



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

SUITE 1100
445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

January 12, 2010

Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Hand Delivered

Re: *Brayton et al. v. Pawlenty, et al.*
Ramsey County Court File No. 62-CV-09-11693
Appellate Court Case No. _____

Dear Mr. Grittner:

Enclosed herewith for filing in the above-captioned matter, please find:

1. The original and two copies of Notice of Appeal to Court of Appeals.
2. A certified copy of the judgment from which the appeal is taken.
3. The original and two copies of Appellants' Statement of the Case.
4. An affidavit of service on counsel for Respondents.
5. An affidavit of filing with the trial court administrator.

Pursuant to Minn. R. Civ. App. P. 103.01, subd. 3(d), no filing fee is required.

Very truly yours,

ALAN I. GILBERT
Solicitor General

(651) 757-1450

Enclosures

cc: Galen Robinson

AG: #2567079-v1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

**NOTICE OF APPEAL TO
COURT OF APPEALS**

Plaintiffs,

Trial Court Case No.

62-CV-09-11693

vs.

Chief Judge Kathleen R. Gearin

Tim Pawlenty, Governor of the State of Minnesota, Thomas Hanson, Commissioner, Minnesota Department of Management and Budget, Cal Ludeman, Minnesota Department of Human Services, and Ward Einess, Commissioner, Minnesota Department of Revenue,

Date Judgment Entered:

January 8, 2010

Defendants.

TO: Clerk of Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155.

PLEASE TAKE NOTICE that the above-named defendants appeal to the Court of Appeals of the State of Minnesota from the judgment of the court entered on the date shown.

GALEN ROBINSON
DAVID GASSOWAY
Mid-Minnesota Legal Assistance
430 First Avenue North, Suite 300
Minneapolis, Minnesota 55401
(612) 332-1441

RALONDA J. MASON
Mid-Minnesota Legal Assistance
830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(320) 253-0121

ATTORNEYS FOR PLAINTIFFS

Dated: January 12, 2010

LORI SWANSON
Attorney General
State of Minnesota



ALAN I. GILBERT
Solicitor General
Atty. Reg. No. 0034678

JOHN S. GARRY
Assistant Attorney General
Atty. Reg. No. 0208899

JEFFREY J. HARRINGTON
Assistant Attorney General
Atty. Reg. No. 0327980

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450

ATTORNEYS FOR DEFENDANTS



PATRICK D. ROBBEN
General Counsel to Governor Tim Pawlenty
Office of Governor
Atty. Reg. No. 0284166

130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, Minnesota 55155
(651) 282-3705

ATTORNEY FOR DEFENDANT
GOVERNOR TIM PAWLENTY

Dated: January 12, 2010

AG: #2567031-v1

30

State of Minnesota
Ramsey County

District Court
Second Judicial District

Court File Number: 62-CV-09-11693

Case Type: Civil Other/Misc.

Notice of Entry of Judgment

In Re: Deanna Brayton, Darlene Bullock, Forough Mahabady, Debra Branley, Marlene Griffin and Evelyn Bernhagen on behalf of themselves and all others similiarly situated vs Tim Pawlenty, Governor of the State of Minnesota, Thomas Hanson, Commissioner, Minnesota Department of Management and Budget, Cal Ludeman, Minnesota Department of Human Services, and Ward Einess, Commissioner, Minnesota Department of Revenue

Pursuant to: The Stipulation and Order for Entry of Final Partial Judgment, Judge Kathleen R. Gearin dated January 8, 2010.

You are notified that judgment was entered on January 08, 2010.

Dated: January 8, 2010

cc :Galen Robinson; Alan I Gilbert;
Patrick Dean Robben

Lynae K. E. Olson
Court Administrator

By: *Linda Graska*
Deputy Court Administrator
Ramsey County District Court
15 West Kellogg Boulevard Room 600
St Paul MN 55102


62-CV-09-11693


NOENJUDG

29

STATE OF MINNESOTA

COUNTY OF RAMSEY

FILED
Court Administrator

JAN 18 2010

By CWX Deputy

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

Plaintiffs,

vs.

Tim Pawlenty, Governor of the State of Minnesota, Thomas Hanson, Commissioner, Minnesota Department of Management and Budget, Cal Ludeman, Minnesota Department of Human Services, and Ward Einess, Commissioner, Minnesota Department of Revenue,

Defendants.

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

**STIPULATION AND ORDER
FOR ENTRY OF
FINAL PARTIAL JUDGMENT**

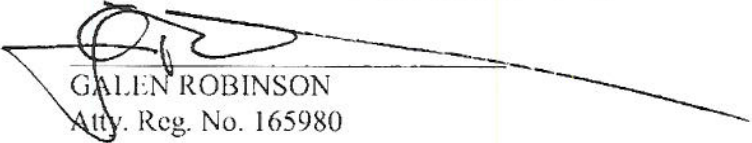
STIPULATION

The parties in the above-entitled action, through their undersigned counsel, hereby stipulate to issuance of the attached Order for Entry of Final Partial Judgment. The parties agree that the Order satisfies Minn. R. Civ. P. 54.02 and that the resulting final partial judgment is appealable as of right under Minn. R. Civ. App. P. 103.03(a).

Nothing in this Stipulation or the attached Order constitutes an admission or acknowledgment by Defendants that any of the unallotments that have been or may be challenged in this or any other lawsuit are unlawful.

Dated: January 8, 2010

MID-MINNESOTA LEGAL ASSISTANCE



GALEN ROBINSON
Atty. Reg. No. 165980

DAVID GASSOWAY
Atty. Reg. No. 389526

430 First Avenue North, Suite 300
Minneapolis, Minnesota 55401
(612) 332-1441

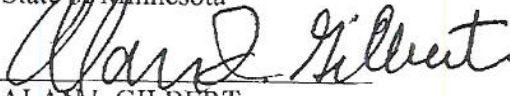
RALONDA J. MASON
Atty. Reg. No. 194487

830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(320) 253-0121

ATTORNEYS FOR PLAINTIFFS

Dated: January 8, 2010

LORI SWANSON
Attorney General
State of Minnesota


ALAN H. GILBERT

Solicitor General
Atty. Reg. No. 0034678

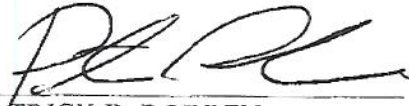
JOHN S. GARRY
Assistant Attorney General
Atty. Reg. No. 0208899

JEFFREY J. HARRINGTON
Assistant Attorney General
Atty. Reg. No. 0327980

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450

ATTORNEYS FOR DEFENDANTS

Dated: January 8th, 2010


PATRICK D. ROBBEN
General Counsel to Governor Tim Pawlenty
Office of Governor
Atty. Reg. No. 0284166

130 State Capitol
75 Rev. Dr Martin Luther King Jr. Blvd.
St Paul, MN 55155
(651) 282-3705

ATTORNEY FOR DEFENDANT
GOVERNOR TIM PAWLENTY

ORDER FOR ENTRY OF FINAL PARTIAL JUDGMENT

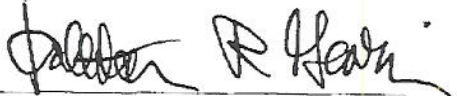
Based on the Court's Order filed December 30, 2009, and the foregoing Stipulation of the parties, and in accordance with Minn. R. Civ. P. 54.02,

IT IS HEREBY ORDERED:

1. Pursuant to the Court's Order of December 30, 2009, and the reasoning set forth therein, Defendants' motion to dismiss is denied with respect to Plaintiffs' claim that the unallotment of funding for the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program is unlawful.
2. Also pursuant to the Court's Order of December 30, 2009, the unallotment of funding for the MSA-SD program that was approved in July 2009 and took effect November 1, 2009, is unlawful and void. Defendants shall immediately restore the funding with respect to that unallotment, if not done so already.
3. There is no just reason for delay of entry of judgment on Plaintiffs' claim that the unallotment of funding for the MSA-SD program is unlawful. Immediate appellate review of this claim is appropriate and in the public interest. The claim implicates the lawfulness of other unallotments made for the current biennium. An expeditious final judicial decision of the claim will assist the executive and legislative branches in determining their respective authority regarding the State's current budget crisis.
4. This Order does not prohibit either the Governor or the Legislature from the exercise of their legitimate constitutional power in light of the current budget issues facing the State or from bringing a motion that the issues in this lawsuit have been rendered moot.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 8, 2010


KATHLEEN R. GEARIN
Chief Judge of District Court

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

COURT FILE: 62-CV-09-11693

30

JUDGMENT

The foregoing shall constitute the judgment
of the court.

Entered: 1/8/2010 LYNÆ K.E. OLSON
Court Administrator

By Linda Gnaska
Deputy Clerk

LYNÆ K.E. OLSON, Court Administrator, Ramsey
County, State of Minnesota, does hereby certify that
the attached instrument is a true and correct copy
of the original on file and of record in my office.

Dated this 11th day of January,
LYNÆ K.E. OLSON, Court Administrator
By [Signature] Deputy
File No. _____

STATE OF MINNESOTA

IN COURT OF APPEALS

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

**APPELLANTS' STATEMENT
OF THE CASE**

Respondents,

Trial Court Case No. 62-CV-09-11693

vs.

Appellate Court Case No. _____

Tim Pawlenty, Governor of the State of Minnesota, Thomas Hanson, Commissioner, Minnesota Department of Management and Budget, Cal Ludeman, Minnesota Department of Human Services, and Ward Einess, Commissioner, Minnesota Department of Revenue,

Appellants.

1. Court or agency of case origination and name of presiding judge or hearing officer.

Ramsey County District Court, Second Judicial District; the Honorable Kathleen R. Gearin, Chief Judge of District Court.

2. Jurisdictional statement.

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal: Minn. R. Civ. App. P. 103.03(a).

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: The judgment was entered January 8, 2010.

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): Minn. R. Civ. App. P. 104.01, subd. 1.

Date of filing any motion that tolls appeal time: None.

Date of filing of order deciding tolling motion and date of service of notice of filing: None.

(B) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? No.

If no, did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01? Yes.

If yes, provide date of order: The order for entry of a final partial judgment was filed January 8, 2010.

3. State type of litigation and designate any statutes at issue.

Civil. Minn. Stat. § 16A.152.

4. Brief description of claims, defenses, issues litigated and result below.

This appeal concerns the validity of the executive branch's reduction of the unexpended allotments of the appropriations available to fund payments under the Minnesota Supplemental Aid-Special Diet ("MSA-SD") program in the current biennium of July 1, 2009 to June 30, 2011. Under the unallotment statute, Minn. Stat. § 16A.152, the executive branch reduced funding for the MSA-SD program effective November 1, 2009, by \$2.133 million for FY 2010 and \$3.2 million for FY 2011. This was part of a larger set of unallotments made by the executive branch under section 16A.152 to address an approximate \$2.7 billion deficit in the State's biennial budget.

Respondents are six Minnesota residents who qualify for payments under the MSA-SD program. They filed this lawsuit on November 3, 2009, against Appellants, who are the Governor and the Commissioners of the Departments of Management and Budget, Human Services, and Revenue. In their amended complaint, Respondents claim that the unallotment of funding for the MSA-SD program is unlawful because it does not comply with applicable statute and violates separation of powers under the Minnesota Constitution. Respondents' amended

complaint also challenges the validity of the unallotment that reduces funding for renters' property tax refunds in FY 2011, the second year of the biennium.

On November 6, 2009, Respondents filed a motion for a temporary restraining order to require Appellants to restore the unallotted funding for the MSA-SD program, based on the claim asserted in their amended complaint. On November 12, 2009, Appellants filed a motion to dismiss the amended complaint. Appellants argued that the challenged unallotments are authorized by section 16A.152 and do not violate separation of powers.

After extensive briefing by the parties, Respondents' motion was heard on November 16, 2009. That same day, a committee of the House of Representatives voted 14-8 to authorize submission of an amicus brief in support of Respondents. A letter in opposition to the filing of the amicus brief was submitted by a member of the House committee on November 16, 2009. With the district court's permission, the amicus brief was filed on November 20, 2009.

The district court granted Respondents' motion in an order filed on December 30, 2009. The order was based solely on the court's legal conclusion that the unallotment of funding for the MSA-SD program does not comport with section 16A.152 and separation of powers.

Based on the order granting Respondents' motion, the parties stipulated to the denial of Appellants' motion to dismiss, and entry of final judgment for Respondents under Minn. R. Civ. P. 54.02, on the claim that the unallotment of funding for the MSA-SD program effective November 1, 2009, is unlawful. The judgment requires Appellants to immediately restore the funding with respect to that unallotment.

As stated in the order for judgment, the court directed the entry of judgment under Rule 54.02 because "[i]mmediate appellate review" is "appropriate and in the public interest." The court further reasoned that "[a]n expeditious final judicial decision of the claim will assist the

executive and legislative branches in determining their respective authority regarding the State's current budget crisis.”

This appeal from the judgment followed. Appellants have also filed a petition for accelerated review in the Supreme Court, with a motion for expedited consideration of the petition, and motions for expedited review in both the Supreme Court and the Court of Appeals.

5. List specific issues proposed to be raised on appeal.

1. Is the unallotment of funding for the Minnesota Supplemental Aid-Special Diet program authorized by Minn. Stat. § 16A.152?
2. Does the unallotment of funding for the Minnesota Supplemental Aid-Special Diet program violate separation of powers under the Minnesota Constitution?

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state. None.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state. None.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? No.

8. Is oral argument requested?

Yes. If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? No.

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

10. **Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.**

LORI SWANSON
Attorney General

ALAN I. GILBERT
Solicitor General

JOHN S. GARRY
Assistant Attorney General

JEFFREY J. HARRINGTON
Assistant Attorney General

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450

ATTORNEYS FOR APPELLANTS

GALEN ROBINSON
DAVID GASSOWAY
Mid-Minnesota Legal Assistance
430 First Avenue North, Suite 300
Minneapolis, Minnesota 55401
(612) 332-1441

RALONDA J. MASON
Mid-Minnesota Legal Assistance
830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(320) 253-0121

ATTORNEYS FOR RESPONDENTS

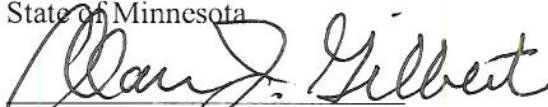
PATRICK D. ROBBEN
General Counsel to Governor
Tim Pawlenty
Office of Governor

130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, Minnesota 55155
(651) 282-3705

ATTORNEY FOR APPELLANT
GOVERNOR TIM PAWLENTY

Dated: January 12, 2010

LORI SWANSON
Attorney General
State of Minnesota



ALAN I. GILBERT
Solicitor General
Atty. Reg. No. 0034678

JOHN S. GARRY
Assistant Attorney General
Atty. Reg. No. 0208899

JEFFREY J. HARRINGTON
Assistant Attorney General
Atty. Reg. No. 0327980

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450

ATTORNEYS FOR APPELLANTS



PATRICK D. ROBBEN
General Counsel to Governor Tim Pawlenty
Office of Governor
Atty. Reg. No. 0284166

130 State Capitol
75 Rev. Dr Martin Luther King Jr. Blvd.
St Paul, MN 55155
(651) 282-3705

ATTORNEY FOR APPELLANT
GOVERNOR TIM PAWLENTY

AG: #2567675-v1



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

SUITE 1100
445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

January 12, 2010

Court Administrator
600 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102

Re: *Brayton, et al. v. Pawlenty, et al.*
Court File No. 62-CV-09-11693
Chief Judge Kathleen Gearin

Dear Court Administrator:

Enclosed herewith for filing as provided in Minn. R. Civ. App. P. 103.01, subd. 1, please find a copy of Notice of Appeal to Court of Appeals. Pursuant to Minn. R. Civ. App. P. 107.02(e), no cost bond is required of these Appellants.

Very truly yours,

A handwritten signature in cursive script that reads "Alan I. Gilbert".

ALAN I. GILBERT
Solicitor General

(651) 757-1450

Enclosure

cc: Galen Robinson
Frederick Grittner, Clerk of Appellate Courts

AG: #2567188-v1



AFFIDAVIT OF FILING BY U.S. MAIL

Re: *Brayton et al. v. Pawlenty, et al.*
Ramsey County Court File No. 62-CV-09-11693
Appellate Court Case No. _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)


BARBARA FEHRMAN, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on January 12, 2010, she caused to be filed with the trial court administrator a true and correct copy of Notice of Appeal to Court of Appeals, by depositing the same in the United States mail at said city and state, properly enveloped with prepaid first class postage, and addressed to:

Court Administrator
600 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102


BARBARA FEHRMAN

Subscribed and sworn to before me on
this 12th day of January, 2010.



NOTARY PUBLIC

AG: #2567236-v1

