

JUN 17 2011

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

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

***AMICUS CURIAE***  
**MEMORANDUM OF**  
**MINNESOTA ASSOCIATION**  
**OF TREATMENT**  
**PROGRAMS**

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**INTRODUCTION**

“Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent.” Minn. Const. Art. I, § 1. The Minnesota Association of Treatment Programs (“MATP”) is an unincorporated association of organizations (“Providers”) whose mission is to provide treatment to and otherwise care for and assist chemically dependent persons within the State of Minnesota. A list of the Providers is attached as Exhibit “A.”

MATP and the Providers seek to ensure that the rights of these persons, who are some of the most vulnerable citizens of Minnesota, are not stripped away as a result of the current legislative impasse.

The mission and work of the Providers is funded in substantial part by the Consolidated Chemical Dependency Treatment Fund (CCDTF), a State-operated, County-managed system for provision of chemical dependency treatment to people eligible for public assistance.<sup>1</sup> The Counties, following State guidelines and procedures, enter into provider contracts that establish services and rates, assess persons applying for treatment services, and determine which provider will supply what amount of services to meet the determined needs of each patient. The Providers

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<sup>1</sup> In 2006, the Minnesota Department of Human Services prepared an analysis report of the CCDTF, which is available online at: <http://www.leg.state.mn.us/docs/2009/other/090616.pdf>.

use CCDTF funds in a variety of ways to help treat and rehabilitate patients, including inpatient and outpatient treatment and halfway house programs. Treatment is often a condition of an offender's sentencing or parole or may be mandated by civil (including family) courts. Funding from the CCDTF will cease June 30, 2011, if there is not a resolution of the budget impasse by the legislative and executive branches.

**INTEREST OF THE *AMICUS CURIAE***

The Providers that make up MATP vary in location and size, but all share the common mission to provide treatment services to the most vulnerable of Minnesota's citizens – those afflicted with the iron grip of chemical dependency.<sup>2</sup> Chemical dependency is a chronic disease that affects a person's body, mind and behavior. Treatment is intended to help a patient cope with drug addiction and develop skills and habits to avoid relapse. Even with treatment, however, the risk for relapse for chemically dependent adults is high, making recipients of chemical dependency treatment particularly vulnerable in our society.

Some examples of the Providers who are members of MATP include:

A. RS Eden. RS Eden is a Minnesota nonprofit corporation with a longstanding reputation of working successfully with some of the most challenging substance abuse situations that can occur. RS Eden's staff specializes in serving culturally diverse, poly drug adult males and females. Treatment programs include counseling, chemical health, relapse prevention, health care, independent living skills and aftercare, as well as vocational and educational services. In addition, RS Eden provides residential chemical dependency treatment programs for both women and men.

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<sup>2</sup> No counsel for a party authored this memorandum in whole or in part, and no person other than *amicus curiae* and its counsel has made a monetary contribution toward its preparation or submission.

B. Haven Chemical Health Systems, LLC. Haven Chemical Health Systems, LLC operates various residential and outpatient chemical dependency programs throughout the Twin Cities metro area. Its goal is to initiate a process of recovery through carefully guided practice in making the necessary lifestyle changes that promote long-term abstinence and recovery.

C. Juel Fairbanks Chemical Dependency Services. Founded in 1973, Juel Fairbanks Chemical Dependency Services (“Juel Fairbanks”) is a nonprofit chemical dependency service agency located in St. Paul. The namesake of Juel Fairbanks was an American Indian, an Ojibwe from Cass Lake, who was active in Alcoholics Anonymous. Among other programs, Juel Fairbanks operates a group residential housing facility in Saint Paul for high-risk adults and young adults.

D. Project Turnabout. At Project Turnabout, licensed professionals facilitate all chemical dependency treatment programming which includes individual and group therapy, lectures and videos, recreation, nutritional planning and more. Staff members include psychologists, licensed counselors and nurses, as well as a chaplain and a physical fitness trainer. Residential programs are offered on the campus in Granite Falls as well as the halfway house program in Marshall.

### **ARGUMENT**

The provision of health care (including chemical dependency treatment services) for Minnesota’s most vulnerable citizens is a core function of government and must be funded. The cessation of funding will have an immediate and adverse effect on those vulnerable adults who are in the midst of treatment for chemical dependency.

. This obligation, which has been previously recognized by this Court, arises from the Minnesota Constitution and Minnesota Statutes as well as the Supremacy Clause of the United States Constitution. Any interruption of CCDTF funding would result in an immediate corresponding interruption in the chemical dependency treatment of the Providers' clients. Continued administration of CCDTF funding is a core function of Minnesota's government. Without continued funding of this core function, vulnerable adults served by the Providers are certain to suffer immediate and irreparable harm.

**I. MINNESOTA COURTS HAVE THE INHERENT AUTHORITY AND THE OBLIGATION TO CONTINUE FUNDING SUBSTANCE ABUSE TREATMENT PROVIDERS.**

**A. Courts have inherent authority to take action to protect rights guaranteed by the Minnesota Constitution.**

The judicial branch is established by virtue of Article 6 of the Minnesota Constitution, which imposes on the courts the duty to protect the constitutionally-guaranteed rights of Minnesota citizens. The "fundamental function" of the judicial branch is "the administration of justice and the protection of the rights guaranteed by the constitution." *Petition for Integration of Bar of Minnesota*, 12 N.W.2d 515, 518 (Minn. 1943). The courts are "the final authority and the last resort in the protection of the human, political, and property rights guaranteed by the constitution." *Id.*

As the "final authority" for the protection of constitutionally-guaranteed rights, the courts have inherent authority to administer justice. *Id.* This authority comes as a matter of law, without requiring specific promulgation from the State constitution or statute. *Id.*

The concept of the courts' "inherent authority" has been addressed a number of times by the Minnesota Supreme Court. Typically, the inherent authority of the courts is invoked when the Supreme Court regulates the practice of law or promulgates procedural rules. However, the

Supreme Court has stated that a lack of funding could empower the judicial branch to take action to fulfill its constitutional obligations. Specifically, the Supreme Court said:

At bottom, inherent judicial power is grounded in judicial self-preservation. 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 re Clerk of Court's Compensation v. Lyon County Commissioners*, 241 N.W.2d 781, 785 (Minn. 1976) (emphasis supplied).

The judicial branch's responsibilities go beyond the protection of its own power to hear and decide cases. Indeed, as one of Minnesota's three co-equal branches of government, the judicial branch must also protect the rights of the citizens of Minnesota by ensuring that the executive branch and the legislative branch are fulfilling their obligation to preserve core government functions. When the legislative branch fails to make appropriations for use by the executive branch, the judicial branch has the inherent legal authority to take such steps as are appropriate and necessary to ensure the continued operation of government and the protection of the constitutional rights of the citizens. As cautioned in *Lyon County Commissioners, supra*, failure by the courts to take protective and appropriate action would make a "myth" of the separation of powers.

**B. Courts have the obligation to protect vulnerable adults abandoned by the legislative and executive branches.**

The Minnesota Bill of Rights entitles all citizens, especially the most vulnerable, to the provision of basic services such as health care (including chemical dependency treatment services). Article 1, Section 1 of the Minnesota Constitution, which has remained unchanged since its initial adoption in 1857, defines the role of government as being "for the security,

benefit and protection of the people, in whom all political power is inherent.” Minn. Const. Art. I, § 1.

The citizens of Minnesota are entitled to the protection of all three branches of government. Because the legislative and executive branches have failed to provide for the continued protection of the most vulnerable adults in Minnesota, the judicial branch is obligated to take action.

The budget impasses of 2001, 2005 and today are not the only instances where the judicial branch has been required to take action to protect vulnerable adults’ constitutional rights against the actions (or inactions) of government officials. For example, in 1944, the Minnesota Supreme Court affirmed the inherent duty of government officials to care for the less fortunate members of our society in the interest of the general welfare. *Thiede v. Town of Scandia Valley*, 14 N.W.2d 400, 407 (Minn. Sup Ct. 1944).

In *Thiede*, an indigent family named Thiede, who previously resided in the town of Fawn Lake, acquired a real estate settlement for poor relief purposes in the town of Scandia Valley. *Id.* A dispute arose between Fawn Lake and Scandia Valley as to which town was responsible for providing relief to the family. The dispute was initially resolved by Scandia Valley agreeing to allow the family to remain on the real estate, so long as Fawn Lake provided the care and maintenance for the family. However, Fawn Lake later reneged on the agreement and informed Scandia Valley that Fawn Lake would no longer take responsibility for the Thiede family’s care or support. Upon receiving this notice, Scandia Valley (itself not wanting the responsibility to provide for the family’s care and support) forcibly evicted the Thiede family from the town. *Id.* at 404-05.

Following their eviction, the Thiede family sued Scandia Valley. The Supreme Court held that the care for the less fortunate is the duty of state and local government, which could not be abdicated merely for economic convenience. *Id.* at 407, 409. Simply put: “[t]he protection [of the indigent] afforded by our form of government is not merely fair weather shelter. **It may not be minified by reasons of temporary economic expediency.**” *Id.* (emphasis supplied).

The clients served by the Providers through the CCDTF cannot be abandoned because of the temporary inability for the legislative and executive branches to resolve a budgetary impasse. Under *Thiede*, the judicial branch has the obligation to protect the vulnerable and continue their support. This obligation can best be met by granting the relief requested by the Attorney General.

**C. The Minnesota Legislative and Executive Branches Have Established the Policy of Protecting Vulnerable Adults.**

Granting the Attorney General’s petition will further public policy. It is the unwavering policy of the State of Minnesota to protect and provide safe residential services and living environments to vulnerable adults.<sup>3</sup> Violation of the statutory protection established by this public policy is grounds for civil and criminal liability. Minn. Stat. §§ 626.557-5573, 609.232-33. Protecting the administration of the CCDTF furthers the public policy established by statute by ensuring that the vulnerable adults receiving chemical dependency services via the CCDTF are not abandoned.

**D. The Supremacy Clause of the United States Constitution Requires Continued Spending of Federal Funds Intended to Protect Vulnerable Adults.**

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<sup>3</sup> Minn. Stat. § 626.557, *et seq.*, commonly known as the Minnesota Vulnerable Adults Act, defines a vulnerable adult as any person 18 years of age or older that is a resident or inpatient of a facility. Minn. Stat. § 626.5572 subd. 21 (a) (2). Each client of a Provider receiving residential substance abuse treatment is therefore, by definition, a vulnerable adult.

MATP agrees with the Attorney General's position concerning the effect of the Supremacy Clause of the United States Constitution on this Court's obligation to continue core services. For those funds appropriated by Congress, the executive branch is obligated to provide such services as are necessary to make payments according to the directions of the United States Congress.

**E. This Court's Precedent Requires Continued Funding of Core Functions of Government, Including Administration of the CCDTF.**

This Court has consistently held that the executive branch is obligated to continue funding its core functions during a budgetary impasse. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. C0-05-5928 (Dist. Ct. June 23, 2005) (Conclusion of Law No. 9).<sup>4</sup> Such "core functions" include matters relating to the life, health and safety of Minnesota citizens, plus those functions required to be performed by the State or a federal contract or federal law. *Id.* at Conclusion of Law No. 10. In a supplemental order during the 2005 budget impasse, this Court stated emphatically that the core functions of government, for which continued funding was constitutionally required, included "the provision of health care for the state of Minnesota's most vulnerable citizens." *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. C0-05-5928 (Dist. Ct. June 30, 2005) (Conclusion of Law No. 3).<sup>5</sup> Provision of "health care" naturally includes the continued administration of CCDTF funds.

The rights of the vulnerable adults in 2011 are no less valuable than were the rights of those vulnerable adults protected by this Court in 2005. Lack of an agreement between the legislature and executive branch on how to appropriate and spend funds cannot be used as an excuse to suspend services and protection to vulnerable persons.

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<sup>4</sup> Attached to the Petitioner's Petition as part of Exhibit 4.

<sup>5</sup> Attached to the Petitioner's Petition as part of Exhibit 4.

## **II. ABSENT RELIEF, VULNERABLE ADULTS WILL BE AT RISK FOR IMMEDIATE AND IRREPARABLE HARM.**

Discontinuing CCDTF funding for the Providers will have an immediate and substantially adverse effect on the patients they serve. The Providers do not have significant funding reserves. Without continued funding, the Providers will be required to substantially reduce or even eliminate their services, even to the point of having to evict patients and clients residing in the Providers' treatment facilities. Any interruption in treatment could cause relapse, homelessness, incarceration, and criminal behavior. These patients, who were in the treatment program to address their suffering from chemical dependency, will leave the supportive environment, only to return to the streets, to the people that fed their addictions, to confusion, to alcohol, to drugs, to crime, and to pain.

Both the Attorney General and the Governor have cited the need to have correctional supervising after June 30, 2011, to include incarceration and community supervision of offenders. The programs funded by CCDTF and operated by the Providers are an integral part of the incarceration process. Clients receiving treatment funded by CCDTF are referred by local courts, including the effective drug court program. These programs exist specifically to keep drug substance abusers out of incarceration. Other clients are referred by civil courts, to help clients reestablish their relationship with their families or otherwise protect children from abuse arising from substance abuse.

If the State ceases administration of the CCDTF, the Providers will be unable to accept any referrals, and the courts will not have the option of imposing a condition of chemical dependency treatment. Thousands of parolees and probationers who are under such a condition will be in violation of their conditions of supervision if their treatment is interrupted. This is an

immediate and highly consequential imposition on the administration of justice and the judicial branch's means to control its cases.

Failure to continue funding would make treatment for acute addiction and withdrawal unavailable, resulting in a health crisis in Minnesota. One such treatment method is the prescription of methadone, managed by the Department of Human Services. Methadone is a medication used for maintenance treatment for opiate dependence or detoxification from opiates. It is widely recognized as the most effective form of treatment for opiate dependence in terms of treatment outcome, reduction in illegal activity, and cost effectiveness. A patient on methadone engages in appropriate behaviors and sees a return to normal physiological and biopsychosocial function. Because methadone is an opiate, a patient suddenly stopping methadone is at risk for withdrawal. To cease providing access to that drug will result in chaos and the likelihood that those addicted will resort to illegal means to avert the pain of withdrawal, or go into emergency rooms as a costly, unnecessary alternative.

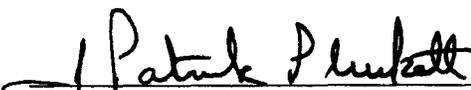
Any interruption in chemical dependency funding will result in irreparable harm to those receiving treatment as well as other Minnesotans. Alcohol and drug abuse is the primary contributing factor for the vast majority of individuals who engage in behaviors dangerous to themselves and the community. When these individuals are referred to treatment through civil or criminal court, the treatment court becomes the de facto supervisory agency. The courts rely on the Providers to monitor these individuals. Without the Providers being open, these individuals lose their safety net. Without this safety net, it is not difficult to imagine these individuals returning to illegal activities to feed their addictions. In the case of a woman who is pregnant, the absence of treatment enhances the likelihood that her child will be born with a drug problem.

Finally, discontinued funding will cause permanent and lasting damage to the already fragile infrastructure of the Providers. Due to recent and ongoing economic conditions the Providers do not have sufficient funds reserved to sustain operations through a temporary or extended budget impasse. Most Providers will not be able to simply “restart” once the legislative and executive branches resolve the budget impasse. In all likelihood, many programs would not be able to recover from the impact of a shutdown that interrupts administration of the CCDTF funds.

**CONCLUSION**

The treatment of Minnesota’s vulnerable adults grappling with the hooks of chemical dependency is a critical, core function of the State. This Court has the inherent judicial authority and obligation to order continuation of the administration of the Consolidated Chemical Dependency Treatment Fund.

Respectfully Submitted,

Dated: June 17, 2011   
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The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

  
J. Patrick Plunkett

## Exhibit A

### **Chemical Dependency Treatment Providers**

RS Eden

1931 W Broadway Ave.

Mpls., MN, 55411

Fee for service outpatient and residential C.D. treatment. Also receives grants from the state.

Project Turnabout

660 18<sup>th</sup> St. P.O. Box 116

Granite Falls, MN. 56241

Fee for service outpatient and residential C.D. treatment.

Haven Chemical Health Systems

2042 Wooddale Dr. #220

Woodbury, MN. 55125

Fee for services outpatient and residential C.D. treatment.

Park Avenue Center

2525 Park Ave.

Mpls., MN. 55404

Fee for service outpatient C.D. treatment

Wayside House Inc.

3705 Park Center Drive

St. Louis Park, MN. 55416

Fee for service women's C.D. outpatient and residential treatment, housing, and support services.

The Gables

604 5<sup>th</sup> St. S.W.

Rochester MN. 55902

Fee for service women's Residential C.D. treatment.

Meridian Behavioral Health

550 Main St. #230

New Brighton, MN. 55112

Fee for service outpatient and residential C.D. treatment.

River Ridge Treatment Programs

14750 Lac Lavon Dr.

Burnsville, MN. 55306

Fee for service outpatient and residential treatment.

Pride Institute  
14400 Martin Dr.  
Eden Prairie, MN. 55344  
Fee for service GLBT outpatient and residential treatment.

Recovery Resource Center  
1900 Chicago Ave. S.  
Mpls., MN. 55404  
Fee for service outpatient C.D. treatment.

We Care Counseling Center  
6027 N. Georgia Blvd.  
Oakdale, MN.  
Fee for service outpatient C.D. treatment.

Common Ground  
1027 7<sup>th</sup> St. N. W. #207  
Rochester, MN. 55901  
Fee for service outpatient C.D. treatment

Turning Point  
1500 Golden Valley Rd.  
Mpls., MN. 55411  
Fee for service outpatient and residential C. D. treatment for African Americans.

Fountain Centers  
408 Fountain St.  
Albert Lea, MN. 56007  
Fee for service outpatient and residential C. D. treatment

Create Inc.  
1911 Pleasant Ave. S.  
Mpls., MN. 55403  
Fee for service outpatient C.D. services.

ShareHouse  
4227 9<sup>th</sup> Ave S.W.  
Fargo, N.D. 58110  
Fee for service outpatient and residential C.D. services with multiple Minnesota sites.

St. Cloud Hospital-Recovery Plus  
1406 6<sup>th</sup> Ave. N.  
St. Cloud, MN. 56303  
Fee for service outpatient and residential C. D. services

Rum River Hills C.D.  
101 18<sup>th</sup> Ave. N.  
Princeton, MN 55371  
Fee for service outpatient C.D. treatment.

Nuway House  
2518 First Ave. S.  
Mpls., MN. 55404  
Fee for service outpatient and residential C. D. services

Washington County HSI  
275 Orleans  
Stillwater, MN. 55082  
Fee for service outpatient C. D. services

Adolescent Treatment Center of Winnebago  
620 First Ave. S. W.  
Winnebago, MN. 56098  
Fee for service Adolescent C. D. residential treatment

Juel Fairbanks Chemical Dependency Services  
806 North Albert Street  
St. Paul, Minnesota 55104

Pathway House  
PO Box 6610  
Rochester, MN 55903