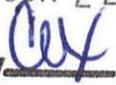


STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator
JUN 22 2011
By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62 CV-11-5203

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

**HOUSE RESPONSE TO
PETITION AND REPLY**

The Minnesota State House of Representatives submits this Response to the Petition of the Attorney General filed June 13, 2011, and Reply to the Response of the Governor to that Petition, filed June 15, 2011.¹

1. The Attorney General's Petition seeks an order of this Court declaring that, despite the current budget impasse, the Executive Branch of Government must still undertake core functions required by the Minnesota and United States Constitution, and federal law, and that the State of Minnesota must pay for those functions. To effectuate that relief, the Petition also seeks an order directing the Commissioner of the Department of Management and Budget to issue checks and process funds necessary to pay for such obligations. The Petition further requests a determination of what are the core functions to be performed by the state government, and finally, requests appointment of a Special Master to hear and make recommendations to the Court with respect to any issues which may arise regarding the terms of the Court's order.

¹ Consistent with the Governor's service of his Response, the House has served this Response on the Governor, Attorney General and Solicitor General, and others as set forth in the attached Affidavit of Service. In addition, they will serve any party served by the Attorney General with the Petition, if and when that party makes an appearance in these proceedings. They will also serve any other party or entity as the Court directs.

2. In his Response to the Petition, the Governor takes the position that the Court is without authority to grant the relief requested by the Attorney General. The Response of the Governor nonetheless asserts that this Court has the authority to order the Legislature and the Governor to appear before a mediator “to oversee and facilitate negotiations between the legislative majority, on the one hand, and the legislative minority and the governor, on the other.” *See* Response of Governor, at p. 2. The Governor requests that the Court take no action in response to the Attorney General’s Petition until mediation has been exhausted.

3. With respect, this Court is without power to direct either the Legislature or the Governor in how they conduct their business. The arguments advanced by the Attorney General in her Petition are based on state and federal constitutional principles that are claimed to require temporary funding of core or critical functions the Executive Branch of Government despite the absence of duly enacted appropriations. Those principles in no way implicate the legislative process for enacting a budget. *See* Petitioner’s Memorandum in Support of Motion for Relief, at p. 7, et seq.

4. The Governor’s request is unprecedented. Governor Dayton cites this Court’s orders in prior proceedings relating to a possible government shutdown, but those orders provide no authority for the relief he seeks. For example, the Governor asserts that in 2005, the Court appointed former Justice Edward Stringer “as Special Master to *mediate* and, if necessary, hear and make recommendations to the Court . . .”. Response of Governor, at p. 2 (emphasis supplied by Governor). This is the sole authority relied upon by the Governor. However, the quote is incomplete, as the sentence continues “. . . with respect to any issues which may arise regarding compliance with the terms of this Order.” In other words, the Special Master was appointed and

empowered to resolve substantive issues brought before the Court as to what functions were core; the order did not, by any stretch, address the larger issue of the budgetary impasse.

5. Not only is the request of the Governor unprecedented, it would violate separation of powers principles. In *Brayton v. Pawlenty*, 781 N.W.2d 357, 365 (Minn. 2010), the Minnesota Supreme Court succinctly described the budget and appropriations processes:

The Legislature has the primary responsibility to establish the spending priorities for the state through the enactment of appropriation laws. Minn. Const. art. IV, § 22; *id.* art. XI, § 1. The executive branch has a limited, defined role in the budget process. The Governor may propose legislation, including a budget that includes appropriation amounts, which proposals the Legislature is free to accept or reject. But the only formal budgetary authority granted the Governor by the constitution is to approve or veto bills passed by the Legislature. *See* Minn. Const. art. IV, § 23. With respect to appropriation bills, the constitution grants the Governor the more specific line-item veto authority, through which an item of appropriation can be vetoed without striking the entire bill. *Id.* If the Governor exercises the veto power, the Legislature may reconsider the bill or items vetoed, and if approved by a two-thirds vote, the vetoed bill or item becomes law. *Id.*

Once a bill has been passed by the Legislature and approved by the Governor (or a veto is overridden), the bill becomes law, and the constitutional responsibility of the Governor is to “take care that the laws be faithfully executed.” Minn. Const. art. V, § 3. If this process of legislative passage and gubernatorial approval or veto does not succeed in producing a balanced budget within the normal legislative session, the Governor has the authority to call the Legislature into special session. *See* Minn. Const. art. IV, § 12.

There is no mention of a role for the judicial branch in the process prescribed by the constitution for enacting a budget.

6. Moreover, Article III, Section 1, of the Minnesota Constitution provides: “The 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.” Separation of powers is a core feature of our state government, and is deeply rooted in American politics. *Wulff v. Tax Court of Appeals*, 288

N.W.2d 221, 222-23 (Minn. 1979). The Minnesota Supreme Court has been diligent in respecting that principle. See *Irwin v. Surdyk's Liquor*, 599 N.W.2d 132, 141 (Minn. 1999) (holding that statutorily imposed limitation on attorney fees violated separation of powers) and *Sharood v. Hatfield*, 296 Minn. 416, 210 N.W.2d 275, 279 (1973) (striking down as unconstitutional on separation of powers grounds statute requiring attorney registration fees be diverted to state's general fund). In *Sharood*, the supreme court said “[I]f it is a judicial function that the legislative act purports to exercise, we must not hesitate to preserve what is essentially a judicial function.” By the same token, enacting a budget is essentially a legislative function, and the courts may not intrude on the function. See *Schermer v. State Farm Fire and Cas. Co.* 721 N.W.2d 307, 315 (Minn. 2006) (holding that separation of powers principles preclude courts from actions which necessarily interfere with legislative functions).

7. The Wisconsin Supreme Court just last week addressed a similar issue regarding the separation of judicial and legislative powers, and held in clear and explicit terms that the courts cannot interfere with the legislative process. *State ex rel. Ozanne v. Fitzgerald*, 2011 WL 2323678, *2 (Wis.) filed June 14, 2011. Its analysis is instructive:

In *Goodland v. Zimmerman*, 243 Wis. 459, 10 N.W.2d 180 (1943), the court focused on fundamental separation of powers principles and addressed whether a court has the power to enjoin publication of a bill duly enacted by the legislature. The court first explained that “governmental powers are divided among the three departments of government, the legislative, the executive, and judicial.” *Id.* at 466–67, 10 N.W.2d 180. The court then explained that the “judicial department has no jurisdiction or right to interfere with the legislative process. That is something committed by the constitution entirely to the legislature itself.” *Id.* at 467, 10 N.W.2d 180. The court held that “[b]ecause under our system of constitutional government, no one of the co-ordinate departments can interfere with the discharge of the constitutional duties of one of the other departments, no court has jurisdiction to enjoin the legislative process at any point.” *Id.* at 468, 10 N.W.2d 180. The court noted that “[i]f a court can intervene and prohibit the publication of an act, the court determines what shall be law and not the legislature. If the court does that, it does not in terms legislate but it invades the

constitutional power of the legislature to declare what shall become law. This [a court] may not do.” *Id.*

Id. at *1. By the same token, the courts cannot direct the legislature in how or when to conduct its business. Under our Constitution, courts can only address the validity of legislation once enacted, but can play no role at all in the process of enactment.

8. For these reasons, the request of the Governor for appointment of a mediator should be denied.

9. At the end of the FY 2010-2011 biennium, the Legislature will have at its disposal previously appropriated funds which it may spend in execution of its duties. *See* Minn. Stat. §16A.281, which provides that the appropriations to the Legislature do not cancel under Minn. Stat. §16A.28, subd. 3. The statute provides that carryover funds are credited to special accounts and may be used, among other purposes, “to pay expenses associated with sessions, interim activities, public hearings, or other public outreach efforts and related activities....” Approval of the Commissioner of Management and Budget is not required to spend these funds. The House requests this Court’s Order direct the Commissioner of the Department of Management and Budget to issue checks and process payments of previously appropriated legislative funds.

WHEREFORE, the Minnesota State House of Representatives requests the following relief from this Court:

1. Regarding the Governor’s Response to the Petition, the Court should deny the request of Governor Dayton to appoint a mediator to oversee the budget process. This Court is without authority to make such an order.

2. Regarding the Attorney General’s Petition at page 8, paragraph 2, the Court should direct the Commissioner of the Department of Management and Budget to issue checks

and otherwise process payments on behalf of the Legislature of carryover funds available to that body pursuant to statute.

3. Such other relief as may be appropriate.

Respectfully submitted,

Dated: June 22, 2011

BRIGGS AND MORGAN, P.A.

By: *Diane Bratvold*

Eric J. Magnuson (#66412)
Diane B. Bratvold (#18696X)
Attorneys for the Minnesota
State House of Representatives
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Minneapolis, Minnesota 55402-2157
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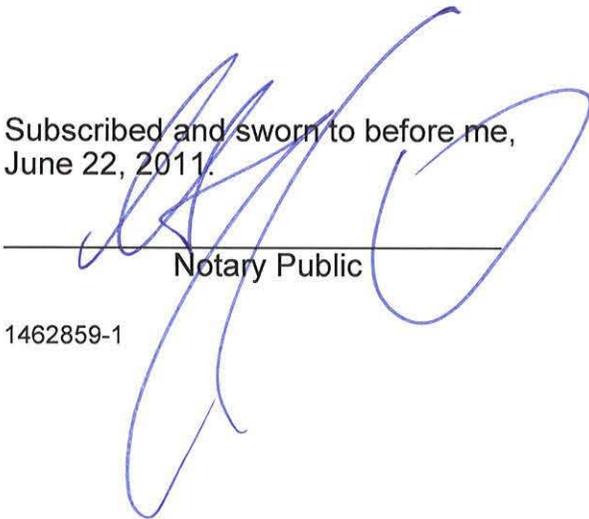
**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

AFFIDAVIT OF SERVICE

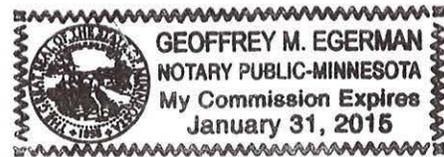
Christine Hafner, being duly sworn, on oath says: that on the 22nd day of June, 2011, at 2:50PM (s)he served the attached House's Response to Petition and Reply upon John M. Stuart, Esq., therein named, personally at 331 2nd Avenue South, #900, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Colleen Chaput, Receptionist, an expressly authorized agent for service for said John M. Stuart, Esq., a true and correct copy thereof.



Subscribed and sworn to before me,
June 22, 2011.



Notary Public



1462859-1

Re: Firm/03053/KMD

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF HENNEPIN

METRO LEGAL SERVICES

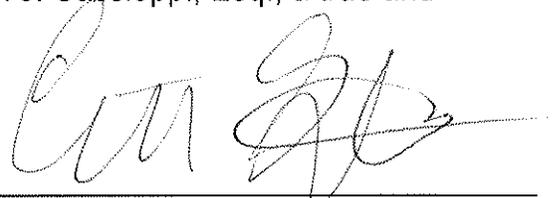
Carter D. Griffith, being duly sworn, on oath says:

that on June 22, 2011, at 2:36 PM he served the attached:

House's Response to Petition and Reply upon:

David L. Lillehaug, Esq. and Joseph J. Cassioppi, Esq., therein named, personally at:

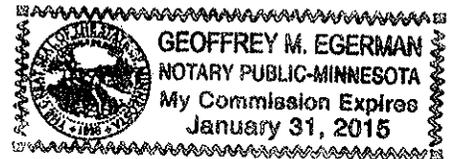
200 South 6th Street, #4000, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Laura Weisinger, Receptionist, an expressly authorized agent for said David L. Lillehaug, Esq. and Joseph J. Cassioppi, Esq., a true and correct copy thereof.



Carter D. Griffith

Subscribed and sworn to before me on

6/22, 2011



1462859 - 2

RE: Firm/03053/KMD

**STATE OF MINNESOTA
COUNTY OF HENNEPIN**

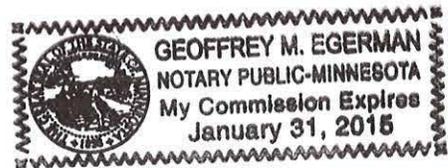
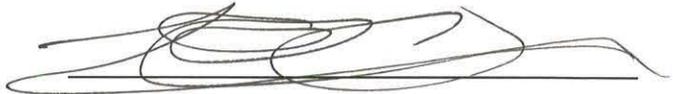
AFFIDAVIT OF SERVICE

Nick Gibbons, being duly sworn, on oath says: that on the 22nd day of June, 2011, at 3:00PM (s)he served the attached House's Response to Petition and Reply upon Christopher W. Madel, Esq., therein named, personally at 800 LaSalle Avenue, #2800 Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Marsha Burke, Receptionist, an expressly authorized agent for service for said Christopher W. Madel, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
June 22, 2011.

Notary Public

1462859-3



Re: Firm/03053/KMD

STATE OF MINNESOTA
COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

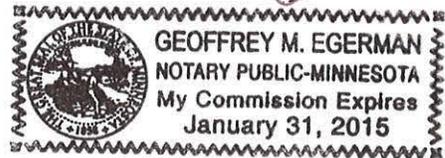
Christine Hafner, being duly sworn, on oath says: that on the 22nd day of June, 2011, at 3:00pm (s)he served the attached House's Response to Petition and Reply upon Michael O. Freeman, Esq., therein named, personally at 300 South 6th Street, #2000C, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Andrea Dane, Receptionist, an expressly authorized agent for service for said Michael O. Freeman, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
June 22, 2011.

Notary Public

1462859-4

Callab



Re: Firm/03053/KMD

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

METRO LEGAL SERVICES

Jesse D. Frericks, being duly sworn, on oath says:
that on June 22, 2011, at 4:02 PM he served the attached:
House's Response to Petition and Reply upon:
Alan I. Gilbert, Esq., therein named, personally at:

445 Minnesota Street #1100, St. Paul, County of Ramsey, State of Minnesota, by
handing to and leaving with Aaron Olson, Administrative Assistant, an expressly
authorized agent for said Alan I. Gilbert, Esq., a true and correct copy thereof.

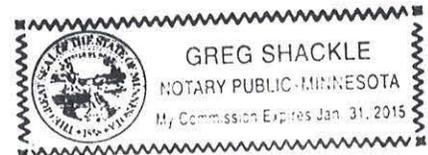


Jesse D. Frericks

Subscribed and sworn to before me on

June 22, 2011





RE: Firm/03053/KMD

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

METRO LEGAL SERVICES

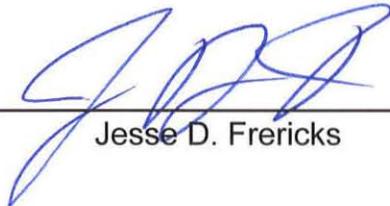
Jesse D. Frericks, being duly sworn, on oath says:

that on June 22, 2011, at 3:38 PM he served the attached:

House's Response to Petition and Reply upon:

Lori Swanson, Esq., therein named, personally at:

445 Minnesota Street, #1100, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Carolyn Manteuffel, administrative assistant, an expressly authorized agent for said Lori Swanson, Esq., a true and correct copy thereof.

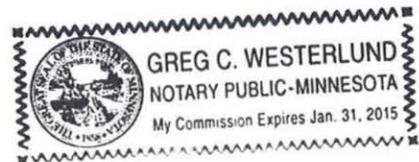


Jesse D. Frericks

Subscribed and sworn to before me on

June 22, 2011





1462859 - 6

RE: Firm/03053/KMD