this remaining deficit. *See* Affidavit of Patrick Robben Exhibits 1-13. Commissioner Hanson also timely notified the legislative budget committees of the approved unallotments within fifteen days. *See id.* Exhs. 10-13;Minn. Stat. § 16A.152, subd. 6.

Consistent with Commissioner Hanson's determination that "probable receipts for the general fund will be less than anticipated," continuing analyses by MMB show significant ongoing reductions in the State's revenues from previously anticipated levels. Robben Aff. Exhs. 1-3, 14-16. Most recently, on November 10, 2009, MMB determined that actual receipts for the first four months of the biennium are already $81.4 million less than projected. *Id.* Exh. 16.

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

The MSA-SD is part of the broader Minnesota Supplemental Aid ("MSA") program. The MSA program, which is administered by the Minnesota Department of Human Services ("DHS"), provides for State-funded monthly cash payments to supplement federal Supplemental Security Income benefits for certain individuals. MSA-SD provides for supplemental payments for certain medically prescribed diets. Applications for MSA-SD benefits are made through county human services agencies. The counties determine the eligibility of and approve payments to MSA-SD recipients. Affidavit of Mary Orr ¶¶ 2-4.

The MSA-SD program 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. Orr Aff. ¶ 5. 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. Minnesota Session Laws 2009,

chapter 79 (House File 1362), article 13, section 3, subdivision 4(j); Robben Aff. Exh. 17; Orr Aff. ¶ 5.

The Administration 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. Robben Aff. Exh. 10. These unallotments represent a reduction in MSA-SD funding of $2.133 million for FY 2010 and $3.2 million for FY 2011. *Id.* Exh. 9, p. 4.[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.*; Orr Aff. ¶ 8, Exh. 1.

As with all of the Administration's unallotments, the reduction in funding for the MSA-SD program, including the unavailability of benefits under the program from November 1, 2009 through June 30, 2011, has been well publicized since mid-June 2009. The MMB Commissioner's proposed unallotments for the MSA-SD program were made public on June 16, 2009. Robben Aff. Exh. 5. The Governor publicly approved the proposed unallotments on July 1, 2009. *Id.* Exh. 8. On July 16, 2009, the MMB Commissioner publicly provided written notice of the approved unallotments and their implementation to the chairs of the legislative budget committees and members of the Legislative Advisory Commission. *Id.* Exh. 10.

On September 11, 2009, DHS issued a Bulletin to county human services offices reiterating that unallotments for the MSA-SD program meant that no State funds would be available for the program from November 1, 2009 - June 30, 2011. The Bulletin further stated that counties had the option to continue funding for the program at the counties' own expense, and listed a variety of other public and private resources that might be available to MSA-SD

[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. Robben Aff. Exhs. 9, p. 4, 10, 17.

recipients. The Bulletin also directed the counties to review and advise all identified MSA-SD recipients of the potential assistance through three particular public programs, and to send notice of the suspension of the MSA-SD program to all current identified recipients at least ten days in advance of November 1, 2009. Orr Aff. ¶¶ 7-11, Exh. 1.

Plaintiffs served their lawsuit on October 29, 2009, and it was filed on November 3, 2009. Plaintiffs served their TRO motion papers on November 6, 2009. Their motion asks the Court to require the State to continue payments under the MSA-SD program. On November 10, 2009, the Defendants moved to dismiss Plaintiffs' complaint.

ARGUMENT

PLAINTIFFS CANNOT SATISFY THE LEGAL STANDARDS FOR PRELIMINARY INJUNCTIVE RELIEF.

Longstanding Minnesota case law sets forth the criteria that any request for preliminary injunctive relief must satisfy. Defendants submit that because Plaintiffs' request does not meet these criteria, their motion should be denied.

A. Plaintiffs Cannot Satisfy The *Dahlberg* Standards.

In *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (Minn. 1965), the Minnesota Supreme Court identified five factors to be considered in determining whether to grant a request for preliminary injunctive relief:

> (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;
>
> (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;
>
> (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief;
>
> (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and

(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

See also Eakman v. Brutger, 285 N.W.2d 95, 97 (1979) (applying *Dahlberg* standards to motion for temporary restraining order); *MGM Liquor Warehouse Int'l, Inc. v. Forsland,* 371 N.W.2d 75, 77 (Minn. Ct. App. 1985) (citing *Eakman* and stating that *Dahlberg* "analysis applies equally to temporary restraining orders.")

A "primary factor" in determining whether to grant preliminary injunctive relief is whether the proponent of the restraint has shown a probability of success on the merits, the third *Dahlberg* criterion. *Teachers Local 59 v. Special Sch. Dist. No. 1,* 512 N.W.2d 107, 110 (Minn. Ct. App. 1994). Defendants submit that in this case the likelihood of success criterion is dispositive because Defendants have complied with applicable law. *See, e.g., Miller v. Foley,* 317 N.W.2d 710, 713-14 (Minn. 1982) (reversing grant of preliminary injunctive relief in case challenging governmental unit's budgetary decisions because plaintiffs were unlikely to prevail on the merits).

1. Plaintiffs are not likely to succeed on the merits.

Plaintiffs' claims challenging the MSA-SD unallotments are asserted in counts 1, 4 and 5 of their complaint. Each of these claims is without merit.

a. Count 1 — claimed violation of unallotment statute.

The public records confirm that each of the conditions of section 16A.152, subdivision 4 was satisfied. The Commissioner of MMB, Tom Hanson, reported to the Governor and the legislature that he had "determined, as defined in Minnesota Statutes 16A.152, that 'probable receipts for the general fund will be less than anticipated, and that the amount available for the remainder of the [2010-2011] biennium will be less than needed.'" Robben Aff. Exh. 4. The budget reserve account was drawn down to zero. *Id.* Commissioner Hanson's proposed

unallotments to eliminate the remaining deficit were approved by the Governor, after the Commissioner's consultation with the Legislative Advisory Commission; and Commissioner Hanson notified the legislative budget committees of the approved unallotments within fifteen days. *Id.* Exhs. 5-13. As to the MSA-SD program, there was an unexpended FY 2010 allotment and an unexpended FY 2011 allotment of the appropriation from which the program was to be funded this biennium. Robben Aff. Exhs. 9, p. 4, 10, 17; Minn. Stat. § 16A.011, subds. 3-4.

Plaintiffs wrongly contend that the Court should read into the unallotment statute a requirement prohibiting use of the unallotment authority at the beginning of a biennium or that the legislature and the Governor must agree to a balanced budget at the start of the biennium. *See* Complaint ¶ 118, p. 23 ¶ 2; Pls.' TRO Mem. at 21-23. Commissioner Hanson's application of the statute tracks its literal language. In accordance with the express terms of section 16A.152, subdivision 4(a), the Commissioner determined that "probable receipts for the general fund will be less than anticipated" because evidence of a worsening economy and decreasing revenue collections showed that receipts for the 2010-2011 biennium would be less than projected in the February 2009 forecast as well as the November 2008 forecast. Robben Aff. Exh. 4. The Commissioner further determined, again in accordance with the explicit language of subdivision 4(a), that "the amount available for the remainder of the [2010-2011] biennium will be less than needed" because expected revenues would be less than needed to cover authorized spending. *Id.*

It is well established that the plain language of the statute controls and "shall not be disregarded under the pretext of pursuing the spirit [of the statute]." Minn. Stat. § 645.16 (2008); *see also American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) (stating that in applying statute's plain language, "statutory construction is neither necessary nor permitted");

Hyatt v. Anoka Police Dep't, 691 N.W.2d 824, 826-28 (Minn. 2005) (stating that plain language of statute controls whether or not reviewing court considers the result to be "reasonable" or "good policy"); *Tracy State Bank v. Tracy-Garvin Coop.*, 573 N.W.2d 393, 395 (Minn. Ct. App. 1998) (stating that courts are "prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked"); *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004) (holding that "the plain language" of section 16A.152, subd. 4(b), authorized the challenged $49 million reduction of the allotment to the Minnesota Minerals 21st Century Fund in the 2001-2003 biennium) *rev. denied* (Minn. Oct. 19, 2004). Accordingly, the plain language of section 16A.152, subdivision 4(a) mandates rejection of Plaintiffs' contention.

Plaintiffs impermissibly seek to have subdivision 4(a)'s requirement that the MMB Commissioner determine probable receipts will be "less than anticipated" rewritten as "less than anticipated at the beginning of the biennium" to preclude the Commissioner from making this determination before the start of a biennium. *See* Complaint ¶ 118, p. 23 ¶ 2; Pls.' TRO Mem. at 21-23. The plain language doctrine simply does not permit the Court to read such a limitation into the statute. *See, e.g., Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006) (reiterating that "we will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently"). Moreover, as reflected in Commissioner Hanson's June 2009 determination, the term "anticipated" is reasonably applied as including the level of receipts projected in the November and February forecasts. Robben Aff. Exh. 4. These forecasts are mandated by statute, Minn. Stat. § 16A.103 (2008), and are otherwise explicitly referenced in the unallotment statute, Minn. Stat. § 16A.152, subd. 2(a)-(b). In addition, the continuing reduction of State receipts compared to projections is undisputed. *See* Robben Aff. Exhs. 1-3, 14-16 (MMB

analyses showing that receipts for the general fund have been declining relative to projections from November 2008 to the present). Actual receipts for the first four months of the current biennium are already $81.4 million less than projected. *Id.* Exh. 16.

The plain language also addresses Plaintiffs' related contention that use of the unallotment authority in the first year of a biennium is limited to appropriations for that year and cannot extend to appropriations for the second year of the biennium. *See* Complaint ¶ 117, p. 24 ¶ 2D. Under the statute's express terms, the executive branch's unallotment authority applies to "*any* prior appropriation or transfer." Minn. Stat. § 16A.152, subd. 4(b) (emphasis added). "The word 'any' is given broad application in statutes." *Hyatt*, 691 N.W.2d at 826. Inserting the modifier "any" demonstrates a legislative "intent to be inclusive, not restrictive." *In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 519 (Minn. 2006). Thus, the MMB Commissioner's decision to reduce allotments for any existing appropriations, including those for the second year of the biennium, such as the FY 2011 appropriation for MSA grants, is permitted under the plain language of the statute.[3]

Plaintiffs' arguments are also without merit if the Commissioner's unallotments are viewed in light of the purpose of the statute. The legislature authorized the executive branch to respond to a budget shortfall by adjusting State expenditures. *Rukavina*, 684 N.W.2d at 533 ("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

[3] Nothing in the statutes required the Commissioner to wait until the start of FY 2011 to set allotments for FY 2011 appropriations. *See* Minn. Stat. § 16A.011, subd. 3 (defining "allotment" as "a limit placed by the [MMB] commissioner on the amount to be spent or encumbered during a period of time pursuant to an appropriation"). The provision referenced by Plaintiffs, Minn. Stat. § 16A.14, subd. 1 (2008), *see* Complaint ¶ 117, only prohibits the Commissioner from setting an allotment period that extends beyond the fiscal year for which the appropriation was made. It does not, as Plaintiffs suggest, restrict the Commissioner to setting allotments only for the current year of the biennium.

commission, to compensate for deficits in the general fund."); *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.") (Robben Aff. Exh. 19, p. 4). Commissioner Hanson initiated the unallotment process after his determinations under subdivision 4(a) regarding receipts and expenditures produced the conclusion that "the state's revenues are not anticipated to be sufficient to support planned spending in the upcoming biennium," with the resulting shortfall for the biennium expected to be $2.7 billion. Robben Aff. Exh. 4.

In addition, a Commissioner's interpretation of a statute he administers is entitled to deference. *See, e.g., In re Kleven*, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (reiterating established principle that "an agency's interpretation of a statute that it administers is entitled to deference"). The office of the Commissioner of Finance (now Management and Budget) has administered the unallotment statute in its various iterations for almost forty years. *See Legislative History of Unallotment Power*, at 4-13 (Senate Counsel, June 29, 2009) available at *www.senate.leg.state.mn.us/departments/scr/treatise.*

Plaintiffs' proposed construction of the unallotment statute would produce adverse consequences for the operation of State government. If the executive branch were unable to reduce allotted spending at the start of a biennium to avoid a deficit, then spending would continue until such time as the State simply ran out of money before the biennium ended, resulting potentially in a government shutdown, at least as to non-core functions. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 315-17 (Minn. Ct. App. 2007) (rejecting, on procedural grounds, challenge to June 2005 court order that authorized the finance commissioner

to continue to fund "core functions" of the executive branch in the absence of legislative appropriations for them); Minn. Const. art. XI (limiting the State's power to incur indebtedness).[4]

b. Count 4 — claim that statute violates separation of powers.

Statutes are presumed constitutional and will be declared unconstitutional "with extreme caution and only when absolutely necessary." *State v. Tennin*, 674 N.W.2d 403, 407 (Minn. 2004) (quoting *State v. Larsen*, 650 N.W.2d 144, 147 (Minn. 2002)). To successfully challenge the constitutionality of a statute, the challenger "must overcome the heavy burden of showing beyond a reasonable doubt that the statute is unconstitutional." *Tennin*, 674 N.W.2d at 407 (citing *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990)).

The Court of Appeals has already held that an unallotment made in conformance with section 16A.152 does not violate separation of powers. *Rukavina*, 684 N.W.2d at 535 (concluding 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 and stating "[t]his Court can find no basis for the claim of the plaintiffs that the statute in question constitutes an unlawful delegation from the legislature to the executive branch") (Robben Aff. Exh. 19, p. 4).

[4] The potential outcome of Plaintiffs' proposed construction of the statute would be worse than the 2005 partial shutdown, when the State had money but no appropriation authorizing its expenditure. Plaintiffs' construction would mean that the State could be without money to even pay for core function expenditures ordered by a court.

Plaintiffs' attempt to distinguish the facts of *Rukavina* does not change the clear holding of the case.[5]

Other state courts have similarly held unallotment laws to be constitutional. *See, e.g., New England Div. of American Cancer Soc'y v. Commissioner of Admin.*, 769 N.E.2d 1248, 1257 (Mass. 2002) (stating Massachusetts unallotment legislation "reflects a legislative determination that the Commonwealth's need to remain solvent overrides particular statements of social policy contained in those appropriation items subject to allotment"); *University of Connecticut Chapter AAUP v. Governor*, 512 A.2d 152, 158 (Conn. 1986) (stating that Connecticut unallotment law "does not delegate the legislative authority to appropriate," but rather "delegates to the governor the power" to reduce "allotments"); *North Dakota Council of Sch. Adm'rs v. Sinner*, 458 N.W.2d 280, 286 (N.D. 1990) ("The Legislature has not given the director of the budget power to make a law, but only the authority to execute the law within the parameters established by the Legislature."); *Hunter v. State*, 865 A.2d 381, 392 (Vt. 2004) (stating that because unallotment statute "involves shared powers at the intersection of the branches of government, we find no constitutional violation").

Plaintiffs cite to two cases which found laws allowing the executive branch in other states to reduce legislative appropriations to be unconstitutional, *State v. Fairbanks N. Star Borough*, 736 P.2d 1140 (Alaska 1987) and *Chiles v. Children A,B,C,D, E & F*, 589 So.2d 260 (Fla. 1991). Plaintiffs' reliance on these cases is misplaced for several reasons. First, and most importantly, the controlling precedent in Minnesota is the *Rukavina* decision, which held that Minnesota's

[5] Moreover, because it is the legislature that granted unallotment authority to the executive branch, it is within the legislature's power to circumscribe or expand that authority by amending section 16A.152, as it has in the past. *See Sviggum*, 732 N.W.2d at 323 (recognizing that "it is the legislature and not the judiciary that has the institutional competency to devise a prospective plan for resolving future political impasses").

unallotment law is constitutional. Second, unlike section 16A.152, the statutes involved in *Fairbanks* and *Chiles* did not deal with the reduction of funds allotted by the executive branch, but rather changes by the executive branch in the appropriations themselves. This distinction was critical in *Rukavina* and other cases upholding unallotment statutes. *See, e.g., Rukavina,* 684 N.W.2d at 535; *New England Div.,* 769 N.E.2d at 183-84; *University of Connecticut,* 512 A.2d at 158; *North Dakota Council,* 458 N.W.2d at 286; *Hunter,* 865 A.2d at 392. Third, again unlike section 16A.152, the statutes involved in *Fairbanks* and *Chiles* did not provide for any consultation with or other input from a legislative committee.

Based on the foregoing, and in particular the *Rukavina* precedent, Plaintiffs' constitutional claim is without merit.

c. Count 5 — claim that line-item veto should have been used.

The Governor may only line-item veto an individual appropriation. Minn. Const. art. IV, § 23 ("If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill."); *Inter Faculty Org. v. Carlson,* 487 N.W.2d 192, 195 (Minn. 1991) ("An 'item of appropriation of money' is a separate and identifiable sum of money appropriated from the general fund dedicated to a specific purpose."). Funding for the MSA-SD program this biennium was not subject to a line-item veto because there was no separate appropriation for that program. Rather, the MSA-SD program is funded from the large, general appropriation for all the various MSA grants, which is $33.93 million for FY 2010 and $35.191 million for FY 2011. Minnesota Session Laws 2009, chapter 79 (House File 1362), article 13, section 3, subdivision 4(j); Robben Aff. Exh. 17; Orr Aff. ¶ 5.

Plaintiffs do not contend that the Governor should have line-item vetoed the MSA grants appropriation of over $69 million as an alternative to unalloting $5.33 million in funding for the

MSA-SD program. Because the Governor could not have line-item vetoed funding for just the MSA-SD program, his unallotment of that funding necessarily did not deny the legislature the opportunity to attempt to override a line-item veto.

2. The other *Dahlberg* criteria also support denial of Plaintiffs' motion.

Since Plaintiffs cannot show a likelihood of success on the merits, their motion should be denied on this basis alone. *See, e.g., Teachers Local 59,* 512 N.W.2d at 110; *Miller,* 317 N.W.2d at 713-14. However, consideration of the other *Dahlberg* factors further supports denial of Plaintiffs' motion.

a. Nature of relationship among the parties.

Defendants, the State's duly elected Governor and three of his appointed Commissioners, are authorized to administer the State's business. This includes the administration of State human services programs of which Plaintiffs have been and continue to be recipients.

The Governor, as the State's highest elected administrative officer, has been given the statutory right to act through his Commissioner of MMB for the purpose of determining which funds should be unallotted to remedy a budget shortfall. *See* Minn. Stat. § 16A.152. There is no dispute that the State is experiencing a multi-billion dollar deficit, and the Administration desires to consider all possible unallotments of State funds to deal with the deficit.

Furthermore, it has been publicly known since June 16, 2009, that the Administration would end State funding for the MSA-SD program on November 1, 2009. Robben Aff. Exh. 5. Had Plaintiffs acted more promptly to challenge the unallotment, the matter could have been adjudicated before the November 1 cut-off date. Defendants submit that the delay in commencing this action until just prior to the lapse of State funding weighs against the request for equitable relief in the form of a TRO. *Cf. Aronavitch v. Levy,* 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953) (stating equitable doctrine of laches is applied "to prevent one who has

not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay").

b. Balance of harm.

As discussed above, the Administration has exercised its statutory right to unallot funding for this particular program in its effort to correct a severe budget shortfall. In so doing, it has assessed and determined the alternatives it considers most appropriate for the State to deal with the shortfall. Defendants submit that the requested injunctive relief will therefore result in harm to the State if the Administration's authority, and its judgment as to which programs should be unallotted, are compromised.[6]

c. Public policy considerations do not justify the requested injunctive relief.

Pursuant to State law, the Administration is given discretion to unallot monies to correct the current budget shortfall. *See* Minn. Stat. § 16A.152. It has unallotted State funds for that purpose, which necessarily implicates the Administration's application of public policy, such as whether any MSA funding should be unallotted, and if so, in what amount and for which particular MSA benefits. A TRO would therefore interfere with the Administration's public policy judgments.

In addition, the public policy underlying the unallotment statute is to prevent a deficit in the State biennial budget. *See Rukavina*, 684 N.W.2d at 535 (stating that "the legislature, by statute [Minn. Stat. § 16A.152] authorized the executive branch to avoid, or reduce, a budget shortfall in any given biennium" and "deal with an anticipated budget shortfall before it occurs").

[6] Moreover, as reflected in the Affidavit of Mary Orr, the Director of the DHS Community Partnerships Division, alternative resources are available that could, at least to some extent, provide partial funding or other assistance for Plaintiffs' dietary needs. Orr Aff. ¶¶ 9-10, Exh. 1.

This policy has constitutional import, as the Minnesota Constitution prohibits the State from running a biennial budget deficit. Minn. Const. art. XI, § 6

d. There would be some administrative burden to the State to comply with the requested TRO.

Although there appears to be no significant administrative burden to the Court, there would be some administrative burden to the State to comply with a TRO. The State has spent considerable time and resources to program its automated system to effectuate the unallotment. According to the Affidavit of Mary Orr, it is anticipated that DHS would need one working day to reprogram its automated system to implement the requested TRO and the individual counties would need approximately 15 working days to authorize payments. Orr Aff. ¶ 12.

CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court deny the Plaintiffs' motion.

Dated: November 12, 2009

Respectfully submitted,

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