

STATE OF MINNESOTA  
COUNTY OF RAMSEY

**FILED**  
**Court Administrator**  
JUL - 7 2011  
By  Deputy

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Civil

In re Government Shutdown Litigation,

Court File No. 62-CV-11-5203

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

**ORDER REGARDING PETITIONS  
OF MINNESOTA DEPARTMENT OF  
HUMAN SERVICES LICENSING  
DIVISION, ARC MINNESOTA  
MINNESOTA SCHOOL BOARD  
ASSOCIATION & INTERMEDIATE  
SCHOOL DISTRICTS**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding of the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On Friday, July 1, 2011 and Tuesday July 5, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by programs (hereinafter listed). Based on the file, proceedings, and recommendations, the Court makes the following ORDER:

1. The petition filed by the Minnesota School Board Association and Intermediate School Districts is granted as these funds fall within the Court's June 29, 2011 order regarding school funding.

2. The petition of Arc Minnesota for continued funding of its housing access services is denied.

3. The petition of the Minnesota Department of Human Services Licensing Division is granted for the reasons stated by the Special Master and is effective July 11, 2011.

Dated: 7-7-11

BY THE COURT:



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

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions  
of Executive Branch of the State of Minnesota

**SPECIAL MASTER  
RECOMMENDATIONS FOR  
MINNESOTA SCHOOL BOARD  
ASSOCIATION AND INTERMEDIATE  
SCHOOL DISTRICTS**

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This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 1, 2011. Present before the Special Master were Lori Swanson, Attorney General; Al Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Michelle Kinney, Counsel for Minnesota School Board Association; Karen Keppell, Counsel for the Intermediate School Districts; Sarah Ruff, Counsel for Intermediate District 287 and Intermediate District 917; Janet Johnson, Finance Director of Intermediate District 287.

Based upon the arguments of counsel and the testimony at the hearing, the Special Master makes the following:

**Recommendation**

1. **NO ACTION** is required on Petitioners' request because the Court's Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 specifically found that funding education was a critical core function of government and the Department of Education has agreed that the State and Federal special education aids sought by Petitioners should be disbursed.

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### **Concerns of Petitioners**

1. The Minnesota School Board Association, on behalf of the Independent School Districts, and the Intermediate School Districts, object to the Department of Education's interpretation of the Court's Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding ("Order") that only state aids with open and standing appropriations for fiscal year 2012 must be disbursed. State and Federal special education aids will not be paid to Petitioners because they have been deemed by the Department not to involve a critical core function of government.

2. The Department of Education's interpretation of the Order will prevent the Intermediate School Districts from receiving any funding under state special education aids, which constitutes the vast majority of the funding for these particular Districts.

### **Analysis**

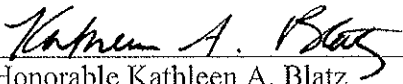
1. Petitioners were informed that without legislation appropriating funds for state education aids and funding Department operations, no state or federal aids would be paid by the Department of Education to school districts other than those state education aids flowing from open or standing appropriations.

2. The Court specifically found that "[t]he 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." (Order at Finding of Fact 21.)

3. The Department of Education originally interpreted the Order as not encompassing State and Federal special education aids on the grounds that they do not involve a

critical core function of government, but the Office of the Governor has since stated on the record that the Department of Education has concluded that upon further review such funds were authorized by the Court's Order as a core critical function of government.

Dated: July 6, 2011

  
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The Honorable Kathleen A. Blatz  
Special Master

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions  
of Executive Branch of the State of Minnesota

**SPECIAL MASTER  
RECOMMENDATIONS FOR ARC  
MINNESOTA**

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This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 1, 2011. Present before the Special Master were Lori Swanson, Attorney General; Al Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; Scott Schifsky, Program Director of ARC Minnesota; Cindy Johnson, Housing Access Coordinator of ARC Minnesota; and Steve Larson, Public Policy Director of ARC Minnesota.

Based upon the testimony at the hearing, the Special Master makes the following:

**Recommendation**

1. Petitioner's request for continued funding of its housing-access services should be **DENIED.**

**Concerns of Petitioner**

1. Petitioner argues that continued funding of its housing-access services is necessary to meet the public health and safety needs of the individuals eligible for medical assistance home care and adults eligible for Minnesota Medicaid Waiver services.

### Analysis

1. The housing-access services provided by Petitioner are important to the vulnerable Minnesotans it serves. However, in its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011, the Court specifically found:

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.

(Findings of Fact ¶ 31.)

2. Petitioner provided no evidence that continued payment of these funds was mandated by Supremacy Clause principles.

Dated: July 6, 2011

  
The Honorable Kathleen A. Blatz  
Special Master

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions  
of Executive Branch of the State of Minnesota

**REPORT AND RECOMMENDATIONS  
OF SPECIAL MASTER REGARDING  
BACKGROUND STUDIES BY THE  
MINNESOTA DEPARTMENT OF  
HUMAN SERVICES LICENSING  
DIVISION**

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This matter came on for hearing before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 1, 2011 and July 5, 2011. Present before the Special Master were Lori Swanson, Attorney General; Al Gilbert, Solicitor General and Deputy Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Numerous attorneys and witnesses appeared for associations other organizations to urge positions regarding continued operations during the government shutdown.


Numerous petitioners have appeared before the Special Master to request that the Department of Human Services (“DHS”) rehire the staff necessary to perform statutorily-mandated background studies in the DHS Licensing Division for employees and volunteers that perform services for program’s deemed critical core functions by the Court’s Findings of Fact, Conclusions of Law, and Order for Granting Motion for Temporary Funding of June 29, 2011 (the “Order”). *See, e.g.* Minn. Stat. ch. 245C (Minnesota Department of Human Services Background Studies Act). The Licensing Division of DHS was closed effective July 1, 2011 as part of the present government shutdown.



The Court explicitly found in its Order that “[n]ecessary administration and supportive services” be funded after June 30, 2011. (Finding of Fact ¶ 27(5).) Without background checks, many agencies who perform critical core functions are barred from hiring the staff and volunteers essential to carrying out their programs. The Licensing Division also suspends licenses if pending investigations or reports are received of alleged maltreatment / misconduct. Continued licensure of the subjects of such reports could jeopardize the well-being of vulnerable populations.

The Commissioner of DHS has requested funding to re-open the Licensing Division on July 11, 2011 to provide support services to those programs deemed as performing critical core functions. It is the Special Master’s recommendation that the Court **GRANT** the request and authorize funding for the Licensing Division to rehire it staff and provide services as of July 11, 2011. If so ordered, the Special Master recommends that the Court require the Commissioner of DHS to exercise discretion so that only those employees necessary to process licensing requests related to previously deemed critical core functions be re-employed.

Dated: July \_\_, 2011

  
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The Honorable Kathleen A. Blatz  
Special Master