

FILED
Court Administrator

STATE OF MINNESOTA

JUN 17 2011

DISTRICT COURT

COUNTY OF RAMSEY

By  Deputy

SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 62CV-11-5361

**PETITIONERS' MEMORANDUM IN
SUPPORT OF MOTION FOR RELIEF**

The Minnesota Judicial Branch exists to provide the five million citizens of Minnesota with access to justice. This constitutional mandate must not “shut down.” In order to ensure that that does not happen, the Minnesota Judicial Council and the Attorney General bring this petition seeking judicial relief in the event that the political branches are not able to reach resolution on the judicial branch budget before June 30. The Minnesota Judicial Branch has every hope that the political branches will come to resolution on the judicial branch budget, especially in light of the apparent consensus as to the funding for the next biennium for the Supreme Court, Court of Appeals and the trial courts in Minnesota.¹ Notwithstanding the progress toward agreement, the appropriation for the judicial branch has not been enacted into law. Instead, funding for all levels of court and all parts of the judicial branch runs out on June 30. The filing of this petition was therefore necessary to ensure that there is not a breach of the Minnesota Constitution’s promise to all Minnesotans—that they would have access to justice that is delivered promptly and without delay.

¹ See Senate Counsel, Research and Fiscal Analysis, *Public Safety Budget Tracking FY 2012–13*, Senate File 958 (2011), http://www.senate.leg.state.mn.us/departments/fiscalpol/tracking/2011/PS_Public%20Safety%20Conference.pdf.

FACTUAL BACKGROUND

Without a state budget or court order providing for the funding of its services, the judicial branch of state government would shut down. Such a shutdown would deprive Minnesota citizens of the rights guaranteed under the Minnesota and United States Constitutions, and the life, health, safety, and liberty of citizens would be profoundly and irreparably impacted. The following are just some of the consequences that will adversely affect the public interest if the judicial branch of government is shut down.²

The absence of a state budget or court order would profoundly impact law enforcement and criminal justice if the courts could not operate, and undermine citizens' constitutional rights. For instance, Minnesota would essentially have a "catch and release" criminal system. The police could arrest people, but they would have to let them go within 48 hours if there were no functioning court system to conduct probable cause hearings.³ Individuals held in pretrial incarceration would have to be released or have the charges against them dismissed if courts are not operating and able to provide speedy trials, as constitutionally required.⁴ Moreover, without functioning appellate courts, defendants would not have their appeals as of right.⁵ And, without

² See also Affidavit of Sue Dosal, State Court Administrator, attached as Exhibit 1 to this Memorandum.

³ Under Minn. R. Crim. P. 4.03, subd. 1, "a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of arrest. . . ." See also *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (prompt judicial determination of probable cause required for warrantless arrest).

⁴ U.S. Const. amend VI; Minn. Const. art. I, § 6 (right to a speedy trial). See also Minn. R. Crim. P. 6.06 (in misdemeanor cases with speedy trial demand, trial must begin within 60 days, and if defendant is in custody, then trial must begin within 10 days or defendant must be released subject to nonmonetary release conditions); Minn. R. Crim. P. 11 (setting forth timeline of hearings).

⁵ See, e.g., Minn. R. Crim. P. 28.02, subd. 2 ("A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. ch. 590."); Minn. R. Crim. P. 29.02, subd. 1 ("A defendant may appeal

public defenders, defendants will not have counsel as required by the United States Constitution and Minnesota Constitution.⁶ This would have a serious impact on criminal justice in Minnesota. In 2010 alone, 1,066 individuals were charged with sex crimes, and 2,788 were charged with felony domestic assault.

The absence of the civil courts would also cause serious harm to citizens and deprive citizens of their constitutional rights. Among other things, Minnesotans would lack access to prompt adjudication of orders for protection, child custody, child support, child protection, and adoption and other family law matters. In 2010, 11,502 individuals sought orders for protection from domestic assault; in 4,114 actions, courts were asked to protect a child thought to be in harm's way; and 68 actions were brought to civilly commit sex offenders at the end of their prison terms. Additionally, businesses and individuals would lose access to judicial resolution of their claims, including those that require prompt action, such as temporary restraining orders or preliminary injunctions, and claims that require court filings within specified periods of time.

The Petitioners hope that the budget impasse will be resolved through the political process and a shutdown avoided. But in the event that a budget is not enacted into law for the judicial branch, Petitioners seek judicial relief like that ordered by this Court in 2001. During that budget impasse, the Attorney General sought approval of this Court to maintain the operation of the core functions of the judicial branch of state government. This Court granted the relief sought, directing that funding be maintained for the functions of the judicial branch. *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, No. C6-01-5911, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary

as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder.”).

⁶ Minn. Const. Art. I, § 6; *Gideon v. Wainwright*, 372 U.S. 335 (1962); *State v. Nordstrom*, 331 N.W.2d 901, 903 (Minn. 1983).

Funding (Ramsey Co. D. Ct., June 29, 2001) (“*Judicial Branch Core Functions 2001*”), attached as Exhibit 1 to the Petition in this matter. If the political branches cannot reach agreement to resolve the present budget impasse, this Court should adhere to its precedent and ensure that Minnesota continues to have a functioning justice system.

ARGUMENT

In the event that the budget impasse is not resolved, the requested relief should be granted for a number of reasons. First, citizens of Minnesota are entitled to certain rights and privileges under both the United States and Minnesota Constitutions that must be protected by the judicial branch. Second, based on the Minnesota Supreme Court decision in *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986), as well as a proper construction of the Minnesota Constitution, the judicial branch of government is entitled to continue even in the absence of appropriated funds. And, the judicial branch has inherent authority to continue its operations to fulfill its constitutional obligations. *In Re The Matter of the Clerk of Court’s Compensation for Lyon County. v. Lyon County. Comm’rs*, 241 N.W.2d 781, 784 (Minn. 1976)

The Court has jurisdiction to decide, based on the circumstances presented, whether the judicial branch will continue, absent an appropriation for the fiscal year beginning July 1, 2011. Indeed, the Court is authorized and obligated to adjudicate the respective powers and obligations of the branches of State government. *See, e.g., State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (recognizing the court’s responsibility “to independently safeguard for the people of Minnesota the protections embodied in our constitution.”); *In re McConaughy*, 106 Minn. 392, 416, 119 N.W. 408, 417 (1909) (“[T]he judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.”).

The relief requested is limited in nature. The relief sought would permit the continued operation of the judicial branch as required by the United States and Minnesota Constitutions and the Court's inherent authority. The relief requested is limited in duration and will remain in effect, at most, until July 30, 2011, unless the relief is extended by the Court.

I. UNLESS THE JUDICIAL BRANCH CONTINUES OPERATING, MINNESOTA CITIZENS WILL BE DEPRIVED OF THE RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

In *Judicial Branch Core Functions 2001*, the Court held that “[f]ailure to fund the core functions of the judicial branch nullifies the judicial branch, which in turn contravenes the Minnesota Constitution.” *Judicial Branch Core Functions 2001*, Concl. of Law 6, at 4. In so holding, the Court also noted that Article VI of the Minnesota Constitution provides that the function of the judicial branch “involve[s] the adjudication of cases,” including the prompt adjudication of both civil and criminal cases. *Id.*, Findings of Fact 4, at 2.

The judicial branch protects the rights of Minnesota citizens under the United States and Minnesota Constitutions. For example, the judicial branch upholds the mandate of the 14th Amendment of the U.S. Constitution. U.S. Const., amend. XIV, § 1 (no state shall “deprive any person of life, liberty, or property, without due process of law”). It also enforces the provisions of the Minnesota Constitution, including those contained in the Bill of Rights, such as article 1, section 2 (“No member of this state shall be . . . deprived of any of the rights or privileges secured to any citizen thereof...”); article 1, section 6 (right to speedy and public trial by an impartial jury); article 1, section 7 (due process of law for criminal defendants); article 1, section 8 (right to civil redress for injuries or wrongs “promptly and without delay”); article 1, section 13 (just compensation when private property is converted to public use”).

It is well-settled that states cannot abridge or ignore the constitutional rights of their citizens simply because funding has not been appropriated to meet those constitutional obligations. In *Watson v. City of Memphis*, 373 U.S. 526, 83 S. Ct. 1314 (1963), the Supreme Court reviewed a lower court's decision permitting the City of Memphis additional time to desegregate some of its public parks and other recreational facilities. As one of its defenses, the city claimed that it should be given more time to desegregate because a number of the recreational facilities would have to be closed because of the inadequacy of the present park budget. *Watson*, 373 U.S. at 537, 83 S. Ct. at 1320–21. The Supreme Court rejected this justification for delay by noting that “it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them.” *Id.* at 537, 83 S. Ct. at 1321. *See also* *Abbott v. Burke*, ___ A.3d ___, 2011 WL 1990554, at *2 (N.J. May 24, 2011) (court held that state must fund a state constitutional right to education and reasoned that the state “may not use the appropriations power as a shield from its responsibilities.”).

The lack of resources defense has also been rejected in other contexts. *See, e.g., Barker v. Wingo*, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (delays in criminal justice process may violate defendants' due process rights, and ultimate responsibility for overcrowded courts rests with the government); *Harris v. Champion*, 15 F.3d 1538, 1562-63 (10th Cir. 1994) (neither lack of funding for public defender system nor mismanagement of resources by public defender constitute acceptable excuses for lengthy delays in adjudicating direct criminal appeals); *Williams v. Bennett*, 689 F.2d 1370, 1387-88 (11th Cir. 1982) (“Defendants clearly may not escape liability [for an Eighth Amendment violation] solely because of the legislature’s failure to appropriate requested funds. . . . If . . . a state chooses to operate a prison system, then each

facility must be operated in a manner consistent with the Constitution”); *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) (“the defenses of fund shortage and the inability of the district court to order appropriations by the state legislature, have been rejected by the federal courts”); *United States v. Terrell County*, 457 F. Supp. 2d 1359, 1367 (M.D. Ga. 2006) (recognizing lack of funds is not a defense or legal justification for the deprivation of constitutional rights).

The absence of funding may not eliminate the constitutional rights of five million Minnesota men, women and children. The Court must provide the relief requested to ensure that constitutional protections continue to be afforded to the citizens of this State.

II. THE MINNESOTA JUDICIAL BRANCH CANNOT BE TERMINATED BY A BUDGET IMPASSE.

The Minnesota Supreme Court has held that one branch of government may not eliminate the core functions of another branch. *See State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). At issue in *Mattson* was an act of the legislature which transferred most of the responsibilities of the State Treasurer to the Commissioner of Finance. *Id.* at 778. The legislature did not abolish the State Treasurer’s position, but rather eliminated the budget of the treasurer and transferred to the Commissioner of Finance most of the State Treasurer’s functions. *Id.*

The Minnesota Supreme Court held that the failure of the legislature to appropriate funds to the State Treasurer so that he could carry out the core functions of his office was unconstitutional. *Id.* at 782–83. The Court noted that Article III of the Minnesota Constitution discusses the distribution of the power of state government as follows:

‘The power of government shall be divided into three distinct departments: legislative, executive and judicial. No power or persons belonging to or constituting one of these departments shall exercise any of the power properly belonging to either of the others except in the instances expressly provided in this constitution.’

Id. at 780 (quoting Minn. Const. art. III, § 1). The Court further noted that while Article V, Section 4 of the Minnesota Constitution provides that “[t]he duties and salaries of the executive offices shall be prescribed by law,” that article does not authorize legislation that strips an office of all its functions. *Id.* at 780-81. Because the legislative act at issue stripped the State Treasurer of his duties over the receipt, care and disbursement of state monies -- functions that constituted the very core of the Office of the State Treasurer -- the Court found the act to be unconstitutional. *Id.* at 782–83.

Mattson applies with equal force to this case. The Supreme Court noted that even though certain functions of the State Treasurer were preserved, the office “now stands as an empty shell.” If there is no funding after June 30, 2011, the judicial branch will essentially have no ability to operate and will effectively be nullified. “Any decrease in the ability of the judicial branch to handle cases and associated administrative matters would cause the judicial branch to be unable to carry out its core functions,” and would nullify the judicial branch as certainly as the legislative enactment did in *Mattson*. See *Judicial Branch Core Functions 2001*, Findings of Fact 6, at 3; see also *id.*, Concl. of Law 6, at 4 (“Failure to fund the core functions of the judicial branch nullifies the judicial branch, which in turn contravenes the Minnesota Constitution.”).

Mattson also recognized that the Minnesota Constitution provided that the Office of State Treasurer had certain inherent powers even if those powers were not expressly set forth in the Constitution. As the Court noted, Section 4 of Article V of the Minnesota Constitution simply states: “[t]he duties and salaries of the executive officers *shall be prescribed by law*.” *Id.* at 780 (emphasis added). Even with this express declaration in the Constitution that the Treasurer’s duties were to be *prescribed by law*, meaning by legislative enactment, the Court held that there were implicit limits on the legislature’s powers. *Id.* at 782. See also *Clerk of Court’s*

Compensation for Lyon County v. Lyon County Commissioners, 241 N.W.2d 781, 784 (Minn. 1976) (“Obviously, the legislature could seriously hamper the court’s power to hear and decide cases or even effectively abolish the court itself through its exercise of financial and regulatory authority. If the court has no means of protecting itself from unreasonable and intrusive assertions of such authority, the separation of powers becomes a myth.”).

In addition to the principle that one branch of government cannot effectively abolish another branch of government, it is also well-settled that the Minnesota judiciary possesses inherent authority to preserve its existence, including the authority “to protect itself, to enable it to administer justice whether any previous form of remedy has been granted or not.” *Lyon County*, 241 N.W.2d at 784 (further noting that “[a]t bottom, inherent judicial power is grounded in judicial self-preservation.”); *see also State v. Chauvin*, 723 N.W.2d 20, 24 (Minn. 2006) (affirming district court’s use of sentencing jury post-*Blakely* because it was necessary to carry out legislative sentencing scheme and vindicate defendant’s jury trial right even though not expressly permitted by legislation); *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1982) (noting that inherent power of court extends to ordering expungement by court officials and agents). Although ultimately reversing a district court order that set the minimum annual salary of the clerk of court higher than what was set by the county, the Minnesota Supreme Court recognized in *Lyon County*, that the judiciary has the inherent authority “to compel the payment of public funds for *judicial* purposes.” 241 N.W.2d at 785 (emphasis added). That is, of course, the very authority at issue in this petition.

In a subsequent case, the Minnesota Supreme Court summarized the principles of inherent authority identified in *Lyon County*: “a court has inherent judicial authority to engage in activities that are (1) necessary (2) to achieve a unique judicial function (3) without infringing on

equally important legislative or executive functions.” *Chauvin*, 723 N.W.2d at 24. These established principles identified by the Minnesota Supreme Court support this Court’s use of inherent power to compel payment of public funds for judicial purposes.

First, as noted above, the functions of the judiciary—both civil and criminal—are constitutional requirements that cannot be abrogated. Permitting itself to continue its judicial function is a practical necessity that goes to the heart of separation of powers. *See Lyon County*, 241 N.W.2d at 784 (noting that “[a]t bottom, inherent judicial power is grounded in judicial self-preservation.”).⁷ Second, the adjudication of civil and criminal cases is a function that has been expressly and constitutionally reserved to the judicial branch. Minn. Const. art. VI, §§ 1-3. And, finally, because this petition seeks relief only in the event that the legislative and executive branches fail to act, there is no unnecessary infringement on the authority vested in those branches. In short, granting this petition is in accord with the principles of inherent judicial authority established in *Mattson* and *Lyon County*.

The *Mattson* and *Lyon County* decisions are consistent with decisions in other states. *See, e.g., Halvorson v. Hardcastle*, 163 P.3d 428, 439-40 (Nev. 2007) (finding that each branch of government has, “by virtue of its mere constitutional existence,” the inherent authority to carry out its basic functions); *46th Circuit Trial Court v. County of Crawford*, 719 N.W.2d 553, 560 (Mich. 2006) (stating that separation of powers requires that each branch of government

⁷ The courts in Minnesota are not unique in recognizing that they may have to exercise their inherent power to compel payment of their operating expenses. Indeed, in certain instances, such responsibility has been broadly applied by the judicial branch to establish the overall budget of the court. *See, e.g., Carlson v. State ex rel. Stodola*, 220 N.E.2d 532 (Ind. 1966); *In the Matter of the Mandate of Funds for the Gary City Court v. City of Gary*, 489 N.E.2d 511 (Ind. 1986); *Mower v. Rusk*, 618 P.2d 886 (N.M. 1980); *In the Matter of the 1987 Essex County Judicial Budget Impasse*, 533 A.2d 961 (N.J. 1987); *McCain v. Grant Parish Police Jury*, 440 So.2d 1369 (La. Ct. App. 1983); *Beckert v. Warren*, 439 A.2d 638 (Pa. 1981); *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971).

must be allowed adequate resources to carry out its constitutional responsibilities); *Case v. Lazben Fin. Co.*, 121 Cal. Rptr. 2d 405, 415 (Cal. Ct. App. 2002) (recognizing the legislature cannot act to defeat or impair another branch's exercise of its constitutional power or the fulfillment of its constitutional function); *Williams v. State Legislature of the State of Idaho*, 111 Idaho 156, 722 P.2d 465 (1986) (concluding that legislature cannot eliminate core functions of state auditor); *Bd. of Elementary & Secondary Educ. v. Nix*, 347 So.2d 147, 155 (La. 1977) (holding that legislature may not prevent a branch of government from performing its constitutional function); *Jones v. State*, 803 S.W.2d 712, 715–16 (Tex. Crim. App. 1991) (recognizing the legislature violates the separation of powers doctrine if it unduly interferes with another branch); *O'Coin's, Inc. v. Treasurer of the County of Worcester*, 287 N.E.2d 608, 612 (Mass. 1972) (finding that the legislature, through the exercise of its powers, may not prevent another branch from fulfilling its constitutional responsibilities); *Thompson v. Legislative Audit Comm'n*, 448 P.2d 799, 801-02 (N.M. 1968) (holding legislature cannot abolish the core functions of the constitutional office of state auditor); *Morris v. Glover*, 121 Ga. 751, 49 S.E. 786, 787 (1905) (finding that legislature cannot expressly abolish the office of county treasurer and cannot indirectly accomplish the same result by transferring its duties to another office).

The *Mattson* and *Lyon County* decisions are also supported by long-standing U.S. Supreme Court precedent, which recognizes that the principle of separation of powers requires that each co-equal branch of government be free from control by the other branches. “The general rule is that neither department [of government] may . . . control, direct or restrain the action of the other.” *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S. Ct. 597, 601 (1923). See also *O'Donoghue v. United States*, 289 U.S. 516, 530, 53 S. Ct. 740, 743 (1933) (“[E]ach department should be kept completely independent of the others-independent not in the sense

that they shall not co-operate to the common end of carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to the coercive influence of either of the other departments.”); *Humphrey’s Executor v. United States*, 295 U.S. 602, 629-30, 55 S. Ct. 869, 874 (1935) (“The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers . . .”).⁸

As set forth herein, the judicial branch protects the constitutional rights of Minnesota citizens, and the absence of appropriated funds cannot eviscerate the core functions of the judicial branch of state government. Accordingly, the requested relief should be granted.

III. FUNDAMENTAL PRINCIPLES APPLICABLE TO THE CONSTRUCTION OF THE MINNESOTA CONSTITUTION ALSO SUPPORT THE REQUESTED RELIEF.

The Court must give the constitution a practical, common sense construction so as to harmonize its various parts. *See, e.g., State ex rel. Mathews v. Houndersheldt*, 151 Minn. 167, 170-71, 186 N.W. 234, 236 (1922) (“The constitution must be read as a whole so as to harmonize its various parts.”); *State ex rel. Chase v. Babcock*, 175 Minn. 103, 107, 220 N.W. 408, 410 (1928) (recognizing that constitution must “receive a practical, common sense

⁸ In *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. Ct. App. 2007), a group of legislators petitioned for a writ of *quo warranto* challenging the constitutionality of the Commissioner of Finance’s disbursement of funds pursuant to the district court’s Order in *Executive Branch Core Functions 2005*. The court found the remedy of *quo warranto* to be inapplicable because the legislature had retroactively appropriated funds for the Commissioner’s disbursements. *Id.* at 320 (holding that “*quo warranto* cannot be used to challenge the constitutionality of completed disbursements of public funds.”). The court therefore declined to reach the merits, but stated that the legislature could avoid future judicial intervention to fund core services of a coordinate branch of government by enacting legislation to address a potential budget impasse. *Id.* at 323.

construction.”). In addition, “[t]he rules applicable to the construction of statutes are equally applicable to the constitution.” *Clark v Ritchie*, 787 N.W.2d 142, 146 (Minn. 2010) (citing *Houndersheldt*, 151 Minn. at 170, 186 N.W. at 236).

In this case, there are competing constitutional provisions. On the one hand, Minnesota Constitution Article XI, Section 1 gives the legislature the power of appropriation. On the other hand, Article I sets forth certain constitutional rights belonging to Minnesotans, including the right to trial by jury, speedy trial, due process, privilege against self-incrimination, redress of injuries or wrongs, prohibition against unreasonable searches and seizures, and religious freedom. Minn. Const. Art. I, (bill of rights). Likewise, Article VI establishes the judicial branch and vests judicial power of the State in the supreme court, court of appeals, and district courts. Minn. Const. Art. VI, § 1.⁹

Where, as here, a budget impasse exists that prevents the judicial branch from performing its constitutional duties in the 2012-13 biennium, an inconsistency exists in the application of these constitutional provisions. The Court must therefore construe the Constitution to ascertain the framers’ intent. *See, e.g., In re Minnesota Power & Light Co.*, 435 N.W.2d 550, 556 (Minn. Ct. App. 1989) (stating where statutes “appear inconsistent, the entire act should be construed so as to ascertain and effectuate its principal objective.”). In so doing, it is presumed that the framers of the Minnesota Constitution did “not intend a result that is absurd, impossible of execution, or unreasonable.” Minn. Stat. § 645.17(1); *see, e.g., Minn. Baptist Convention v. Pillsbury Acad.*, 246 Minn. 46, 57, 74 N.W.2d 286, 294 (1955) (rejecting an “absurd” construction of the Minnesota Constitution).

⁹ Article VI, Section 13 also requires a clerk of the district court in each county. And, Article VI, Section 2 requires the Minnesota Supreme Court to appoint “a clerk, a reporter, a state law librarian, and other necessary employees.”

Although another branch holds the power of the purse, the framers undoubtedly never envisioned that that power would or could prevent the judicial branch of government from carrying out its constitutional responsibilities or depriving Minnesotans of their constitutional rights. Such a construction would mean “that our state constitution is devoid of any meaningful limitation on legislative discretion” and would “do violence” to the framers’ intent. *See Mattson*, 391 N.W.2d at 782-83. *See also Lyon County*, 241 N.W.2d at 784 (recognizing that “separation of powers becomes a myth,” if one branch of government could “effectively abolish” another); *Wulff v. Tax Court of Appeals*, 288 N.W.2d 221, 223 (Minn. 1979) (“Notwithstanding the separation of powers doctrine, there has never been an absolute division of governmental functions in this country, nor was such even intended.”).

The judicial branch cannot shut down. As discussed *supra* at 2-3, a shutdown would severely impact criminal justice, the public safety, and the constitutional right of all Minnesotans to the provision of timely access to justice; among other things, Minnesota’s law enforcement would effectively become “catch and release,” and speedy trial demands (and other required criminal proceeding timelines) would be impossible to meet, requiring the release of criminal defendants. These results could not have been intended by the drafters of the Minnesota Constitution. *See, e.g., Terminiello v. Chicago*, 337 U.S. 1, 37, 69 S. Ct. 894, 911 (1949) (Jackson, J., dissenting) (stating that U.S. Constitution is not “a suicide pact.”).

Numerous court decisions have construed state constitutions to avoid such results. *See, e.g., 46th Circuit Trial Court*, 719 N.W.2d at 560 (“Although the allocation of resources through the appropriations . . . authorit[y] lies at the heart of the *legislative* power . . . in those rare instances in which the legislature’s allocation of resources impacts the ability of [another] branch to carry out its constitutional responsibilities, what is otherwise exclusively a part of the

legislative power becomes, to that extent, a part of the [co-ordinate branch's] power.”); *Williams*, 722 P.2d at 470, n. 4 (construing the Idaho Constitution and framers’ intent as prohibiting the legislature from reducing “appropriations to a constitutional officer below the level necessary to carry out the constitutional duties of the office.”); *Nix*, 347 So.2d at 155 (holding legislature’s reduction of education board’s staff deprived board of its ability to perform its constitutional functions and therefore was unconstitutional); *Thompson*, 448 P.2d at 800-02 (construing New Mexico Constitution and finding framers could not logically have intended legislature to abolish a constitutional office; thus, legislature’s attempt to strip state auditor of core functions and reduce salary to \$1.00 was unconstitutional); *Morris*, 49 S.E. at 787 (recognizing framers of Georgia Constitution established separate and distinct constitutional offices and never contemplated legislature had the power to render such offices an empty shell). *See also Fletcher v. Kentucky*, 163 S.W.3d 852, 868-69 (Ky. 2005) (invalidating governor’s executive order appropriating funds, but holding that certain executive branch functions must be funded by the state treasurer even in the absence of a legislative appropriation); *id.* at 876-877 (Lambert, C.J., concurring and dissenting in part) (stating the Kentucky Constitution “must be interpreted to further its purpose of supporting the endurance of a representative republic” and “[a]llowing the General Assembly to control the executive by way of the appropriations clause strikes at the heart of the purpose of separation of powers The logical extension of such an idea would be the destruction of government.”).

The Minnesota constitution was drafted to effectuate the operation of government. Minn. Const. article I, section 1 (“Government is instituted for the security, benefit, and protection of the people. . . .”). A contrary construction is not only inconsistent with the *Mattson*, *Lyon County* and *Wulff* decisions, but is also unsupported by basic principles of constitutional

interpretation. By contrast, Petitioners' requested relief harmonizes the constitutional provisions.

CONCLUSION

In the infancy of our State, Minnesota's first Chief Justice wrote, "all must regard as matter of pride and gratulation, that in this state no one, not even the worst felons, can be denied the right to simple justice." *Davis v. Pierse*, 7 Minn. 13, 23 (Gil. 1, 11) (1862). To ensure that this inspiring command remains reality, and based on the analysis set forth above, the Court should order the State to continue to fund the judicial branch of government.

Dated: June 17, 2011

Respectfully submitted,

MINNESOTA JUDICIAL COUNCIL

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In Re Temporary Funding of Core
Functions of the Judicial Branch of
the State of Minnesota)
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Case Type: Civil

Court File No. _____

AFFIDAVIT OF SUE DOSAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

I, SUE DOSAL, State Court Administrator, being first duly sworn, hereby state as follows:

1. The entire scope of services currently performed by, and the responsibilities currently assigned to, the judicial branch represent its core functions under the Minnesota Constitution. All of these services and responsibilities are necessary to the adjudicatory role and the effective administration of justice as contemplated in the Minnesota and the United States Constitutions.

2. The district court of the State of Minnesota has original jurisdiction in all civil and criminal cases and appellate jurisdiction as provided by law. MINN. CONST. Art. VI, § 3. This jurisdiction encompasses all divisions of the district court and processes placed in district court by law, including, for example, all child support matters (*Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999)), and probate matters (MINN. CONST. Art. VI, §§ 11, 12; Minn. Stat. §484.011 (2010)). An exhaustive list of statutory duties would be lengthy and difficult to compile given that such matters are scattered throughout 12 volumes of the Minnesota Statutes. However, case

type examples include family court proceedings, civil commitments, juvenile delinquencies, child protection matters, business litigation, employment matters, guardianships and many more.

3. The district courts of the state of Minnesota adjudicate 1.7 million cases each year. In 2010, over 27,000 felony cases were filed including 1,066 individuals charged with sex crimes and 2,788 persons charged with felony domestic assault. There were 28,000 gross misdemeanor cases filed including more than 14,000 DWI cases, and 1.4 million other criminal cases handled including assaults, theft, DWI and stalking. An additional 250,000 civil, family, juvenile and probate cases were filed involving such important matters as 11,502 individuals seeking orders for protection from domestic assault, 5,829 children for whom protection from physical abuse and neglect was sought, 2,725 guardianship/conservatorship cases involving vulnerable adults and children, 25,000 dissolutions with children and child support cases, and more than 22,000 housing eviction cases. Additionally, thousands of commercial and other civil matters are handled, many requiring urgent action including temporary restraining orders and preliminary injunctions.

4. The district courts of the state of Minnesota include the following judicial positions funded by state appropriations: district court judges (who must be paid under MINN. CONST. Art. VI, §5 regardless of the absence of any appropriation), referees (Hennepin and Ramsey counties), and child support magistrates. These state paid judicial positions are teamed with personal or pooled support staff including law clerks, secretaries, and court reporters although not on a one-to-one basis. These positions assist the judges by creating a record of the activities in the courtroom in the event of an appeal, researching the law applicable to individual cases, and assisting in the preparation of the written orders and memoranda of law to

communicate the court decisions to parties. In addition, per diem conciliation court referees and violations bureau hearing officers in Hennepin and Ramsey counties adjudicate cases.

5. District Court Administrators, formerly known as clerks of court, are constitutionally mandated positions (see MINN. CONST. Art. VI, § 13). District Court Administrators and their staff support the district court case work by among other things, receiving and processing the daily filings, notices, and all records for the district court. They schedule hearings and trials, take minutes of courtroom activity and operate electronic recording devices. They issue process to compel litigants to come to court in some cases. They also arrange for facilities and support for the Court of Appeals when it holds oral argument in the judicial districts. They receipt and distribute fines, fees, and restitution for crime victims.

6. Judicial District Administrators in each of the ten judicial districts assist the chief judge of the district court with administrative duties, including assigning judges and cases and managing case conflicts within the district, hiring district court administrators, appointing and removing child support magistrates and managing the use of interpreters, jurors, and psychological services in criminal and commitment matters. They provide financial and human resources services within the district. In the two large, single county judicial districts, the Judicial District Administrator is also the District Court Administrator.

7. According to an independent audit performed by the State of Minnesota Legislative Auditor, Report #01-02, Program Evaluation Report: District Courts (Jan. 2001) (referred to herein as “2001 AUDIT”), the Minnesota courts use a well-accepted method, called a weighted caseload analysis, to determine the need for judges statewide. The weighted caseload analysis was last updated in 2009. According to the 2009 analysis, the district courts are currently short at least twenty-two judge positions. The 2001 Audit also found that Minnesota

judges carry caseloads which are double the average of judges in comparable states. The most recent caseload comparison in 2008 of the Fourth Judicial District to five similarly sized metropolitan courts across the country reconfirmed that result, showing that Hennepin County judges carried caseloads that were more than twice the average of the other metropolitan courts.

8. Since 2008, the judiciary has implemented many cost containment strategies including a hiring freeze, voluntary separation program, leave without pay, layoffs, voluntary furloughs, and administrative position consolidation. Since 2008, the judiciary has lost nearly 250 positions. As a consequence, it is now operating 10% short staffed and delays in case processing are building across the state. Public access in over half of the districts is reduced by up to a 1/2 day per week. All judicial vacancies are held open for a minimum of four months and retired judge funding has been reduced, resulting in fewer judges to hear cases.

9. Without its current level of judges and staff, which is already inadequate as measured by weighted caseload analysis and reduced by budget constraints, the district court's ability to uphold important constitutional rights in criminal and juvenile cases will be severely impaired. MINN. CONST. Art. 1, §§ 5, 6, 7, 10, and 11; U.S. CONST. Amend. V, Amend. VII. Deflecting resources away from civil cases would itself risk violating constitutional rights to prompt justice, adequate remedies, and equal protection in civil cases. MINN. CONST. Art. I, §§ 4, 8. Shutting down any part of the judicial branch case work or administrative support for such casework, even temporarily, would create backlogs that, even after resumption, would impact citizens' constitutional rights to prompt justice.

10. The State is responsible for all guardian ad litem programs and personnel costs, court interpreter program costs, mental commitment examination costs, competency-to-proceed examination costs in criminal cases, and *in forma pauperis* costs. The Guardian ad Litem

Program is federally mandated to cover abuse and neglect filings in Juvenile Court (Child Abuse Prevention and Treatment Act, 42 USC 5101, et seq) and by state law on abuse and neglect cases in family and juvenile courts (M.S. 518.165, Subd.2; M.S. 260.163, Subd.5). Additionally, under Minn. Stat. 518.165, Subdivision 1, a judge may appoint a guardian ad litem in other dissolution/custody matters. The Guardian ad Litem Board does not have the ability to ignore the mandated appointments or a court order for appointment. The program must continue to meet its legal obligations to protect and ensure the safety of the most vulnerable of children, those involved in juvenile and family court proceedings. Without state funding for these costs and their administrative overhead, these important and constitutionally mandated components will be completely absent and will prevent the district court from carrying out its core functions.

11. The Minnesota Supreme Court has appellate jurisdiction in all cases, and original jurisdiction in remedial cases as provided by law. MINN. CONST. Art. VI, § 2. The Supreme Court's core function also includes overseeing the work of the entire judicial branch, including maintaining effective court rules, attorney licensing and discipline, and judicial discipline. Although attorney licensing and discipline is funded by attorney registration fees, there is some sharing of payroll processing and communications.

12. The Minnesota Court of Appeals has appellate jurisdiction over the district courts, except in cases of first degree murder or certain election contests, and other appellate jurisdiction as provided by law. MINN. CONST. Art. VI, § 2; Minn. Stat. § 480A.06 (2010).

13. The two appellate courts include justices of the supreme court and judges of the court of appeals (all of whom must be paid under MINN. CONST. Art. VI, § 5 regardless of the absence of any appropriation). These justices and judges require personal or pooled support staff

to carry out their core functions, including commissioner/staff attorneys, law clerks, secretaries, and retired judge positions to assist with the appellate caseload.

14. The Minnesota Supreme Court currently receives approximately 800 filings each year. The Court of Appeals receives approximately 2,200 filings per year.

15. The Clerk of the Appellate Courts, a constitutionally mandated position (MINN. CONST. Art. VI, § 2), oversees the filings and records of both appellate courts. Minn. Stat. § 480A.04 (2010).

16. Even a temporary absence or reduction of the appellate function (including judges, support staff and the clerk's office) could cause significant and irreversible damage to the rights of individual litigants, particularly in emergency situations.

17. The State Law Librarian, a constitutionally mandated position (MINN. CONST. Art. VI, § 2) supports the research necessary to the core judicial branch functions of adjudication. Even temporary removal of the state law librarian's functions could cause significant delays in case processing, particularly at the appellate level. The State Law Library provides public access to appellate briefs and opinions, serves as the federal repository designation and assists litigants in state courts in accessing legal materials and forms.

18. The State Court Administrator, under the direction of the Chief Justice of the Supreme Court and the Minnesota Judicial Council, oversees the administration of the state courts and provides essential support services for core judicial branch functions at all court levels. The Information Technology Division supports and maintains computer operations for district courts and the two appellate courts, including case management, jury management, interpreter, guardian ad litem and psychological services computer systems and maintains judicial branch networks and communications. The Information Technology Division also

provides electronic interface with the Bureau of Criminal Apprehension for criminal history records, with the Secretary of State for voting records, with the Department of Public Safety for driver's license records, with the Department of Revenue for the collection of court fines, fees and restitution. The Human Resources and Finance Divisions provide central support for financial, budgetary and personnel functions of the branch including labor relations. The Continuing Education Division oversees continuing education programs for all judicial branch personnel, including testing and certification of district court interpreters. The Legal Counsel Division develops contracts for branch operations and provides legal consultation to judges and district court personnel for administrative issues, related to state funding of the courts, personnel, office space, equipment, public access to records, and interactive video telecommunications. The Court Services Division provides scheduling and research support for child support magistrates, manages a statewide jury program, certifies and decertifies bail bond agents, operates a centralized court payment center which receives and processes nearly 500,000 payable citation cases and millions of dollars of court fine payments annually, and maintains rosters of certified interpreters, psychological services examiners as well as alternative dispute resolution neutrals and related disciplinary functions. The Court Information Office receives and coordinates responses to public and media inquiries concerning case related information and requests for access to statewide records under the Rules of Public Access to Records of the Judicial Branch. The State Court Administrator's Office provides the primary communications with other branches and state justice partners in supporting the operations of the judicial branch and maintains an internal audit function to help safeguard the \$200 million in revenue collected annually by the courts.

19. Even temporary removal of the state court administrator's functions could cause significant delays in case processing. The very records necessary to operate all the state courts, as well as their entire communication systems, would be directly affected, as would many integral services. The trial and appellate courts simply could not operate without the support of the State Court Administrator's Office.

20. Despite the significant budget cuts and workforce reductions experienced since 2008, the Judicial Branch FY12-13 budget request for the supreme court, court of appeals and district courts included only the continuation of FY11 base budgets and funding needed for unavoidable and statutorily mandated employee benefit cost increases. The Governor and Legislature supported this requested level of funding.¹

21. The core functions of the judiciary are also dependent on the services of state funded public defenders. *See, e.g., Dziubak v. Mott*, 503 N.W.2d 771, 777 (Minn. 1993) (public defenders are extremely important to the working of the criminal justice system). The right of indigent defendants to appointed counsel is mandated under both the federal and state constitutions. *Gideon v. Wainwright*, 372 U.S. 335 (1962); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *State v. Nordstrom*, 331 N.W.2d 901 (Minn. 1983). Juveniles in delinquency proceedings have a right to counsel at public expense also. *In re Gault*, 387 U.S. 1 (1967). Juveniles over age 10 who are the subjects of child welfare proceedings have a statutory right to counsel as well. Minn. Stat. 260C.163 The State Board of Public Defense administers and supervises the public defender system. There is also an appellate services office providing

¹ See Senate Counsel, Research and Fiscal Analysis, *Public Safety Budget Tracking FY 2012-13, Senate File 958* (2011), http://www.senate.leg.state.mn.us/departments/fiscalpol/tracking/2011/PS_Public%20Safety%20Conference.pdf

representation for appeals from felony and gross misdemeanor convictions, post conviction remedies (if there has not been an appeal of the conviction), and appeals from delinquency adjudications or extended jurisdiction juvenile convictions.

22. For each of the ten judicial districts there is a Chief Public Defender, appointed by the State Board of Public Defense, who represents defendants charged with a felony, a gross misdemeanor or misdemeanor when so directed by the District Court. They also represent minors ten years of age or older in the juvenile court when so directed by the juvenile court judge, for both delinquency and Children in Need of Protection or Services cases. Their support staff include investigators, dispositional advisors (who serve as sentencing advocates), law clerks, paralegals and secretaries.

23. The Board of Public Defense also provides legislatively authorized state funding to the Public Defense Corporations, which are independent, non-profit organizations providing public defense services to inner city and reservation clients.

24. State funded public defenders represent over 80% of all criminal and juvenile defendants in the State of Minnesota. Even temporary delays in public defender services caused by lack of an appropriation could delay criminal and juvenile cases processing beyond constitutional limits. *See Harris v. Champion*, 15 F.3d 1538, 1562-63 (10th Cir. 1994) (lack of funding for public defender system not an acceptable excuse for lengthy delays in adjudicating direct criminal appeals). Criminal cases may be dismissed when delays violate the defendants constitutional right to a speedy trial. *State v. Griffin*, 760 N.W. 2d 336 (Minn. App. 2009.)

25. The State Board on Judicial Standards, which reviews ethical complaints against judges, can best be described as a shared function of the three branches of government. The Governor appoints Board members, some with the consent of the Senate, while the Supreme

Court determines the ethical code and rules of procedure for the Board, and resolves formal complaints prosecuted by the Board. Without a functioning Board and its staff, the judiciary would be without an effective judicial disciplinary mechanism. This would damage public confidence in the judiciary and the effective administration of the courts.

FURTHER AFFIANT SAYETH NOT.

Dated: 6/17/11

Sue Dosal
SUE DOSAL

Subscribed and sworn to before me
this 17th day of June, 2011.

Cheryl L. Boe
NOTARY PUBLIC

AG: 491051, v. 01

