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STATE OF MINNESOTA

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DISTRICT COURT

RAMSEY COUNTY

By *J* Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

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

File No. 62-cv-11-5203
The Honorable Kathleen R. Gearin

**MEMORANDUM OF LAW OF THE
AMICI COALITION OF CHILD
CARE PROVIDERS AND
SUPPORTERS IN SUPPORT OF
TEMPORARY FUNDING**

INTRODUCTION

The members of the *Amici* Coalition of Child Care Providers and Supporters—Child Care Works, The Minnesota Child Care Association, The Minnesota Licensed Family Child Care Association, The Minneapolis Foundation, Greater Twin Cities United Way, Sheltering Arms Foundation, Blandin Foundation, Minnesota Community Foundation, The St. Paul Foundation, Social Venture Partners, Women’s Foundation Of Minnesota, The Jay And Rose Phillips Family Foundation Of Minnesota, McKnight Foundation, Grotto Foundation, and United Ways of Greater Minnesota (collectively, the “*Amici*”)—respectfully submit this proposed memorandum of law as *amici curiae* in support of Petitioner and Respondent.

These *Amici* urge the Court to grant the Petition of Attorney General Lori Swanson with respect to continuation of the administration of core government functions in the event of and for the duration of any state government shutdown—including the distribution of federal funding for core programs provided to the state—and specifically request that the Court order the continued payments of child care assistance for poor children. Funded by the

federal, state, and local appropriations, these child care assistance programs are designed to assure the safety and welfare of vulnerable children. These *Amici* further urge the Court to approve the Governor's determination in his First Supplemental Response that he will continue payments to services vendors and providers under the Minnesota Family Investment Program ("MFIP") and Diversionary Work Program ("DWP"), and request greater specificity regarding continuing payments to child care service providers under these and related child care assistance programs for poor children—namely, the Transition Year, and Basic Sliding Fee Child Care Assistance programs—in the event of a state government shutdown.

These *Amici* finally request that the Court order the state to retain and continue to fund state workers necessary to operate the systems used to administer and coordinate federal, state, and local child care subsidy eligibility authorizations and payments.

INTEREST OF AMICI CURIAE

The *Amici* represent the interests of child care providers throughout Minnesota, families receiving child care through state-administered child care assistance programs, and philanthropic organizations providing private financial support for early child care and education programs serving the poor. Among the early child care and education programs receiving financial support from some members of the *Amici* are The Alliance of Early Childhood Professionals, Joyce Preschool, Mayflower Preschool, the Parenting Resource Center, People Serving People, St. Anne's Place, Southside Family Nurturing Center, Way to Grow, and the Amherst Wilder Foundation. (*See* Mayotte Aff. ¶ 7.)

Although the members of the *Amici* vary in the services and assistance they provide, they all support Minnesota's children and families, and the State's statutory goal that every

Minnesota child is ready for kindergarten by 2020. (*See* Mayotte Aff. ¶ 3 & n.1 (citing Minn. Stat. § 124D.141, subd. 2(4)-(6)).) Collectively, the philanthropic members contribute approximately \$20 million annually to early child care and education programs. (*See id.* ¶ 4.) This amount is believed to represent the bulk of private contributions to early childhood programs for Minnesota's poorest families. (*See id.*) Although the amount of the philanthropic contributions is significant, it pales in comparison to the projected \$222 million state expenditure in fiscal year 2011 to subsidize such programs. (*See id.* ¶ 5.)

ARGUMENT

Minnesota's poorest families spend 20 to 29 percent of their income to cover child care expenses. (*See* Child Care WORKS Aff. Ex. B, Key Trends: Highlights from the 2009 Statewide Household Child Care Survey, at 2.) For these families, the availability of subsidized child care allows parents to seek employment, to avoid requesting public assistance, and to provide their children with higher quality care with a focus on supporting education. (*See, e.g., id.* Ex. A (noting that the cost of child care can be a significant barrier to employment for low-income workers with children); *see also id.* Ex. B, Child Care for Families with Low Incomes, at 2.)

Studies and extensive research have shown that early child care and education programs are the best possible investment in a thriving Minnesota future. (*See* School Readiness Funders Coalition Aff. ¶ 8.) If a child receives support for growth in cognition, language, motor skills, adaptive skills, and social-emotional functioning during the first five years, that child is more likely to succeed in school and become a productive member of society. (*See id.*) Without such support during these formative years, however, a child is

more likely to drop out of school, rely on welfare benefits, and commit crimes. (*See id.*; *cf. also* Minnesota Child Care Association Aff. ¶ 10.)

As the threat of a government shutdown nears, members of the *Amici* Coalition of Child Care Providers and Supporters have learned that low-income families forced to make difficult financial decisions are considering whether they must stop taking advantage of child care programs due to the increased cost, and sacrifice one parent's income in order to care for their children at the risk of losing their homes. (*See* Minnesota Child Care Association Aff. ¶ 8; Minnesota Licensed Family Child Care Association Aff. ¶ 4; School Readiness Funders Coalition Aff. ¶ 9; Rowe Aff. ¶ 5; Ross Aff. ¶ 5; Hosea Aff. ¶ 5.) Indeed, this decision making may become moot if child care programs are unable to stay afloat and must close—perhaps permanently—after the loss of revenue. (*See* Minnesota Child Care Association Aff. ¶ 7.c; Minnesota Licensed Family Child Care Association Aff. ¶ 4.)

The child care industry operates on slim margins, however, and cannot absorb the significant loss of margins that would result from a government shutdown. (*See* Minnesota Child Care Association Aff. ¶ 6.) The funding gap that would result if the government stopped providing subsidies for child care simply cannot be bridged by private sources. (*See* School Readiness Funders Coalition Aff. ¶ 10.) Providers who rely on child care assistance as a primary source of income will be forced to stop serving low-income children. (*See* Minnesota Child Care Association Aff. ¶ 7.a.)

I. THE COURT SHOULD ORDER—WITH SPECIFICITY—THE CONTINUATION OF CHILD CARE ASSISTANCE AS A CORE GOVERNMENT FUNCTION IN THE EVENT OF A GOVERNMENT SHUTDOWN.

There are three child care assistance programs in Minnesota: (1) the Minnesota Family Investment Program (“MFIP”) child care assistance program; (2) the Transition Year Child Care Assistance Program, which is a one-year entitlement to families after MFIP assistance ends; and (3) the Basic Sliding Fee Program, which is a first-come, first-served program for low-income families.

This array of programs, available as families work toward independence, provides crucial, stabilizing environments for thousands of Minnesota’s youngest, poorest, and most vulnerable citizens. The programs often enable parents to work, and ensures that children are safe, fed, and in an enriching environment that will ensure their long-term well-being. Programs providing such basic needs are essential services for these children and must be continued in the event of and for the duration of any government shutdown.

A. Child Care Assistance Through Minnesota Family Investment Program and Diversionary Work Program

MFIP and the Diversionary Work Program (“DWP”) provide cash assistance to very poor families and their children. These are the state’s “welfare-to-work” programs under the federal Temporary Assistance for Needy Families program (“TANF”).¹ MFIP and DWP

¹ Minnesota State Plan for Temporary Assistance for Needy Families 3 (effective Jan. 1, 2009 – Dec. 2011).

provide, for up to sixty months, grants that supplement family income, assist with child care costs, and offer employment services.²

Because “[c]hild care is a key component in Minnesota’s strategy to help families leave and remain off welfare,”³ MFIP provides child care assistance as part of the public assistance benefits that many families on MFIP and DWP receive. This assistance is contingent on those families complying with work activities outlined in mandated employment plans, and, without the child care assistance, some families would be unable to comply with those plans. Thus, child care assistance must be understood as a key component of public assistance.

The Governor has recommended that public assistance benefits should continue if a government shutdown occurs. (*See* First Supp. Resp. ¶ 3.B.) Similarly, the Attorney General argues that, pursuant to the Supremacy Clause, the state’s performance of core administrative functions on behalf of the federal government—including payments of public assistance designed to assure the safety and welfare of citizens—are core functions of government and should be continued in the event of and for the duration of a government shutdown. (*See* Pet. ¶ 21.) Neither party, however, makes it clear that these directives include the continuation of federal and state assistance for child care. Whichever position the Court adopts, it should direct the continuation of these critical services.

² *See id.*

³ *Id.*

B. Transition Year Child Care

Transition Year child care assistance is available to families for one year after of MFIP assistance for child care ends.⁴ When families are on the verge of emerging from the deepest poverty, this program provides critical support toward the achievement of self-sufficiency. For purposes of this hearing, there is no reason to treat child care assistance programs differently than other programs providing for the minimum needs for families—for example food stamps or Medical Assistance.

C. Basic Sliding Fee Program

Families who are not poor enough to qualify for MFIP, the so-called working poor, may qualify for sliding fee child care assistance.⁵ This assistance supplements their ability to pay for child care rather than stop work at low-paying jobs, and should also be specifically funded as a core government function.

II. THE COURT SHOULD DIRECT THE STATE TO CONTINUE FUNDING THE MINNESOTA ELECTRONIC CHILD CARE SYSTEM.

Because the State is responsible for making child care assistance payments from all sources of funds, it must continue to make available critical payment systems used to pay out federal funds, and eligibility systems used by local governments to approve families in need to receive such support.

All child care assistance programs administered by the State are comprised of commingled federal block granted funds, state appropriations, and local government funding.

⁴ *See id.*

⁵ *See id.* at 4.

For fiscal year 2011, the public sources are projected to expend \$222 million for child care assistance, and the approximate breakdown is as follows:⁶

Federal funding	64 percent
State funding	35 percent
County funding	1 percent

For child care assistance to continue through any shutdown, the state needs to maintain the administrative infrastructure—known as the Minnesota Electronic Child Care (“MEC2”) system.⁷ MEC2 works in a coordinated fashion with local governments, as the counties determine who is eligible for child care and how much assistance they can receive. The counties enter this information into MEC2 as an authorization and child care providers submit bills against these authorizations. While counties authorize care and processing the bills, MEC2 is the repository for this information and so it must be maintained in order for child care to be authorized and, ultimately, for provider bills to be paid. Thus, the Court should find that MEC2 is a core government function, entitled to receive continued funding in the event of and for the duration of any government shutdown.

III. RESPECTED SOURCES AGREE THAT QUALITY CHILD CARE IS VITAL TO MINNESOTA’S FUTURE.

Without continued child care assistance, poor families will suffer and the impact will last far beyond the duration of any government shutdown. (*See, e.g.*, School Readiness Funders Coalition Aff. ¶¶ 8-9; Child Care WORKS Aff. ¶ 6; Minnesota Child Care

⁶ Minn. Dep’t of Human Servs., Family Self-Sufficiency and Health Care Program Statistics 20 (Apr. 2011).

⁷ Minn. Dep’t of Human Servs., Information Technology, 2005 Report to the Legislature 20, available at <http://www.leg.state.mn.us/docs/2005/mandated/050155.pdf>.

Association Aff. ¶ 8; Minnesota Licensed Family Child Care Association ¶ 4; Hosea Aff. ¶ 5; Rowe Aff. ¶ 5.) These families do not have good alternative options: parents must often choose between quitting their jobs in order to directly care for their children, or leaving their children in unsafe or poorly monitored environments. Either way, they are faced with immediate well-being and safety concerns and long-term instability, and the State will incur additional costs.

Private sources cannot “backfill” the gap that will be created by stopping child care subsidy payments in the event of a shutdown. (*See* School Readiness Funders Coalition Aff. ¶ 10.) The effect of a shutdown will simply be that the poorest, most vulnerable children will lose a safe nurturing place to be while their parents work. (*See* Child Care WORKS Aff. ¶¶ 5-6.)

Most child care providers cannot absorb the impact of not receiving state payments for poor children in their care. Providers in both rural and urban communities serve significant populations of children who qualify for subsidies, and, without these payments, many providers will be driven out of business, or forced to stop providing care to poor children. (Child Care WORKS Aff. ¶ 5; Minnesota Child Care Association Aff. ¶¶ 6-7; Minnesota Licensed Family Child Care Association Aff. ¶ 4.)

Without continued funding of child care assistance programs, poor families will lose child care that has become an integral part of their routine and necessary for their survival; providers—many of whom already function paycheck-to-paycheck—will go out of business; and Minnesota’s most vulnerable children will suffer the lingering effects of instability well beyond the duration of any government shutdown.

CONCLUSION

For the foregoing reasons, child care assistance should be deemed an essential core service that will be continued to be funded in the event of a government shutdown.

Respectfully submitted,

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