

FILED
Court Administrator

JUL 14 2011

By  Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

In re Government Shutdown Litigation,

Case Type: Civil
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 COALITION AGAINST
SEXUAL ASSAULT AND MINNESOTA
COALITION FOR BATTERED WOMEN**

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 July 1, 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 Coalition Against Sexual Assault is granted in part and denied in part.
2. Funds administrated by the Department of Public Safety shall be reinstated for 24-hour accompaniment to a hospital for forensic exams, referrals to emergency shelters, safety planning, and a 24-hour crisis line as these all fall within the critical core function exception to Article XI of the Minnesota Constitution.
3. Funding (except from Office of Justice Programs) is not approved for providing assistance in recording crimes to law enforcement, guidance in obtaining civil protection orders, and support at court proceedings as these services do not fall within the critical core function exception to Article XI.
4. Any funding administered by the Office of Justice Programs for services for sexual abuse victims shall be reinstated on grounds that not distributing those funds would violate the Supremacy Clause of the United States Constitution.
5. The petition of Minnesota Coalition for Battered Women is granted in part and denied in part.
6. Funds administrated by the Department of Public Safety shall be reinstated for domestic abuse victim shelters, 24-hour domestic abuse crisis lines, assistance in obtaining emergency medical services for domestic abuse victims, and developing an emergency safety plan for domestic abuse victims as these fall within the critical core function exception to Article XI.
7. Funding (except from the Office of Justice Programs) is not approved for providing assistance to domestic abuse victims in recording crimes to law enforcement, guidance in obtaining civil protection orders, and support at court

proceedings as these services do not fall within the critical core function exception to Article XI.

8. Any funding administered by the Office of Justice Programs for services for domestic abuse victims shall be reinstated on grounds that not distributing those funds would violate the Supremacy Clause.

Dated:

7-14-11

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

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 REGARDING
PETITION OF MINNESOTA COALITION
AGAINST SEXUAL ASSAULT**

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; Alan 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. Caroline Palmer, MNCASA; Donna Dunn, Executive Director, MNCASA; Jeanne Ronayne, Dodge, Fillmore, Olmsted Counties Victims Unit; and Chief Paul Schnell, Hastings Police Department appeared on behalf of Petitioner.

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

Recommendation

1. Petitioner's request that sexual assault victim service programs be designated as critical core functions of government should be **GRANTED**.

Concerns of Petitioner

1. Petitioner seeks a determination that crime victim services funded by Crime Victim Grants administered by the Minnesota Department of Public Safety, Office of Justice Programs ("OJP") be designated as critical core functions of government that must continue to operate and

receive funding. Petitioner also maintains that the mix of federal and state funding for such services implicates the Supremacy Clause of the United States Constitution and therefore requires continued disbursement of the grants.

Analysis

1. The Minnesota Coalition Against Sexual Assault (“MNCASA”) is a nonprofit organization located in St. Paul, Minnesota, appearing in its representative capacity on behalf of 85 sexual assault victim advocacy service member programs and allies throughout the State of Minnesota. Member Programs provide a range of 24-hour emergency assistance to victims, including operation of a 24-hour crisis line, 24-hour accompaniment to the hospital for a sexual assault medical forensic exam, safety planning, referral to emergency shelters, assistance in recording crimes to law enforcement, and guidance with civil protective orders to address immediate safety needs. In many instances, Member Program employees are the first responders to crimes of sexual violence. According to the OJP, sexual assault programs served 12,554 primary and secondary victims in 74 Minnesota counties in 2010.

2. The Office of the Governor supports the petition and requests independently that funding for crime victim grants be continued. These grants would encompass and fund the programs addressed in this petition, as explained more fully in the Special Master Recommendations Regarding Petition of the Minnesota Coalition for Battered Women.

3. In response to the shutdown, sexual assault programs have reduced essential staffing and services. Most programs do not carry large reserve funds and some programs have already stopped delivering services. Member programs are struggling to maintain 24-hour emergency assistance. The only Spanish-language crisis line in Minnesota has already been suspended. Without the funding necessary to continue 24-hour emergency services, sexual assault victims

will be left without access to immediate support, evidence will be lost, and victims will remain vulnerable to further harm.

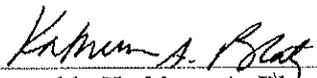
4. Member Programs receive state and federal funding through OJP. The average grant per program is \$43,000 per year, as determined annually by the OJP. These grants consist of state funds but may be augmented by federal funds that pass through the OJP. In most instances, the programs themselves do not know what portion of their funding derives from federal, as opposed to state, sources. Federal grants include the Services Training Officers Prosecutors (STOP) Violence Against Women Act Grant Program, the Sexual Assault Services Program (SASP) and the Victims of Crime Act (VOCA) Program. The United States Department of Justice administers these grant programs. The OJP is under agreements and obligations with the federal government to disburse these federal funds “to ensure the health, safety and welfare of Minnesota citizens.” (Order p. 7 ¶ 24.) A failure to distribute these funds may violate the Supremacy Clause of the U.S. Constitution.

5. The Court’s Order recognizes that certain critical core functions of government should continue to be funded in the event of a shutdown. The Order specifically enumerates five objectives, including “[m]aintenance of public safety and immediate public health concerns.” (Order p. 9 ¶ 27(2); p. 6 ¶ 20 (citing Article I, Section 1 of the Constitution for the proposition that “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent.”).) Exhibit A of the Order further identifies Priority 1 Critical Services as those constituting an “immediate threat to public health and/or safety.” (Order Ex. A III(A).) “Generally, these would include agencies and facilities that operate 24-hours a day.” (*Id.*) Sexual assault programs meet the criteria set forth in the Court’s Order. OJP programs such as these maintain crisis services 24-hours a day, attending to the mental health and trauma

response needs of crime victims. Sexual assault service programs are crucial to the safety of Minnesota communities and represent a critical core function of government.

6. The As more fully explained in the Special Master Recommendation Regarding Petition of the Minnesota Coalition for Battered Women, the record before the Special Master concerning crime victim grants prevents a more precise and narrow recommendation. However, because of the integral and critical part these programs play in ensuring public safety, the Special Master recommends that crime victim grants for programs addressing sexual assault be continued as consistent with the guidelines set forth in the Court's Order and in Exhibit A. Accordingly, the petition should be granted.

Dated: July 13 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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 REGARDING
PETITION OF MINNESOTA COALITION
FOR BATTERED WOMEN**

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; Alan 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. Liz Richards, Director of Programming and Cynthia Cook, Executive Director, appeared on behalf of Petitioner Minnesota Coalition for Battered Women.

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

Recommendation

1. Petitioner's request that crime victim services including domestic violence programs, shelters and safe homes for battered women and their children, supervised visitation centers, sexual violence programs, abused children programs and general crime programs be designated as critical core functions of government should be **GRANTED**.

Concerns of Petitioner

1. Petitioner seeks a determination that crime victim services funded by grants administered by the Minnesota Department of Public Safety, Office of Justice Programs (“OJP”) be authorized as critical core functions of government that relate to “the life, health, and safety” of Minnesota citizens. (Order p. 13 ¶ 37.) Petitioner also asserts that continued funding is required by the Supremacy Clause of the United States Constitution.

Analysis

1. Minnesota Coalition for Battered Women (“MCBW”) is a membership organization appearing in its representative capacity on behalf of 83 Member Programs. Member Programs provide critical direct services to victims, including domestic violence programs, shelter and safe homes for battered women and their children, supervised parenting time centers, sexual violence programs, abused children programs and general crime programs throughout Minnesota. The individual Member Programs receive significant -- to total -- funding from Crime Victim Services grants administered by the OJP.

2. Domestic violence programs and emergency shelters provide a range of 24-hour crisis services, including shelter, safe houses and emergency transportation. In addition, Member Programs partner with law enforcement to provide victims assistance in navigating the criminal justice system, obtaining protective orders, investigating and prosecuting cases, recovering belongings, securing medical services, and preserving forensic evidence.

3. In 2010, 56,121 victims of domestic violence and their children received services through programs such as these. In one 24-hour period, local domestic violence programs sheltered 990 victims, provided non-residential services to 825 individuals, and fielded 582 crisis hotline calls. (2010 Domestic Violence Counts: A 24-Hour Census of Domestic Violence

Shelters and Services.) In 2010, there were 8,992 total shelter intakes involving women and children. The average stay was 24 days and the total shelter bed days for women and children was 215,168 days. (Minnesota Department of Public Safety OJP: Domestic Violence Shelter Usage in Minnesota, January 2011 p. 3.)

4. The Office of the Governor supports the Petitioner's request and submitted an independent request that certain programs deemed by the Department of Public Safety as being critical core functions be authorized to continue being funded. Included on its list are those programs receiving Crime Victim Grants. Of the Crime Victim Grants, 26 are for shelters and the rest serve victims of domestic violence, sexual assault, child abuse and other crimes. These programs appear to exactly mirror those supported by the Petitioner. The Attorney General is also in support of the Petitioner's and Governor's petitions.

5. In response to the shutdown, domestic violence programs have reduced essential staffing and services. As of July 1, 2011, at least three emergency shelters for battered women and their children had suspended service and 38 bed spaces were eliminated. As of that date, there were no available shelter bed spaces in the metropolitan area and only 10 in rural Minnesota. Member programs are struggling to provide a minimal level of service, with staff members volunteering their time. Despite these efforts, Member Programs are struggling to maintain the funding necessary to provide 24-hour staff coverage and a 24-hour crisis line. The reduced level of services is insufficient to meet critical health and safety needs of women and children in Minnesota. Additional programs are in imminent danger of shutting down.

6. Member Programs receive state and federal funding through the OJP. The OJP disburses approximately \$40 million annually in grants for domestic violence prevention programs. These funds are disbursed to domestic violence programs that provide 24-hour crisis

services. The OJP receives federal funds “designed to ensure the health, safety and welfare of Minnesota citizens.” (Order p. 7 ¶ 24.) The funds come from the Violence Against Women Act funding, the Victims of Crime Act funding, and the Family Violence Prevention Services Act funding. Petitioner asserts that the OJP is under agreements and obligations with the federal government to disburse these federal funds.

7. The Court’s Order recognizes that certain critical core functions of government should continue to be funded in the event of a shutdown. The Order specifically enumerates five objectives, including “[m]aintenance of public safety and immediate public health concerns.” (Order p. 9 ¶ 27(2); p. 6 ¶ 20 (citing Article I, Section 1 of the Constitution for the proposition that “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent.”).) Exhibit A of the Order further identifies Priority 1 Critical Services as those constituting an “immediate threat to public health and/or safety.” (Order Ex. A III(A).) “Generally, these would include agencies and facilities that operate 24-hours a day.” (*Id.*) Domestic violence programs work closely with local law enforcement and the criminal justice system to ensure the security and safety of women and children. OJP programs such as these maintain crisis services 24-hours a day, seven days a week. Continued funding of domestic violence programs is consistent with the guidelines set forth in the Court’s Order and in Exhibit A. Domestic violence programs and emergency services are critical to providing for the health and safety of women and children, and represent a critical core function of government.

8. In reviewing the evidence submitted, the Special Master focused in on those programs whose mission seemed broader than emergency shelter/housing and/or 24-hour crisis hotlines in order to determine whether its recommendation to the Court could be more narrowly tailored. In the end, the Special Master concludes that based on the record before her, such tailoring could

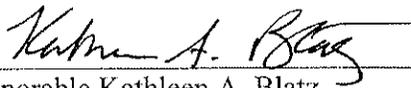
not be done. For example, “abused children’s programs” include those programs which conduct forensic interviews, specialized medical evaluations, and treatment under the OJP Crime Victim Grants. These services and programs are deemed “child advocacy” and not treatment or crisis intervention. Likewise, “abused children’s programming” under the OJP includes “Parenting Time Center Programs,” described by Petitioner as “supervised parenting centers.” These centers are available for use as a drop-off site so parents who are under court order not to have contact with each other can exchange children for visitation at a neutral site.

9. In candor the Special Master acknowledges that the record is not easily dissected. While it appears that the grants primarily fund critical core services, others services could be delayed until the executive and legislative branches reached agreement on the budget. Nonetheless, the Special Master recommends that the Crime Victim Grants continue to be funded. In so concluding, the Special Master views the programs funded by the grants to complement the critical public safety work done by law enforcement, and therefore should be similarly funded during the shutdown. In its focus on reports of physical and sexual abuse of victims, law enforcement concentrates its efforts on the investigation, apprehension and supervision of *perpetrators*. In contrast, victim service programs focus their efforts on the *victims*, helping them to be safe during times of crisis, preserving evidence and facilitating a connection with law enforcement and prosecutors so that victims have continuing legal protection. To be sure, if a scalpel were applied – versus the blunt instrument of these Special Master proceedings – the recommendation would carve out portions of grants that, while beneficial, fall short of the services vital and critical to the protection of adult and child victims. But because it is near-impossible to do in a Special Master hearing what knowledgeable legislative committees do in the course of weeks, the Special Master has decided to err on the

side of public safety. The large bulk of the funding is clearly directed to programs that provide direct services to victims in need of timely intervention in order to be immediately safe and then to assist victims in securing services or court intervention to protect them, and often their children, from future abuse. As such, continued authorization of the Crime Victim Services grants is consistent with the guidelines set forth in the Court's Order and in Exhibit A.

Accordingly, the Special Master recommends that the petition be granted.

Dated: July 12, 2011



The Honorable Kathleen A. Blatz
Special Master