

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

The Ninetieth Minnesota State Senate and
the Ninetieth Minnesota State House of
Representatives,

Court File No. _____

Plaintiffs,

v.

COMPLAINT

Mark B. Dayton, in his official capacity as
Governor of the State of Minnesota, and
Myron Frans, in his official capacity as
Commissioner of the Minnesota Department
of Management and Budget,

Defendants.

Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of
Representatives, for their Complaint against the above-named defendants, state and allege as
follows:

Introduction

1. This is a declaratory judgment action initiated pursuant to Minnesota Statutes, Chapter 555, seeking a declaration that Governor Dayton's May 30, 2017 line-item vetoes of the Minnesota Legislature's funding for fiscal years 2018 and 2019 violate the Separation of Powers Clause of the Minnesota Constitution. Plaintiffs further seek injunctive relief or mandamus, directing the Commissioner of the Department of Management and Budget to allot funds that were appropriated to the Legislature for the 2018-2019 fiscal biennium. Without such relief, Plaintiffs are unable to fulfill their constitutional obligations, will not be able to properly

represent their constituents, and the People of the State of Minnesota are deprived of a constitutionally-mandated voice in the administration of their government.

2. By May 26, 2017, the Minnesota Legislature passed a comprehensive and balanced budget for fiscal years 2018 and 2019. This budget included nine appropriation bills and a tax bill. The legislature adjourned the 2017 special session *sine die* and the budget bills that were passed during the regular and special sessions were presented to Governor Mark Dayton as provided by Minnesota Constitution art. IV, § 23.

3. On May 30, 2017, Governor Dayton signed all of the appropriation bills and the tax bill into law. However, Governor Dayton vetoed two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, the appropriations to the Senate and House of Representatives:

	<u>2018</u>	<u>2019</u>
2.24: <u>Subd. 2. Senate</u>	\$32,299,000	\$32,105,000
2.25: <u>Subd. 3. House of Representatives</u>	\$32,383,000	\$32,383,000

(Ex. 1, Governor Dayton's Letter to President of the Senate Fischbach at 1, May 30, 2017.)

These two items, totaling over \$129 million, funded the Senate and House for fiscal years 2018 and 2019. Because the special and regular sessions have ended, Plaintiffs cannot override the veto. Plaintiffs will be without funding starting on July 1, 2017 as a result of the Governor's line-item vetoes.

Parties

4. Plaintiffs Ninetieth Minnesota State Senate and Ninetieth Minnesota State House of Representatives constitute the Ninetieth Minnesota Legislature. This action was authorized by the Legislative Coordinating Commission (LCC) by Resolution LCC-2, and adopted by the LCC on June 2, 2017. (Ex. 2, LCC Resolution relating to legal counsel, June 2, 2017.)

5. Mark B. Dayton is the duly elected Governor and Chief Executive Officer of the State of Minnesota. Governor Dayton's May 30, 2017 line-item vetoes gave rise to this action. Additionally, Governor Dayton heads the executive branch which includes the Department of Management and Budget. Governor Dayton is named as a defendant herein in his official capacity as Governor of the State of Minnesota.

6. Defendant Myron Frans is the Commissioner of the Department of Management and Budget, also known as Minnesota Management and Budget (MMB). The Commissioner manages the State's financial affairs and is the State's controller and chief accounting and financial officer, appointed by the Governor with the consent of the Senate. Minn. Stat. §§ 15.06, 16A.01. Defendant Frans is responsible for allotting appropriations to the Legislature for its expenditures. Defendant Frans is named as a defendant herein in his official capacity as the Commissioner of MMB.

Jurisdiction and Venue

7. Plaintiffs bring this action pursuant to Minnesota Constitution, art. III, § 1, and the United States Constitution, art. IV, § 4. Accordingly, this Court has jurisdiction under Minn. Stat. §§ 484.01, 586.11.

8. Venue is proper in this district under Minnesota Statutes, Chapter 542 because this cause of action arose in Ramsey County, and each defendant maintains his official office in Ramsey County.

Facts

9. The Minnesota Legislature consists of the Senate and House of Representatives.

10. The Minnesota Senate consists of 67 elected senators; 205 permanent, full-time staff; and 35 additional "session-only", full-time staff.

11. The Minnesota House of Representatives consists of 134 elected representatives; 232 permanent, full-time staff; and approximately 50 additional “session-only”, full-time staff.

12. Legislators are elected to represent constituents within their districts. Communicating with constituents is a core function of the Legislature. Constituents legitimately expect that they can contact their legislators with questions about pending legislation, to propose future legislation, and to alert their respective legislators to issues and concerns with the operation of existing laws. Legislative staff facilitates communication between constituents and legislators. Constituent communication occurs year-round. During the interim between regular sessions, legislators depend even more heavily on staff to facilitate constituent communication. A legislator cannot represent the will of the People without the unabridged ability to communicate with his or her constituency.

13. Another core function of the Legislature is to craft legislation for consideration for passage by the Legislature. Crafting legislation is complex and time-consuming. Legislators depend heavily on partisan and nonpartisan staff, including attorneys, research analysts, and fiscal analysts. During the interim between regular sessions, legislative staff prepares bills for consideration when the Legislature is in session. This includes holding committee hearings to gather evidence on issues of interest for possible legislation. No legislator could craft legislation without the aid of legislative staff.

14. The Senate and the House are constitutionally obligated to publish journals of their respective proceedings. Minn. Const. art. IV, § 15. Senate and House staff prepare and review their journals for publication. This is a time-consuming task. In a typical biennium, for instance, the Senate Journal may exceed 10,000 pages in length, plus indexes.

15. During the interim between regular sessions, most legislators are employed outside the Legislature. Legislative activities occur year-round. In addition to the functions described in Paragraphs 9 through 14, legislative committees are empowered to meet during the interim to review legislation and conduct oversight of the executive department. The Governor may call a special session at any time, and a special session may run for an indefinite period of time. Legislative staff spends considerable time preparing for each special session, including preparation and review of legislation. Legislative staff also spends considerable time in advance of the regular session ensuring administrative tasks are completed, including recruiting, hiring, and training staff.

16. The Senate's monthly operating expenses are approximately \$2,500,000.

17. The House's monthly operating expenses are approximately \$2,700,000.

18. The Senate subleases the Minnesota Senate Building from the Commissioner of Administration. The Senate must pay monthly lease payments for the Minnesota Senate Building to the Commissioner of Administration in the amount of \$683,000. This includes \$589,000 due under the lease for the Minnesota Senate Building, plus \$94,000 in costs for the senate parking garage. The Commissioner of Administration leases the Minnesota Senate Building from the Commissioner of MMB. On November 14, 2017, the Commissioner of Administration must make a semi-annual rent payment of \$1,911,000 to the Commissioner of MMB, for the funds paid by the Senate under its sublease. On May 14, 2018, the Commissioner of Administration must make another rent payment of \$4,131,000 to the Commissioner of MMB. If the Commissioner of Administration fails to make these payments, the Commissioner of MMB is authorized under the terms of the lease to remove persons and property from the Minnesota Senate Building.

19. On May 30, 2017, Governor Dayton sent a letter to President of the Senate Michelle Fischbach, as required by Minn. Const. art. IV, § 23, stating the two items of appropriation he vetoed. (*See* Ex. 1.) Governor Dayton also sent a letter to Speaker of the House Kurt Daudt and Senate Majority Leader Paul Gazelka, dated May 30, 2017, explaining the Governor's rationale for the line-item vetoes. (Ex. 1 at Attach 1-3., Governor Dayton's Letter to Speaker Daudt and Majority Leader Gazelka.) As justification for his line-item vetoes, Governor Dayton stated "[y]our job has not been satisfactorily completed, so I am calling on you to finish your work. However, I will allow a Special Session only if you agree to remove the following provisions": (1) the tobacco tax breaks, (2) the estate tax exclusion increase, (3) the C-I property tax freeze, (4) the driver's license provision, and (5) the teacher licensure provision. (*Id.*)

20. Plaintiffs cannot meet in session and therefore cannot override Governor Dayton's line-item vetoes because the special session was adjourned *sine die*. The regular session was adjourned until February 20, 2018. The Minnesota Constitution prohibits reconvening the regular session before 2018. Minn. Const. art. IV, § 12.

21. Beginning on July 1, 2017, the Senate and House will not have operating appropriations for fiscal years 2018 and 2019.

22. LCC has authority to and did authorize this action on behalf of Plaintiffs on June 2, 2017. (Ex. 2.)

23. The Legislature is required to perform certain duties, which have been defined as "core functions," and which cannot be abridged.

24. The core functions of the Legislature include, among other things, drafting, debating, publishing, voting on, and enacting legislation. (*See* Ex. 3, *In re Temp. Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. 62-CV-11-5203, 2011

WL 2556036, at *8, Findings of Fact, Conclusions of Law, and Order Granting Mot. Temp. Funding (Minn. Dist. Ct. June 29, 2011)).

25. No request by the Minnesota Legislature of the Defendants to fund the core functions of the Minnesota Legislature is required because the duties at issue are public and not private. In the event a request is required, such request is futile.

26. Due to Governor Dayton's line-item vetoes, the Legislature will have insufficient funds to exercise its official and constitutional powers and duties beginning on July 1, 2017.

27. The Minnesota Constitution provides that "[t]he powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." Minn. Const. art. III, § 1.

28. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed the Minnesota Legislature's funding for the 2018-2019 fiscal biennium. The vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties.

29. The Governor's line-item vetoes are unconstitutional, null, and void.

30. As a result of Governor Dayton's line-item veto of the Minnesota Legislature's funding for the 2018-2019 fiscal biennium, the Minnesota Legislature has suffered a public wrong that is specifically injurious to the Minnesota Legislature.

Count I (Declaratory Judgment)

31. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

32. Minnesota courts have “recognized that where the constitution commits a matter to one branch of government, the constitution prohibits the other branches from . . . interfering with the coordinate branch's exercise of its authority.” *In re Civil Commitment of Giem*, 742 N.W.2d 422, 429 (Minn. 2007); *accord Limmer v. Ritchie*, 819 N.W.2d 622, 627 (Minn. 2012); *see also State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (1930) (explaining that no branch of government “can control, coerce or restrain the action or nonaction of either of the others in the exercise of any official power or duty conferred by the constitution”).

33. Governor Dayton violated the Separation of Powers Clause of the Minnesota Constitution when he line-item vetoed funding for Plaintiffs for the next biennium. These vetoes impermissibly control, coerce, and restrain the action of the Legislature in the exercise of its official and constitutional powers and duties. The Governor’s veto message made clear he did not disagree with the amounts or character of the appropriations for the Senate and House. In fact, the vetoed appropriations matched amounts recommended in the Governor’s budget for the Senate and House of Representatives. The message demonstrated the Governor’s intent was to coerce the Senate and House to revisit bills that had become law.

34. A justiciable controversy exists between the parties in this matter, and the controversy is ripe for adjudication.

35. Plaintiffs are entitled to a declaratory judgment that:

a. The Omnibus State Government Appropriations bill became law when Governor Dayton signed it on May 30, 2017;

b. The Governor's vetoes of the two items of appropriation in the Omnibus State Government Appropriations bill, chapter 4, article 1, section 2, subdivisions 2 and 3, violate the Separation of Powers Clause, Minn. Const. art. III, § 1, by impermissibly controlling, coercing, and restraining the action of the Legislature in the exercise of its official and constitutional powers and duties;

c. As a result of violating the Separation of Powers Clause, the Governor's line-item vetoes are unconstitutional, null, and void; and

d. Because the Governor's line-item vetoes are unconstitutional, null, and void, those two items of appropriations became law with the rest of the bill.

Count II (Injunctive Relief)

36. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

37. Plaintiffs will suffer immediate and irreparable harm on and after July 1, 2017 without injunctive relief.

38. The Legislature must be allowed to exercise its official and constitutional powers and duties.

39. Plaintiffs seek injunctive relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

Count III (Mandamus Relief Under Minn. Stat. §§ 586.01-586.12)

40. Plaintiffs incorporate and re-allege paragraphs 1 through 30 as if set forth fully herein.

41. A "writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting

from an office, trust, or station. It may require an inferior tribunal to exercise its judgment or proceed to the discharge of any of its functions[.]” Minn. Stat. § 586.01.

42. Plaintiffs have no other plain, speedy, and adequate remedy at law.

43. The Legislature must be allowed to exercise its official and constitutional powers and duties.

44. The Court is permitted to issue a writ of mandamus to compel a person, including the Commissioner of MMB, to take action to avoid arbitrary and capricious results.

45. The Court also has equitable authority to issue a mandatory injunction directing the MMB to take action to comply with the Minnesota Constitution.

46. Plaintiffs seek mandamus relief on or before July 1, 2017, compelling Defendant Frans to allot such funds as necessary to pay for such obligations of the Legislature.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter judgment declaring the Governor’s line-item vetoes, dated May 30, 2017, which denied funding to the Legislature, to be unconstitutional, null, and void;

2. Enter an order reinstating the two items of appropriations vetoed by the Governor, that is the appropriations for the Senate and House, in their entirety;

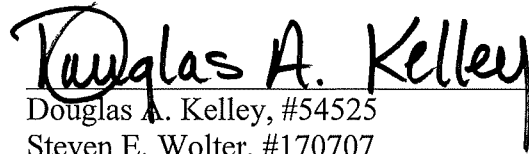
3. Alternatively, directing that, pursuant to the Separation of Powers Clause of the Minnesota Constitution, the Legislature must be allowed to exercise its official and constitutional powers and duties, and the State of Minnesota must fully fund such functions;

4. An order directing Defendant Frans, in his official capacity as the Commissioner of the MMB, to allot such funds as necessary to pay for such obligations of the Legislature; and

5. Granting Plaintiffs such other and further relief as the Court deems appropriate.

Dated: June 13, 2017

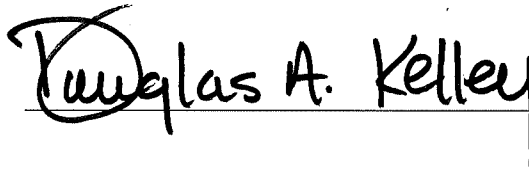
KELLEY, WOLTER & SCOTT, P.A.

_____

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ACKNOWLEDGMENT

The undersigned acknowledges that costs, disbursements, and reasonable attorneys' fees and witness fees may be awarded to the opposing party pursuant to Minn. Stat. § 549.211.

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STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 30, 2017

The Honorable Michelle L. Fischbach
President of the Senate
Room 2113, Minnesota Senate Building
St. Paul, Minnesota 55155

Dear Madam President:

Please be advised that I have received, approved, signed, and deposited in the Office of the Secretary of State, Chapter 4, Senate File 1, with the exception of the line-item vetoes listed below:

- Page 2, Line 24: "Subd. 2 Senate 32,299,000 32,105,000"
- Page 2, Line 25: "Subd. 3 House of Representatives 32,383,000 32,383,000"

At the last minute, the Legislature snuck language into the State Government bill that would hold hostage the Department of Revenue appropriation in this bill to my signature on the Taxes bill. I am unwilling to put the jobs of 1,300 Department of Revenue employees at risk. As a result of this action, I am line-item vetoing the appropriations for the Senate and House of Representatives to bring the Leaders back to the table to negotiate provisions in the Tax, Education and Public Safety bills that I cannot accept. Attached is my letter to Speaker Daudt and Majority Leader Gazelka explaining my reasoning for line-item vetoing the Senate and House of Representatives' appropriations.

Minnesotans expect state government to provide high-quality services. SF 1 provides the needed operating adjustments for state agencies and constitutional offices to maintain these services. Providing the adjustments will help to ensure that our state can address the challenges presented with rising costs over the next biennium as well as population growth and increased demand for services.

There are other investments in this bill that will also benefit Minnesotans, such as: funding to ensure every Minnesotan is counted in the 2020 census; moving the state historic preservation office to the Department of Administration to benefit businesses, and additional funding for tuition incentives that the men and women who join our national guard can take advantage of.

However, there are provisions in this bill that cause concern. The bill intrudes upon my authority to manage the executive branch of state government. It places onerous reporting requirements on state agencies and limits the flexibility of commissioners to manage their agencies.

EXHIBIT 1

The Honorable Michelle L. Fischbach
May 30, 2017
Page 2

Minnesota has a long history of checks and balances between the executive and legislative branches and having Minnesota Management and Budget keep track of the cost of legislation has served us well. SF 1 transfers the responsibility for fiscal notes from Minnesota Management and Budget to the Legislature. Putting this work under the authority of the legislature creates redundancies and inefficiencies and unnecessarily grows government.

The bill reneges on our commitment by \$10 million each year beginning in 2020, to fund the Minneapolis Employees Retirement Fund (MERF) placing that state obligation onto the taxpayers of Minneapolis.

I am extremely disappointed by what is not in this bill. In my budget I prioritized investments in technology, specifically cyber security. I prioritized these not for the benefit of state agencies, but for the benefit of Minnesotans. We need to ensure we can protect our data and systems from cyber-attacks. And, we need to do so while still ensuring that state agencies have the operations capability to responsibly serve our state's citizens. This is not an either/or proposition and I continuously sought both. In addition, we need to ensure that the backbone of our government – how we pay our bills and keep track of our finances – is running smoothly. Critical improvements are needed to these systems to keep them operating. Our procurement systems likewise can use updating. Funding those improvements is not in this bill.

Minnesotans deserve a transparent, fiscally responsible budget. We must make investments to build a more competitive state workforce, ensure efficient and accountable outcomes in state programs, secure our IT infrastructure, and deliver the high quality of state services that Minnesotans deserve.

Sincerely,



Mark Dayton
Governor

cc: Senator Paul E. Gazelka, Senate Majority Leader
Senator Thomas M. Bakk, Senate Minority Leader
Senator Mary Kiffmeyer, Minnesota Senate
Representative Kurt Daudt, Speaker of the House
Representative Melissa Hortman, House Minority Leader
Representative Sarah Anderson, House of Representatives
The Honorable Steve Simon, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes

Attachment



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 30, 2017

The Honorable Kurt Daudt
Speaker of the House
Room 463, State Office Building
St. Paul, Minnesota 55155

The Honorable Paul E. Gazelka
Senate Majority Leader
Room 3113, Minnesota Senate Building
St. Paul, Minnesota 55155

Dear Speaker Daudt and Majority Leader Gazelka:

I am signing into law the nine so-called "Budget Bills," in order to forestall a bitter June showdown over a State Government shutdown. I have strong disagreements with certain provisions in every one of those bills. However, having been through twenty tumultuous days in July 2011, I understand the enormous uncertainties and disruptions that even the threat of another shutdown would cause for many thousands of Minnesotans. I also know from prior experience that it is extremely unrealistic for any of us to imagine we would achieve any better results from protracted budget negotiations well into June.

I will allow the tax bill to become law without my signature. I will not sign it, because of very major objections I have with certain provisions in it. However, I cannot veto it, because of the "poison pill" provision you snuck into the State Government bill, which attempts to eliminate all funding for the Minnesota Department of Revenue in Fiscal Years 2018 and 2019, if the tax bill were not enacted.

I consider this provision, snuck into the State Government bill without my knowledge, to be a reprehensible sneak attack, which shatters whatever trust we achieved during the Session. Now I understand why you made it almost impossible for my staff and me to obtain drafts of your bills' language, sometimes not until minutes before they were brought to the floor for passage.

I will not risk a legal challenge to the Department of Revenue's budget and cause uncertainty for its over 1,300 employees. Because of your action, which attempts to restrict my executive power, I am left with only the following means to raise my strong objections to your tax bill, which favors wealthy individuals, large corporations, and moneyed special interests at the expense of the State of Minnesota's fiscal stability in the years ahead.

Thus, I am line-item vetoing the appropriations for the House and Senate in FY 18/19 and FY 20/21. Your job has not been satisfactorily completed, so I am calling on you to finish your work. However, I will allow a Special Session only if you agree to remove the following provisions, which are extremely destructive to Minnesota's future:

1. Eliminate the Tobacco Tax Breaks. In 2013 I proposed, and the Legislature passed, an increase in cigarettes and other tobacco products, first to help resolve a projected \$623 million deficit in the coming biennium; and second, to discourage people from smoking; and, especially, to discourage young people from beginning to smoke. The tax increases achieved both intended results.

ATTACH. TO EX. 1

The Honorable Kurt Daudt and Paul Gazelka
May 30, 2017
Page 2

This bill's tax breaks for tobacco would cost the State Treasury an estimated \$13.8 million in the FY 18/19 biennium, \$39.7 million in FY 20/21, and even more in subsequent years.

Especially galling, and indefensible, is the tax break for premium cigars, at a cost of \$6.9 million over the next two bienniums. I am appalled that there was not enough money left after you satisfied your priorities to expand the Working Family Credit in FY 18/19 or to further increase the Child Care Tax Credit for working parents; yet, you could find room to sneak in a special tax break for premium cigars for some special, moneyed friends.

2. Cancel the Estate Tax Exclusion Increase. There is already a \$2 million tax exemption for the estates of the wealthiest Minnesotans and a \$5 million tax exemption for farmers and family-owned businesses. Increasing the regular exclusion by another \$1 million would benefit only a handful of the richest people in Minnesota at a cost to the State of \$34.8 million in FY 18/19, \$74.5 million in FY 20/21, and even more in years following.

Whether the State Exclusion is \$2 million or \$3 million, those millionaires, whose preoccupations are to avoid paying taxes, will continue to find other states, who offer them better Estate Tax avoidance. It would require raising the exclusion to the federal level of \$5 million to achieve parity, and that cost would be prohibitive. Reducing state revenues by \$109.3 million from the richest Minnesotans to little public benefit is extremely ill-advised.

3. C-I Property Tax Freeze. I support excluding the first \$100,000 of business property from statewide property taxes despite its high cost of over \$85 million in the next biennium. However, freezing the levy has disastrous effects in future years, costing the State almost \$85 million in FY 20/21 and even more in years following. Over the next ten years, the total revenue loss to the State would be over \$1 billion.

Look at the attached analysis of forecast uncertainties, prepared by the Department of Management and Budget. Even a moderate national recession would reverse Minnesota's hard-earned fiscal stability. That billion dollars in revenue is essential to our State's financial security.

Tax cuts are politically appealing and much appreciated by those who receive them. However, their total cost to the State must be responsible, not just for tomorrow but also for the days, weeks, and years that will follow. This principle was violated with tax breaks in 2000 and 2001, which helped cast State Government into serious and repeated budget deficits soon thereafter.

When I became Governor in January 2011, the State faced a projected \$6.2 billion deficit over the coming biennium. Over the next four years, we went through a very difficult and often painful process to restore our fiscal integrity: to re-establish structural budget surpluses, to pay back the over \$2 billion owed our school districts, and to eliminate many shifts and other gimmicks. I refuse to allow the State's financial security to be jeopardized by excessive tax giveaways, which do not benefit most Minnesotans.

The Honorable Kurt Daudt and Paul Gazelka
May 30, 2017
Page 3

It is unfortunate that your last-minute legislative treachery has left me no other option but either to passively permit those tax provisions to become law and decimate our future financial solvency, or to take this action. However, the future well-being of our children and our grandchildren is at stake. I will not willingly allow their futures to be jeopardized.

4. Driver's License Provision. There is another provision, which I insist you agree to remove, before I will call a Special Session. The new language in HF 470, which prohibits undocumented immigrants from obtaining drivers licenses is, as I have said repeatedly, completely redundant and, therefore, unnecessary. Several different legal opinions have stated to me that current law does not allow my Administration to make such a change, without action by the Legislature.

Thus, this provision is nothing more than a strategic attack against people, many of whom have lived in this country for a long time, and most of whom are living responsible lives and contributing to our growing state economy. Your intent to further divide our evermore diverse population might be politically advantageous to you (it must be, or you wouldn't have done it); but it is destructive to the future well-being of the people of Minnesota.

5. Teacher Licensure Provision. I also insist that you re-open and re-negotiate the Teacher Licensure provisions in HF 2. The integrity of Minnesota's professional teaching standards is of paramount importance to all of our state's licensed teachers and to ensuring the quality of teachers, educating all of our children. While I support improving Minnesota's system of teacher licensure, some provisions undermine the high professional standards that have served Minnesota's schoolchildren extremely well.

I will await your response.

Sincerely,



Mark Dayton
Governor

cc: Senator Thomas M. Bakk, Senate Minority Leader
Representative Melissa Hortman, House Minority Leader
Representative Greg Davids
Senator Roger Chamberlain

Attachment



Notes on Risk and Uncertainty for Minnesota FY 2018-19 Revenues

May 15, 2017

What happens to the revenue forecast if a recession starts?

- During the last two relatively mild and short (8 months each) U.S. recessions, we lowered our revenue forecast for the current biennium on average 4.5 percent from one February to the next (so, over 12 months).
 - We lowered our revenue forecast by 0.5 percent in the 1990-91 recession and by 8.6 percent in the 2001 recession.
 - The Great Recession of 2007-09 is too much of an outlier to use as a comparison here.
- If *this year* we were to face an experience similar to the average of those two recessions, we might lower our forecast for FY 2018-19 revenues by about \$1.9 billion (4.1 percent) in November 2017, and then by another \$200 million (0.5 percent) in February 2018. That would be a \$2.1 billion (4.5 percent) forecast reduction over 12 months.
 - With significant impacts on financial income, especially capital gains, the 2001 recession was much harder on Minnesota revenues than the 1990-91 recession. If this year we were to face a similar experience to the 2001 recession, we might lower our forecast for FY 2018-19 revenues by about \$3.4 billion (7.5 percent) in November 2017, and then by another \$500 million (1.2 percent) in February 2018. That would be a \$3.9 billion (8.6 percent) forecast reduction over 12 months.
 - If this year we were to face a similar experience to the 1990-91 recession, we might lower our forecast for FY 2018-19 revenues by about \$230 million (0.5 percent) by February 2018.
 - These estimates include all sources of revenue forecast risk, including both economic risk and our own forecast error.
 - These estimates *do not include* the impact of a recession on expenditures. Demand for public services tends to increase during an economic downturn, putting pressure on state government spending.

How far off can revenues be by then end of the biennium?

- In February, we forecast total FY 2018-19 revenues to be roughly \$45.7 billion. If our February 2017 forecast is about as accurate as our average forecast, the range of closing values for FY 2018-19 total revenues is \$45.7 billion plus or minus \$2.4 billion (5.4 percent). That is, revenues



could end up as low as \$43.2 billion or as high as \$48.1 billion. (Values do not add due to rounding.)

- Our average error for 29-months-ahead forecasts is plus or minus 5.4 percent of non-dedicated revenues. We calculated the average over 13 biennia.
- More information is in our March 2017 *Revenue Forecast Uncertainty Report*:
<https://mn.gov/mmb-stat/000/az/forecast/2017/february-forecast/forecast-uncertainty-report-full.pdf>

LCC-2

LEGISLATIVE COORDINATING COMMISSION**Resolution relating to legal counsel**

Senator Gazelka moves that the Legislative Coordinating Commission, on behalf of the Minnesota Senate and the Minnesota House of Representatives, retain the law firm of Kelley, Wolter & Scott, P.A., to serve as outside counsel to represent the Senate and House of Representatives in litigation arising from the May 30, 2017, line-item vetoes of the direct appropriations to the Senate and House of Representatives contained in Laws 2017, First Special Session, chapter 4, section 2, subdivisions 2 and 3. The firm may also handle related legal matters in support of the legislature's need for an operating budget to fulfill its constitutional obligations as an independent branch of government.

Adopted
June 2, 2017

EXHIBIT 2



KeyCite Yellow Flag - Negative Treatment

Amended in Part by [In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota](#), Minn.Dist.Ct., June 29, 2011

2011 WL 2556036 (Minn.Dist.Ct.) (Trial Order)

District Court of Minnesota,

Second Judicial District.

Ramsey County

In re TEMPORARY FUNDING OF CORE FUNCTIONS OF
THE EXECUTIVE BRANCH OF THE STATE OF MINNESOTA.

No. 62-CV-11-5203.

June 29, 2011.

Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding

[Kathleen R. Gearin](#), Judge.

Case Type: Civil

On June 15, 2011, this Court issued an Order to Show Cause setting a hearing date of June 23, 2011 on the motion of Petitioner Lori Swanson, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. Since then, various other submissions have been filed with the Court. Appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Governor motioned this Court to order mandatory mediation between the executive and legislative branches. The Court denied the motion orally and in a written order dated June 27, 2011. The Governor opposes the Attorney General's Petition for a court order directing core functions of the State of Minnesota to continue absent a budget agreement between the executive and legislative branches by June 30, 2011. The Governor asks this Court not to issue any further orders at this time arguing the issue is not justiciable. The Governor asserts that he is prepared to use his executive power without an appropriation or court order should the executive and legislative branches fail to reach a budget agreement.
2. The Court finds that the issue has “ripened” to the point where it needs to be ruled upon by the Court. *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Assoc*, 271 N.W.2d 445 (Minn. 1978).
3. The Attorney General petitioned this Court for an order directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. She also requests the Court appoint a Special Master. The Attorney General took no position on the motion for mediation but informed the Court she would participate if ordered to do so.
4. The Minnesota House opposed the request for court ordered mediation as unconstitutional. At the hearing, counsel for the House stated the House does not oppose the Attorney General's Petition or the Governor's position. The House specifically requested the Court order the Office of Management and Budget to continue issuing payments to fund the

Minnesota House in the event of a state government shutdown. The House also took the position that the issue before the Court is justiciable.

5. The Minnesota Senate concurred with the Minnesota House's position on mediation. It takes no position on the Attorney General's Petition and does not oppose the Governor or the Attorney General's requests regarding what functions should be deemed essential. The Senate concurred with the House's position regarding its request that this Court order the Office of Management and Budget to continue issuing payments to fund the Minnesota House in the event of a state government shutdown. The Senate asks that this Court treat both legislative bodies the same.

6. Minnesota Senators Roger Chamberlain, Warren Limmer, Scott Newman, and Sean Nienow motioned this Court to intervene as parties. The Governor and the Attorney General both opposed the motion to intervene. The House and Senate took no position on the issue. The Court denied the motion orally on June 23, 2011. The four senators were allowed to participate as *amicus curiae* regarding the issues raised in the Attorney General's petition.

7. The Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association and Minnesota Habilitation Coalition, Inc. motioned this Court to intervene as parties. The Governor, Minnesota House, Minnesota Senate and the Attorney General had no objection. Therefore, this Court granted intervention orally.

8. The Minnesota Workforce Council Association, the Associated General Contractors of Minnesota and Hennepin County also made motions to intervene. The Attorney General had no objection to the extent that the interveners did not raise new issues. The Governor had no objection to the motions. The House and Senate took no position on the issue. The Court took the motions under advisement.

9. Petitioner Lori Swanson is the Attorney General of the State of Minnesota and in that capacity she represents the public in all legal matters involving the State of Minnesota. She also represents the people of the State in a *parens patriae* capacity.

10. The regular session of the Minnesota Legislature ended on May 23, 2011. No legislation has been enacted appropriating funds for the executive branch officers and agencies (other than the Department of Agriculture, the Board of Animal Health and the Agricultural Utilization Research Institute) for the fiscal year beginning on July 1, 2011.

11. The legislature failed to pass a "lights on" bill that would have continued funding of executive branch core functions beyond 11:59 p.m. on June 30, 2011 before it adjourned.

12. The Governor has not called the legislature into special session in order to have it attempt to pass either a "lights on" bill or funding bills that would either have a two-thirds majority or be signed by the Governor.

13. After the 2005 shutdown, the Minnesota Court of Appeals stated that, "The legislature could prevent another judicially mandated disbursement of public funds without an authorized appropriation by, for example, creating an emergency fund to keep the government functioning during a budgetary impasse or enacting a statute setting forth the procedures to be followed during a budgetary impasse." *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. App. 2007). The Court of Appeals emphasized that it is "the legislature and not the judiciary that has the institutional competency to devise a prospective plan for resolving future political impasses." In the five years since the *Sviggum* decision was issued, no plan has become law.

14. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the five executive branch constitutional officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

15. Due to the lack of appropriations, the five constitutional officers of the State of Minnesota and the executive branch agencies will not have sufficient funds to carry out then-core functions. The failure to properly fund critical core functions of the executive and legislative branches will violate the constitutional rights of the citizens of Minnesota.

16. In 2001 and 2005, the Attorney General petitioned this Court to preserve the operation of core functions of the executive branch of government after a budget was not enacted to fund state government. In those instances, this Court issued Orders providing for the continued performance of the core functions of the executive branch constitutional officers, and that the State continue to pay for such functions performed after July 1, 2001 and July 1, 2005, respectively. *See In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C0-05-5928 (Ramsey Co. D.Ct., filed June 23, 2005); *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001). In 2001 and 2005, the Court appointed a Special Master to assist in resolving issues relating to the Orders. The constitutional analysis that resulted in the judges in those cases granting the Attorney General's petition has not been the subject of appellate review. In both the 2001 and the 2005 cases, the Governor agreed with and joined in the Attorney General's request.

17. With regard to a previous shutdown of the federal government, the Office of Management and Budget (“OMB”) and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property. OMB Memorandum, *Agency Operations in Absence of Appropriations* (Nov. 17, 1981), available at http://www.opm.gov/furlough/OMBGuidance/Attachment_A-4.pdf (hereinafter “OMB Memorandum”).

18. Pursuant to the criteria referenced in paragraph 14 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;

- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

OMB Memorandum.

19. [Minnesota Constitution Article III, Section 1](#), regarding no branch exercising the powers of another, is not found in the United States Constitution. It is found in a number of state constitutions. It is an “unusually forceful command...” *Fletcher v. Commonwealth*, 163 S.W.3d 852 (Ky. 2005).

20. [Article I, Section 1, of the Minnesota Constitution](#) states, “Government is instituted for the security, benefit, and protection of the people in whom all political power is inherent...” Other sections of the Constitution impose a variety of core functions upon the five constitutional officers which may not be abridged. *State ex rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986).

21. The 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.

22. The Supremacy Clause of the United States Constitution requires that the State of Minnesota perform certain core functions of the government pursuant to an intergovernmental compact agreement or congressional mandate.

23. The State of Minnesota has reserves at this time sufficient to fund core functions of the executive branch, and the executive branch could continue to operate core functions if it had access to those funds.

24. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2011, the State will violate the Supremacy clause of the U.S. Constitution. These agreements and obligations involve, but are not limited to, the administration and payment of medical assistance, general assistance, and a variety of other programs designed to ensure the health, safety and welfare of Minnesota citizens.

25. Examples of the federal programs referenced in paragraph 17 include the following: the Supplemental Nutrition Assistance Program (referred to herein as the Food Stamp Program), 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, [42 U.S.C. § 1396 *et seq.*](#) Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* [7 U.S.C. § 2020\(a\)](#); (d), (e)(2), (3) & (9); [42 U.S.C. § 602\(a\)\(1\)](#), (4); [42 U.S.C. § 1396a\(a\)\(9\)](#), (10). The State must also share in the cost of operating each program. *See* [7 U.S.C. § 2025](#), [42 U.S.C. § 609\(a\)\(7\)](#), [42 U.S.C. § 1396a\(a\)\(2\)](#). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* [7 U.S.C. § 2020\(g\)](#); [42 U.S.C. § 609](#); [42 U.S.C. § 1396c](#). The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* [Minn. Stat. §§ 245.771](#) (Food Stamp Program); 256.1.02 (TANF Program); 256.01, subd. 2 (Medicaid Program). The Attorney General also has certain obligations under federal law (as well as state law) with respect to the Medicaid Program. *See, e.g.*, [42 U.S.C. § 1396b\(q\)](#) (investigate and prosecute Medical Assistance fraud); [Minn. Stat. §](#)

[256B.12](#) (original jurisdiction for Medicaid fraud). The Supremacy Clause of the United States Constitution requires the State of Minnesota to fulfill these agreements with the United States government requiring the State to make payments to individuals or local governmental units, or to undertake administrative duties on behalf of or in cooperation with the federal government. The duty to fulfill these agreements, et cetera, constitute core functions for state government under the United States Constitution.

26. Budget impasses in the absence of state funding appropriations do not permit a state to forego its obligation to fund certain federal programs. *Coalition for Basic Needs v. King*, 654 F.2d 838 (1st Cir. 1981). The Supremacy Clause of the [United States Constitution, Article VI, clause 2](#), makes the United States Constitution and federal laws the supreme law of the land governing anything to the contrary in state laws or state constitutions. *Testa v. Katt*, 330 U.S. 386 (1947).

27. The Governor requested in his pleadings that if the Court did decide to issue an order other than to mediate, said order should be based on the Governor's determination of what priority critical services must be continued. The Governor created a Statewide Contingency Response Team (SCRT) chaired by the Commissioner of the Department of Management and Budget, to establish statewide objectives in the event of a shutdown. The Court agrees with the Governor that the following critical core functions of government should continue to be funded after June 30, 2011 even if there is no resolution of the present funding dispute between the executive and legislative branches:

- 1) Basic custodial care for residents of state correctional facilities, regional treatment centers, nursing homes, veterans homes, and residential academies and other similar state-operated services.
- 2) Maintenance of public safety and immediate public health concerns.
- 3) Provision of benefit payments and medical services to individuals.
- 4) Preservation of the essential elements of the financial system of the government.
- 5) Necessary administration and supportive services, including but not limited to computer system maintenance, internet security, issuance of payments.

28. The Court has attached as Exhibit A the document entitled, "Recommended State-wide Objectives, 2001 Potential Minnesota Government Shutdown and Recommended Priority 1 and Priority 2 Critical Services." The Court has made some minimal changes in the document submitted by the Governor. The Court agrees with the Governor that the Court's order regarding continuing funding for core functions of the government should focus on the critical services discussed in Exhibit A. It agrees that those functions are critical.

29. Any order of this Court allowing the Commissioner of the Department of Management and Budget to issue checks and process funds to pay for core functions and obligations that the State has pursuant to the Supremacy Clause of the United States Constitution should limit itself to only the most critical functions of government involving the security, benefit, and protection of the people.

30. There have been numerous motions to intervene and motions to participate as amicus curiae filed because of the issues raised in this case. The briefs and letters submitted represent many programs, agencies, and contracted private businesses that will be significantly and adversely impacted by the failure of the executive and legislative branches to successfully enact laws appropriating funds. It has been argued compellingly that many of these programs and entities are beneficial to the people of the State, provide services that may aid citizens in working their way out of poverty, may provide jobs for private industry, may improve the state infrastructure, may result in benefits that help working class people obtain and maintain employment, and provide a myriad of other benefits to the State. In light of Article XI, the Court believes that the negative impact of a government shutdown on these programs does not justify a court in over-

extending its authority. In light of Article XI of the Minnesota Constitution, the Court must construe any authority it has to order government spending to maintain critical core functions in a very narrow sense. Discretionary appropriations are the province of the legislature, not the courts.

31. 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.

32. The Court finds that “core functions” that are critical enough to require court-ordered funding despite Article XI are far less in number and breath than proposed by the Attorney General and those seeking amicus curiae status.

33. Except for TANF programs, the child care assistance programs discussed in the memorandum of the amici Coalition of Child Care Providers and Supporters are not critical core function programs that would justify this Court in ordering funding despite the lack of legislative appropriations as required by Article XI. Child care programs that are funded under the TANF program should continue to be funded. Not to do so would violate the Supremacy Clause of the United States Constitution. The Court is aware that not funding non-TANF child care assistance may cause extreme hardship to low income working parents, increase the public assistance rolls because some of these people will have to leave the workforce in order to care for their children, and may lessen the opportunities for low income children to succeed in school. These likely consequences can only be avoided by the exercise of legislative and executive branch discretion in settling the budget issues.

34. The Horsemen's Benevolent and Protective Association brief in support of its motion to intervene or file an amicus curiae brief argues that if they are not able to have racing after June 30, 2011, the race meet will be destroyed, and that the reputation of the Minnesota race meet will be permanently blemished, and future race meets will be jeopardized. Nothing was presented that leads the Court to believe that their assertions are anything less than true. If the Court were to order funding of regulatory activities necessary to allow future race meets to take place, it would, in effect, be ruling that the regulation of horse racing is a core function of government. Regulation of horse racing is not a core function of government. The Court is granting the motion to intervene so that the Horsemen's Benevolent and Protective Association make seek emergency review by an appellate court. The only practical and legal remedy that would save the Association from the damage caused by the failure of other branches of government to resolve their differences is obtainable only by the governor calling a special session and the legislature passing appropriations bills that are capable of becoming law.

35. The appointment of a Special Master will help promote judicial economy and efficiency. A Special Master creates an orderly process to resolve requests for, or objections to, funding, thereby preventing the necessity for multiple individual lawsuits to be filed and adjudicated. *See, e.g., Minn. R. Civ. P. 1* (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); *Minn. R. Civ. P. 53.01* (authorizing appointment of special master). *See also 9C Wright & Miller, Federal Practice and Procedure: Civil* §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims).

36. The Governor's Statewide Contingency Response Team decided to recommend that the only critical core functions of the Minnesota Zoological Gardens are feeding the animals, and keeping the animals, the exhibits, and the zoo property safe, secure, and healthy. The Court agrees with that determination and also would add that it is necessary to fund whatever staff is necessary to make sure that none of the animals can escape and become a danger to the public. The Court recognizes that this will cause significant harm to the zoo as the 4th of July weekend and the rest of the summer are the busiest times of the year. It further recognizes that this will significantly reduce the receipts of the zoo. Those concerns need to be recognized and resolved by actions of the executive and legislative branches, not by the judicial

branch. The operations of a zoo, even when in large part paid for by admission charges and other receipts, is a critical core function of government sufficient to overcome the requirements of Article XI.

37. The Minnesota Association of General Contractors takes the position that certain construction projects and activities of their members are core functions necessary for the government to continue to fund. This Association asserts the continued funding of all state construction contracts is an essential or critical government function due to the perilous economic condition of the State's construction industry and the general harm to citizens that suspension of design and construction contracts would cause. In its brief, the Association cites the Lafayette Bridge as an example of a critical core government function necessary to protect the life, health, and safety of its citizens. The Court agrees that any part of a contract which keeps the bridge from collapsing does constitute a critical core function that needs to be funded. It does not agree that replacement of the bridge constitute a critical core function necessary to protect the life, health, and safety of its citizens. A government shutdown may result in increased expenses for road projects that may be funded constitutionally in the future. The Court has no reason to disagree with the assertions of the Association that a government shutdown will significantly delay completion of present projects, increase costs and put numbers of employees out of work. The delay in construction and increased costs that will likely happen as a result of a government shutdown will be because of the executive and legislative branches failing to resolve the budget issues. Those things do not justify the Court in ordering the funding of non-critical core functions and thereby violating Article XI of the Minnesota Constitution.

38. Even though the State has promised to pay for certain projects such as road construction, that does not justify the court ordering payment under those contracts without a specific legislative appropriation. As stated in *County of Beltrami v. Marshall*, 135 N.W.2d 749 (Minn. 1965), “A legislative appropriation is always a prerequisite to state liability. The mere creation of a liability on the part of the state, or promise of the state to pay, if the statute may thus be construed, is of no force in the absence of an appropriation of funds from which the liability may be discharged.”

39. The court agrees with the position of the League of Minnesota Cities, the Coalition of Greater Minnesota Cities, and the City of St Paul regarding Local Government Aid legislation. These funds have already been lawfully appropriated and should be paid on schedule. This is also true regarding previously lawfully appropriated payments to School Districts.

CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when she determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minnesota Statutes Chapter 484, and venue is proper in this Court pursuant to [Minnesota Statutes Section 542.01](#).

3. The Minnesota Constitution must be read as a whole and each provision interpreted in the context of the entire document and the provisions of the U.S. Constitution. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” However, the Minnesota Constitution also provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their offices. Article V, Section 1 “implicitly places a limitation on the power of the legislature” so that the core functions of the executive branch officers, and their performance of those functions, may not be abridged. *State ex. rel Mattson vs. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986). Failure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution. See *Minn. Const. art. III, § 1* (dividing the powers of government into three distinct departments); *Mattson*, 391 N.W.2d at 782 (holding that implicit limitation on legislative authority prevents abolishment “of the independent functions inherent in an executive office.”). See also *Clerk of Court's Compensation for*

Lyon County v. Lyon County Commissioners, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another).

4. The core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. All constitutional officers take an oath to support the constitutions of the United States and the State of Minnesota and to discharge faithfully the duties of their constitutional offices. Minn. Const, art. V, § 6. Core functions include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property.

5. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements, continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the *United States Constitution, Article VI, clause 2*, mandates that any funds paid by the State as a result of participation in these federal programs must continue.

6. The Senate and House (Legislative Branch) must be funded sufficiently to allow them to carry out critical core functions necessary to draft, debate, publish, vote on and enact legislation.

ORDER

1. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for the performance of the critical core functions of government as set forth in this Order.

2. Hennepin and Ramsey Counties motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow them to participate as amicus curiae.

3. Jenni Taylor's motion to intervene is denied as her position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow her to participate as amicus curiae.

4. SEIU Local 284 Kids First MN, Sharon Born, Terry Bicknell, and Rebecca Hall's motion to intervene is granted as their position regarding programs that are not funded as part of federal pass-through funding agreements is not adequately represented by other parties. The federal pass-through funds part of the Minnesota Child Care Assistance program is adequately represented by the petitions of the Attorney General and the Governor. The issue of whether non-federal “pass-through” programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.

5. The Minnesota Horsemen's Benevolent and Protective Association's motion to intervene is granted as their position is not adequately represented by existing parties.

6. Minnesota Workforce Council Association's motion to intervene is denied as their position regarding pass-through of federal dollars is adequately represented by both the Attorney General and the Governor. The Court will continue to allow the Association to participate as amicus curiae.

7. Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association, and Minnesota Habilitation Coalition, Inc.'s motion to intervene are granted by agreement of the parties. The issue of whether non-federal "pass-through" programs constitute critical core functions of government requiring the Courts to order funding despite Article XI is to be dealt with by the Special Master appointed by the Court.
8. The motion of the League of Minnesota Cities, Coalition of Greater Minnesota Cities, and the City of St. Paul to intervene is granted because their position that critical government aid (LGA) funds have already been appropriated by action of the Legislature and approval by the Governor is not adequately represented by existing parties.
9. The motion of the Minnesota Zoological Garden to intervene is granted as their position is not adequately represented by existing parties.
10. The motion of Associated General Contractors of Minnesota to intervene is granted as their interests are not adequately represented by existing parties.
11. The Commissioner of the Department of Management and Budget is also authorized to make payments necessary to carry out the critical core functions of the executive and legislative branches consistent with Exhibit A and the findings of fact and conclusions of law contained in this order. He is also ordered to fund programs where funding is mandated by the Supremacy clause of the U.S. Government and make payments such as LGA payments that have already been lawfully appropriated.
12. Any requests to participate as amicus curiae not previously addressed in this order are granted.
13. The Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, is hereby appointed as Special Master to hear and make recommendations to the Court, as necessary, regarding any issue raised by Petitioner or others relating to the application of this Order. The fees and expenses of the Special Master shall be paid by the State of Minnesota, the Commissioner of the Department of Management and Budget. Expenses shall include the costs of whatever staff she deems necessary to fulfill her duties as a Special Master. Information regarding how to set up a hearing before the Special Master will be made available as soon as possible on the State Court and Second Judicial District websites
14. This Order shall be effective until the earliest of the following:
 - a. July 31, 2011, which may be extended by the Court;
 - b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or
 - c. Further Order of this Court.
15. Petitioner shall serve by U.S. Mail a copy of this Order on the persons and entities who were served the Order to Show Cause dated June 15, 2011 and all other persons who have filed submissions in this proceeding.
16. Nothing in this order shall be construed as prohibiting the Commissioner of OMB from funding resources necessary to respond to an unforeseen emergency that would place the public or public property in immediate danger. The governor may obtain such funds on an emergency basis. If requested by a party, the need for continuation of such emergency funding will be reviewed by the Special Master.

Dated: 6-29-11

BY THE COURT:

<<signature>>

The Honorable Kathleen R. Gearin

Chief Judge

Ramsey County District Court

Appendix not available.

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