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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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. 62-CV-11-5361
The Honorable Bruce W. Christopherson

PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF REQUEST FOR RELIEF

Petitioners the Attorney General and the Minnesota Judicial Council submit this response to the Notice of Intervention and Memorandum of Law of Intervening State Senators (the "Senators").[1] In their Petition, the Attorney General and the Judicial Council seek a court order that will allow the Minnesota Judicial Branch to continue to operate in the event the Governor and the Legislature fail to enact an appropriation for that purpose before July 1. The Senators do not directly respond to the fundamental proposition of law set out in the Petition that the judiciary has the authority to preserve its existence. *See In Re The Matter of the Clerk of Court's Compensation for Lyon County v. Lyon County*, 241 N.W.2d 781, 784 (Minn. 1976). Indeed, in their documents, the Senators nowhere mention the Judicial Council or the continued operation of the Judicial Branch.[2]

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[1] The Petitioners do not respond to the Governor's Response or the Response of the State Board of Public Defense because both entities appear to support the Petition and support the funding of the Minnesota Judicial Branch in the event of a shutdown.

[2] It also appears as if the Senators are mixing up the petition filed in this case with the separate litigation involving funding for agencies within the executive branch, because the Senators refer to actions taken by the Attorney General in the executive branch litigation that have no applicability to this litigation.

Petitioners seek judicial relief in the event that the political branches do not fulfill their constitutional duties. It is now necessary for this Court to act to preserve the constitutional functions of the Judicial Branch, in the event of a shutdown. This Court should adhere to its precedent from 2001, act in accord with precedent from the Minnesota Supreme Court and order the State to continue to pay for the operation of the Judicial Branch of Minnesota's government.

I. THE COURT HAS AUTHORITY TO GRANT THE RELIEF REQUESTED BY THE PETITIONERS.

Senators' contention that this Court cannot order funding to preserve the existence of a branch of government or vindicate Minnesotans' constitutional rights is wrong as a matter of law. As discussed in Petitioners' Memorandum In Support of Motion For Relief ("Petitioners' Memorandum") at 4, the Court has jurisdiction to adjudicate the respective powers and responsibilities of the branches of government and safeguard citizens' constitutional rights. *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."); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 783 (Minn. 1986) (ordering that funds appropriated to the Department of Finance be transferred to the State Treasurer's Office); *Lyon County*, 241 N.W.2d at 784-85 (recognizing that court has authority to issue an order facilitating adequate funding of a branch of government).

Senators' assertion that "it is constitutionally self-evident that funds cannot be spent without legislative appropriation," Senators' Memorandum at 2, ignores well-settled law that expressly permits the judiciary to intervene and protect itself from elimination; indeed, there

is nothing "self-evident" about Senators' misstatement of law. *See Lyon County*, 241 N.W.2d at 784-85. It is well-established that the judiciary is not only protected from destruction by another branch of government due to its status as a separate branch of government, *see Mattson*, 391 N.W.2d at 782 (noting implicit limitation on legislature "to prescribe the duties of such [constitutional] officers"), but that the judiciary also has inherent authority to initiate an independent judicial proceeding to obtain an order to preserve its own existence, including the authority to "protect[] itself from unreasonable and intrusive assertions of [financial and regulatory] authority." *Lyon County*, 241 N.W.2d at 784 ("At 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).

Separation of powers principles do not support Senators' argument. See Senators' Memorandum at 2-3. All Petitioners ask is to maintain the status quo until the budget impasse is overcome, preserving Minnesotans' constitutional rights to prompt and impartial justice during a shutdown. Senators, on the other hand, propose that a failure of the political process (of which the judiciary played no part) can effectively eliminate the Judicial Branch of Minnesota government. Petitioners respectfully submit that a court order for funding to preserve the existence of the Judicial Branch is more consistent with the concept of co-equal branches of government, *see* Article III of the Minnesota Constitution, than Senators' view that the Judicial Branch can be eliminated altogether by a budget impasse.

Moreover, what Petitioners ask this Court to do is not new: there have twice been court orders for funding in anticipation of a government shutdown over the last ten years when the legislative and executive branches were unable to agree upon appropriations for some parts of state government. Senators point to no change in constitutional text, statute, or case law to suggest that this Court proceed differently.

Senators apparently concede that funding should continue to comply with federal law or the Minnesota Constitution. *See Limmer et al. v. Swanson et al.*, A11-1107 (Minn. S. Ct., filed June 20, 2011), Petition for Writ of Quo Warranto at 49-53, *available at* http://www.leg.mn/webcontent/lrl/pdf/Petition_Quo_Warranto.pdf (acknowledging that State funds may be paid to effectuate the mandates of the Minnesota Constitution and federal law, even in the absence of an appropriation). As stated in Petitioners' Memorandum, the continued operation of the Minnesota court system is based upon the mandates of the United States and Minnesota Constitutions. Thus, Senators appear to concede that the judicial branch should be funded even in the absence of appropriation.

II. SENATORS' INTERPRETATION OF THE APPROPRIATION CLAUSE IMPROPERLY IGNORES THE REMAINDER OF THE MINNESOTA CONSTITUTION.

Senators' argument relies only on the language of the appropriation clause of Article XI of the Minnesota Constitution. (Senators' Memorandum at 1-2). However, other provisions of the State constitution must also be given meaning, including those provisions that establish the Judicial Branch as a separate branch of state government. *See* Minn. Const. art. III, § 1 (dividing powers of government in three distinct departments); *id.* art. VI, § 1 (vesting judicial power in courts); *Lyon County*, 241 N.W.2d at 784-85 (recognizing that a court can initiate a legal action to obtain an order for continued funding, and finding that the

legislature cannot "effectively abolish the court itself through its exercise of financial and regulatory authority."); *see also Mattson*, 391 N.W.2d at 783 (refusing "[t]o permit the legislature to gut an executive office" because to do so "is to hold that our state constitution is devoid of any meaningful limitation on legislative discretion in this area.").

For example, the judicial branch upholds the mandate of the 14th Amendment of the U.S. Constitution. U.S. Constitution, 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).

The plain and literal language of these constitutional provisions requires compliance without any qualification for the absence of appropriations; in fact, as noted in Petitioners' Memorandum, courts have consistently held that the lack of funding does not excuse constitutional violations. *Watson v. City of Memphis*, 373 U.S. 526, 537, 83 S. Ct. 1314, 1320-21 (1963) (rejecting City's claim that it be given more time to desegregate recreational facilities because of inadequate park budget). It is neither uncommon nor improper for a court to order the expenditure of money during a budget impasse. *See, e.g., Pratt v. Wilson*, 770 F. Supp. 539, 546 (E.D. Cal. 1991) (court declared that "failure to issue AFDC benefits regularly with reasonable promptness due to the absence of a legislative budget appropriation for the AFDC program because of a budget impasse" violated federal law); *Abbott v. Burke*, -

-- A.3d ---, 2011 WL 1990554, at *14 (N.J. 2011) (ordering state to increase education funding and refusing to hold that the state's Appropriations Clause authority "empowers the political branches to ignore judicial orders and decrees that specify a remedy to ameliorate a historical finding of constitutional violation"); *Knoll v. White*, 595 A.2d 665, 668 (Pa. Commw. Ct. 1991) (requiring state to continue AFDC payments and noting that "[b]udget impasses and the absence of state funding appropriations do not allow a state to forego its obligation to fund the federal AFDC program").

The United States Supreme Court has also concluded that if "tension" exists in the application of competing constitutional provisions, a practical construction is necessary to harmonize the provisions. *See, e.g., Norwood v. Harrison,* 413 U.S. 455, 469, 93 S. Ct. 2804, 2813 (1973) (recognizing an internal tension exists between the Establishment Clause and the Free Exercise Clause of the First Amendment, which requires the Supreme Court to provide for "play in the joints" in order to harmonize the two clauses); *Walz v. Tax Comm'n of the City of New York,* 397 U.S. 664, 668-71, 90 S. Ct. 1409, 1411-12 (1970) (refusing to construe the Establishment and Free Exercise Clauses with a "literalness that would undermine [their] ultimate constitutional objective as illuminated by history.").

It is apparent that the drafters of the Minnesota Constitution did not intend a lawless society and no functioning court system in the absence of appropriations. *See* Minnesota Constitution, Art. I; Petitioners' Memorandum at 2-4 & 13-16. Temporary funding by court order will effectuate the drafters' intent of a continuing judiciary and the "security, benefit and protection of the people," until the current budget impasse is resolved.[3] *See id.*

[3] And, as noted in Petitioners' Memorandum, "separation of powers becomes a myth" where courts have "no means of protecting [themselves] from unreasonable and intrusive assertions

Senators apparently argue that the Court must consider the appropriation clause in isolation because it is unambiguous. (Senators' Mem. at 2). This argument is contrary to *Mattson,* which did not simply apply the unambiguous language of Article V, Section 4, but also gave meaning to the other pertinent provisions of the Minnesota Constitution. 391 N.W.2d at 781-83. Nor is Senators' argument consistent with the doctrine of inherent judicial authority, as explicitly recognized by *Lyon County.* 241 N.W.2d at 785. Senators' argument is also contradicted by their own admission that "there are certain circumstances that the Commissioner may disburse state funds without an annual appropriation by law," and their identification of three specific instances where such spending without an appropriation is permitted: (1) Minnesota Constitution requirements; (2) Minnesota Statutes; and (3) federal mandates. *See Limmer et al. v. Swanson et al.*, A11-1107 (Minn. S. Ct., filed June 20, 2011), Petition for Writ of Quo Warranto at 49-53, *available at* http://www.leg.mn/webcontent/lrl/pdf/Petition_Quo_Warranto.pdf.

Moreover, even an unambiguous provision of the Constitution cannot be applied in a manner that creates an absurd result. *See, e.g., Olson v. Ford Motor Co.,* 558 N.W.2d 491, 494 (Minn. 1997) (stating that when "the literal meaning of the words of a statute would produce an absurd result, we have recognized our obligation to look beyond the statutory language to other indicia of legislative intent"); *Krumm v. R.A. Nadeau Co.,* 276 N.W.2d 641, 643 (Minn. 1979) (stating courts must be guided by the "'fundamental principle' that in interpreting a statute, form should not be exalted over substance and literal constructions

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of [financial and regulatory] authority...." *Lyon County*, 241 N.W.2d at 784. In other words, the judiciary must be permitted to continue functioning -- even without an appropriation -- for judicial self-preservation. *Lyon County* specifically provided for the process whereby the judiciary can initiate an independent judicial proceeding to obtain an order for funding--exactly the process being used here. *See id.* at 181.

should not override the general policy and objectives of the law."); *Kellerman v. City of St. Paul*, 211 Minn. 351, 353, 1 N.W.2d 378, 379-80 (1941) ("[a]lthough it is true that if the meaning of a statute is plain there is ordinarily no room for construction . . . it is equally true that the legislature should not be taken to intend absurd or contradictory consequences.") (citation omitted); *Taylor v. Taylor*, 10 Minn. (Gil.) 81, 88-89 (1865) (rejecting the plain meaning of a provision of the Minnesota Constitution because it "leads to such practical inconvenience, hardship, and absurdity, we cannot believe it to be in accordance with the spirit and meaning of that instrument" and instead interpreting the provision in accordance with the intention and meaning of the framers).

For all of the above reasons, and as discussed in Petitioners' Memorandum at 12-16, a proper construction of the Constitution supports the requested relief.

III. THIS CASE CANNOT BE CONSOLIDATED WITH THE EXECUTIVE BRANCH PETITION.

Contrary to Senators' contention, this case is not "virtually identical" to the case involving the Petition for Temporary Funding of the Executive Branch (Ramsey County Court File No. 62-CV-11-5203), and the cases should not be consolidated. Senators gloss over, or appear not to recognize, that the two petitions filed in the past two weeks are requests on behalf of two separate branches of government. Consolidation here is an impossibility because Judge Gearin, who has already heard the Executive Branch Petition, has recused herself from this case. (*See* Order of Judge Gearin, June 17, 2011, in this matter).

IV. THIS IS NOT THE APPROPRIATE FORUM FOR SENATORS' REQUEST FOR A WRIT OF MANDAMUS.

The Senators' request for a Writ of Mandamus to Order the governor to call a special session is an issue between the legislative and executive branches of government that has

little or nothing to do with this Petition for Judicial Branch funding. It is black-letter law that Senators cannot introduce new issues. *See, e.g., State ex rel. Jackson v. Willson,* 230 Minn. 156, 159, 40 N.W.2d 910, 911-12 (1950) (stating intervenor cannot "change the issue between original parties"); *Twin City Milk Producers Ass'n v. Helger,* 199 Minn. 124, 127, 271 N.W. 253, 254 (1937) (holding "[t]hat an intervenor has no right to change the issues" or "introduce into the action new and foreign issues").

As stated in the Petition and related documents, Petitioners seek continued funding for the Judicial Branch only in the event of a shutdown. Petitioners are hopeful that the legislators and the Governor can reach agreement before July 1, 2011, but must plan for a shutdown so as to protect Minnesotans' Constitutional rights and access to justice. What processes or other means the legislature and Governor use between now and the end of the month to try to further negotiations and resolve the budget impasse is their business. None of that, however, should stand in the way of this Court issuing an Order that ensures the funding for continuation of the Judicial Branch in the event no budget deal is reached by July 1, 2011.

CONCLUSION

For the above reasons, and the reasons stated in Petitioners' Memorandum in Support of Motion for Relief, including the precedent of the 2001 Order of this Court, the Court should grant Petitioners' requested relief.

Dated: June 24, 2011

Respectfully submitted,

MINNESOTA JUDICIAL COUNCIL

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ATTORNEYS FOR PETITIONERS

AG: #2843583-v3

AFFIDAVIT OF SERVICE BY FACSIMILE AND U. S. MAIL

Re: ***In Re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota***
Court File No. 62-CV-11-5361

FILED
Court Administrator
JUN 24 2011
By CLK Deputy

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

BRENDA FINCH, being first duly sworn, deposes and says:

That at the City of St. Paul, County of Ramsey and State of Minnesota, on June 24, 2011, she caused the PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF REQUEST FOR RELIEF to be served by facsimile and by placing the same in the U.S. mail at St. Paul, Minnesota, a true and correct copy thereof, properly enveloped with prepaid first class postage, and addressed to:

David L. Lillehaug
Fredrikson & Byron, P.A.
Suite 400
200 South Sixth Street
Minneapolis, MN 55402-1425
Fax: (612) 492-7077

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Brenda Finch
BRENDA FINCH

Subscribed and sworn to before me on
June 24, 2011.

Virginia M. Clark
NOTARY PUBLIC

VIRGINIA M. CLARK
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN. 31, 2015

AG: #2844447-v1

AFFIDAVIT OF SERVICE BY MAIL

Re: ***In Re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota***
Court File No. 62-CV-11-5361

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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Brenda Finch
BRENDA FINCH

Subscribed and sworn to before me on
June 24, 2011.

Virginia M. Clark
NOTARY PUBLIC

VIRGINIA M. CLARK
NOTARY PUBLIC - MINNESOTA
MY COMMISSION
EXPIRES JAN. 31, 2015

AG: #2840171-v1

Exhibit A

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25 Rev. Dr. Martin Luther King Jr. Blvd
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The Honorable Kurt Zellers
Speaker, House of Representatives
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100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Thomas M. Bakk
Minority Leader, The State Senate
100 Rev. Dr. Martin Luther King Jr. Blvd.
State Office Building, Room 147
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The Honorable Sue Dosal
State Court Administrator
135 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd
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William J. Egan, Chairperson
Board on Judicial Standards
2025 Centre Pointe Blvd., Suite 180
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The Honorable Michelle L. Fischbach
President, The State Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
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The Honorable Paul Thissen
Minority Leader, House of Representatives
267 State Office Building
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Senator Amy T. Koch
Majority Leader, The State Senate
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The Honorable James Schowalter
Commissioner
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