

STATE OF MINNESOTA  
IN SUPREME COURT  
Case No. A111107

OFFICE OF  
APPELLATE COURTS

JUN 22 2011

FILED H

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State Senator Warren Limmer, State Senator Scott J. Newman, State Senator Sean R. Nienow, State Senator Roger C. Chamberlain,

Petitioners,

vs.

Lori Swanson in her official capacity as Attorney General, Mark Dayton in his official capacity as Governor, Jim Showalter as Commissioner of Department of Management and Budget, and Kathleen R. Gearin as Chief Judge of the Ramsey County District Court,

Respondents.

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**REQUEST FOR LEAVE OF COURT TO FILE AN *AMICUS CURIAE* BRIEF**

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Susan M. Voigt, Attorney No. 141276  
Joel D. Sedgeman, Attorney No. 391563  
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Counsel for *Amici*:  
Aging Services of Minnesota  
Care Providers of Minnesota, Inc.

## NOTE REGARDING MOTION TO DISMISS

Aging Services of Minnesota (Aging Services) and Care Providers of Minnesota, Inc. (Care Providers) support the Motion to Dismiss filed by Attorney General Lori Swanson on June 20, 2011 and believe this matter should be resolved in district court. *See Minnesota ex rel. Sviggum v. Ingison, Comm'r of Fin.*, No. A05-1742 (Minn. Sept. 9, 2005) (Blatz, C.J.) (Att'y General Br. in Supp. of Mot. to Dismiss, Attach. 2). The district court has jurisdiction and authority over these matters and has exercised such authority in the past. *Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding*, Ramsey County District Ct. No. C0-05-5928 (Chief Judge G. Johnson, June 23, 2005), attached as Ex. A (without court exhibits); *Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding*, Ramsey County District Ct. No. C9-014725 (Chief Judge L. Cohen, June 29, 2001), attached as Ex. B. Aging Services and Care Providers make this request to file an *amicus curiae* brief in the event the Court chooses to hear this case on the merits.

## AUTHORITY FOR REQUEST

Aging Services and Care Providers, on behalf of their members, a private interest, respectfully request leave of the Court to file an *amicus curiae* brief in this matter pursuant to Rule 129 of the Rules of Civil Appellate Procedure. Aging Services and Care Providers also request leave of the court to participate in oral argument.

## BACKGROUND

Aging Services and Care Providers are trade associations established in 1967 and 1947, respectively. These organizations collectively have 385 nursing home provider members and 750 senior housing service provider members. Almost all of their providers participate in the state Medicaid program and care for Minnesota's most frail and vulnerable citizens.

Approximately 29,852 Minnesota seniors are served by nursing facilities each day, of which 17,269 rely on Medicaid payments for their care.<sup>1</sup> Over 26,000 residents in assisted living facilities rely on Elderly Waiver<sup>2</sup> benefits to pay for their care.<sup>3</sup> Each organization represents a widely diverse group of providers, from traditional nursing homes to highly specialized subacute centers and every type of disability services and senior housing provider.

### REASONS FOR *AMICUS* SUBMISSION

Aging Services and Care Providers request the Court grant leave to submit an *amicus curiae* brief for the following reasons:

- I. Respondents' position is supported and clarified by the *amicus curiae*;
- II. Should the district court not be allowed to maintain authority over this matter and determine which services must continue, there will be very severe and unfortunate consequences to Medicaid recipients. In 2010, 56.9% of all resident days in Minnesota nursing facilities were paid by Medicaid. Many providers will not have financing sufficient to weather a cessation of government payments: eighty-six Twin Cities metropolitan-area facilities reported a median of 10.8 days of cash on hand.<sup>4</sup> Should state financial support for Minnesota's nursing homes and assisted living facilities be cut off, providers will be forced into the choice of either evicting or involuntarily discharging residents for nonpayment pursuant to 42 U.S.C. § 1396r(c)(2)(A)(v) and Minn. Stat. § 144.651, subd. 29, or providing "free care" for as long as their limited

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<sup>1</sup> 2009 Minnesota Department of Human Services data.

<sup>2</sup> "Home- and community-based waiver programs, such as Minnesota's [Elderly Waiver (EW), Community Alternatives for Disabled Individuals (CADI), Community Alternative Care (CAC), Traumatic Brain Injury(TBI), and Developmental Disabilities (DD) programs], allow persons who would otherwise be eligible to receive Medicaid benefits in a traditional institution to instead obtain care in their homes or in community-based residences. *Young v. Jesson*, No. A10-1303 (Minn. Ct. App., Apr. 12, 2011), citing *Ball v. Rodgers*, 492 F.3d 1094, 1098 (9th Cir. 2007); see also Minn. Stat. § 256B.0915.

<sup>3</sup> 2008 Minnesota Department of Human Services data.

<sup>4</sup> "Financial Condition of Minnesota's Nursing Facilities: 2010," data collected, analyzed, and reported by Larson Allen, LLP (April 2011). This figure is based on the responses of 248 facilities to a survey mailed in January 2011.

finances will allow. As the financial data above indicates, providers will not be able to provide this care for long before the downward spiral of events such as missing payroll and an inability to pay vendors for basic necessities such as food for residents will force providers to close. Some residents will be forced to live with family and friends who are unable to meet their needs, while others will simply have no place to go;

- III. The vulnerable elderly, frail and infirm are not a party to this action, but would be served if the Court allows Aging Services and Care Providers to submit an *amicus* brief. Providers and their residents have aligned interests in this matter, as both would suffer grave injury should Medicaid and other provider payments cease;
- IV. Aging Services and Care Providers present a unique perspective in this matter. In their brief, the Petitioners themselves recognize that even absent appropriations some federally sponsored programs could be required to continue pursuant to the Supremacy Clause of the United States Constitution. Pet'rs' Br. at ¶¶ 71 & 76. *See* U.S. CONST. art. VI, cl. 2. In their brief, the Petitioners show no interest in expanding on what state funding would be required by such federal mandates. *See* Pet'rs' Br. at ¶¶ 71 & 76. Respondents such as Attorney General Lori Swanson will presumably address the Supremacy Clause issue, but Aging Services and Care Providers will be able to present more detailed information about specific statutes, regulations, and caselaw regarding Medicaid and the Supremacy Clause. Medicaid rights are a serious issue that even the Supreme Court of the United States has addressed, finding federal Medicaid laws confer "an absolute right to be free from government interference with the choice to remain in a home that continues to be qualified." *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 785 (1980). Minnesota's courts have also addressed the issue of

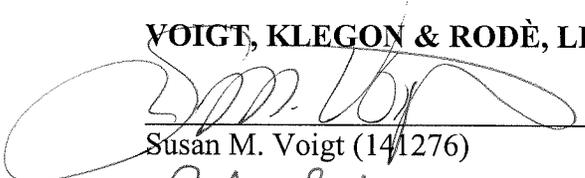
Medicaid and federal preemption. Aging Services and Care Providers will be able to present these important cases to the Court in a way that neither Petitioners nor Respondents would have the interest or resources to do;

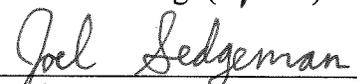
- V. Minnesota risks the suspension of its federal Medicaid match should it stop Medicaid payments to providers. This is an issue with serious implications not only for Medicaid providers and Medicaid recipients, but also for Minnesota taxpayers generally. Federal contribution to the Medicaid program is dependent on the State of Minnesota actually spending its matching state share. *See Harris v. McCrae*, 448 U.S. 297, 301 (1980); 42 U.S.C. § 1396b(a)(1). Aging Services and Care Providers have extensive experience dealing with the myriad of Medicaid regulations and would be able to explain the risks Minnesota would face should it unilaterally suspend Medicaid payments to providers;
- VI. The issues addressed in the *amicus* brief will not be prejudicial to the Petitioners or the Respondent Attorney General, or any other interested person;
- VII. Consideration of the *amicus curiae* will not delay the Court's disposition of this case;
- VIII. The *amicus* brief can be submitted pursuant to the timeframe outlined in the Petitioners' Prayer for Relief.

For the reasons above, Aging Services and Care Providers respectfully request leave to participate as *amici curiae* by filing an *amicus* brief. Aging Services and Care Providers also request leave for time to present oral argument.

Dated: 6/21/2011

**VOIGT, KLEGON & RODÈ, LLC**

  
Susan M. Voigt (141276)

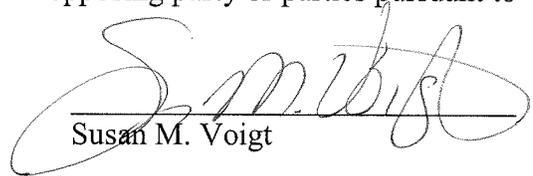
  
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Attorneys for *amici*: Aging Services of  
Minnesota and Care Providers of Minnesota,  
Inc.

**ACKNOWLEDGMENT**

We, Susan M. Voigt and Joel D. Sedgeman, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to Minnesota Statutes § 549.211.

  
Susan M. Voigt

  
Joel D. Sedgeman

FILED  
Court Administrator

JUN 23 2005

By J. H. Hatch Deputy

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

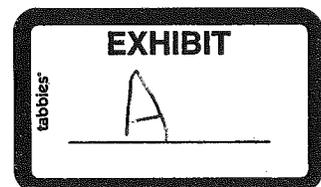
Case Type: Civil

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

Court File No. C0-05-5928

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
MOTION FOR TEMPORARY FUNDING**

On June 15, 2005, this Court issued an Order to Show Cause setting a hearing date of June 29, 2005 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2005. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. On June 15, 2005 Governor Tim Pawlenty filed a Motion to Intervene in the proceeding and requested that the hearing be held on June 23, 2005. The Petitioner agreed to move-up the hearing and so notified the 500 public officials as set forth in his Affidavit of Service. At the hearing on June 23, 2005, appearances were made by Attorney General Mike Hatch and by Eric Lipman, Esq., on behalf of Governor Pawlenty. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.



PETITION EXHIBIT 4

## FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.

2. Governor Tim Pawlenty is the Governor of the State of Minnesota. The parties stipulate that Governor Pawlenty may intervene in this matter.

3. The Minnesota Legislature ended its regular session on May 23, 2005 without approving appropriations for many of the executive branch officers and agencies for the fiscal year beginning on July 1, 2005. Exhibit 1 to the Affidavit of Mike Hatch contains a list of those agencies that were not funded. On May 24, 2005, Governor Tim Pawlenty convened the legislature in special session. The special session has not resulted in any appropriations for the remaining executive branch officers and agencies.

4. The Minnesota Constitution entrusts certain core functions to the executive branch of government. Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

5. The following Public Officials serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government. The agencies headed by these Officials have not been funded by the legislature.

- 1) Gene Hugoson, Department of Agriculture,
- 2) Alice Seagren, Department of Education,
- 3) Glenn Wilson, Department of Commerce,
- 4) Matt Kramer, Department of Employment and Economic Development,

- 5) Dianne Mandernach, Department of Health,
- 6) Kevin Goodno, Department of Human Services,
- 7) Sandy Layman, Iron Range Resources and Rehabilitation Board,
- 8) Scott Brener, Department of Labor and Industry,
- 9) Gene Merriam, Department of Natural Resources,
- 10) Sheryl Corrigan, Minnesota Pollution Control Agency,
- 11) Tim Marx, Housing Finance Agency,
- 12) Michael Campion, Public Safety (partially funded),
- 13) Carol Molnau, Transportation, and
- 14) Peter Bell, Metropolitan Council.

6. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of boards, commissions and the like which act on behalf of state government and perform core functions, and which have not yet been funded.

7. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

8. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2005, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

9. Examples of the federal programs referenced in paragraph 7 include the following: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for which they were eligible. *See* 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(9) and (10). The State must also share in the cost of operating each program. *See* 7 U.S.C. § 2025, 42 U.S.C. § 609(a)(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. *See* 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c. The Department of Human Services is responsible under state law for administering the state programs relating to each of these three

federal programs. See Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); and 256.01, subd. 2 (Medicaid Program) (2004).

10. Due to the lack of legislative appropriations, many of the executive branch agencies and the local units of Minnesota government have insufficient funds to carry out all of their core functions as of July 1, 2005. Any failure to properly fund core functions of the executive branch may violate the constitutional rights of the citizens of Minnesota.

11. In 2001 Attorney General Mike Hatch petitioned this Court to act to preserve the operation of core functions of the executive branch of government after the Minnesota Legislature had failed to pass a budget funding state government. At that time this Court issued an Order directing that state and local agencies continue to perform the core functions required by the Minnesota and United States Constitutions and by federal law, and that the State continue to pay for such functions performed after July 1, 2001. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D.Ct., filed June 29, 2001) (attached to Petitioner's Memorandum in Support of Motion for Relief in this matter). In that Order the Court directed state and local agencies to determine what core functions were required to be performed by each. State executive branch agencies made such determinations, and the list of "critical" operations, listed by agency, which were to remain open in the event of a state government shutdown as of July 1, 2001, is contained in Exhibit 2 to the Affidavit of Mike Hatch submitted in support of this Petition.

12. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

13. Pursuant to the criteria referenced in paragraph 11 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;
- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

14. The Petitioner, Mike Hatch, has indicated that the State has ample financial reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

### CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2004) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2004).

3. Article XI, Section 1 of the Minnesota Constitution provides that “no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.” Under

Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that “government is instituted for the security, benefit and protection of the people . . . .” Article I, Section 1. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2005.

7. The Minnesota Constitution requires that the State provide an adequate education through a “general and uniform system of public schools.” Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, the Food Stamp Program, the Temporary Assistance to Needy Families Program, and the Medicaid Program. Under these agreements continued participation in those programs is required once a State has

agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. Core functions also include functions required to be performed by the State under a federal contract or federal law.

#### ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. Core functions shall include, but are not limited to, the services set forth in the Core and Critical Functions List attached as Exhibit B to this Order. This Order does not approve or disapprove of the numbers of employees needed to carry out the core functions which are set forth in the List. Rather, State agencies and officials are mandated to employ the number of employees necessary to carry-out the core functions in a timely manner.

3. The Minnesota Commissioner of Finance, Peggy Ingison, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

4. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Special Master who shall determine whether the Commissioner of Finance should pay for such services.

5. The Honorable Edward Stringer is hereby appointed as Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

6. This Order shall be effective until the earliest of the following:

- a. July 23, 2005;
- b. The enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2005; or
- c. Further Order of this Court.

7. Petitioner shall serve by U.S. Mail a copy of this Order to the persons and entities listed in Exhibit A attached to the Order. The Petitioner shall also serve, by personal service, a copy of this Order upon the following individuals:

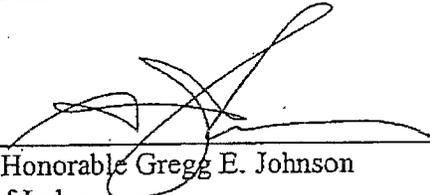
- a. The Honorable Tim Pawlenty, Governor of the State of Minnesota,
- b. The Honorable James Metzen, President of the Minnesota State Senate,
- c. The Honorable Steve Sviggum, Speaker of the Minnesota House of Representatives,
- d. The Honorable Peggy Ingison, Commissioner of Finance, and

e. The Honorable Thomas Heffelfinger, U.S. Attorney for the District of Minnesota.

8. The Court hereby incorporates by reference, and adopts as its own, the Memorandum filed by the Attorney General with the Court in this matter.

9. On Monday, July 11, 2005, at 9:30 a.m., the parties and Special Master will appear at a case management conference for the purpose of updating the Court as to the status of activities taken pursuant to this Order and the need for any further relief.

BY THE COURT:

  
\_\_\_\_\_  
The Honorable Gregg E. Johnson  
Chief Judge  
Ramsey County District Court

Dated this 23 day of  
June, 2005.

AG: #1432476-v1

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil

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

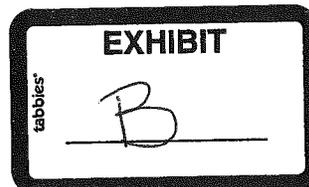
Court File No. C9-01-5725

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
MOTION FOR TEMPORARY FUNDING

On June 21, 2001, this Court issued an Order to Show Cause setting a hearing date of June 29, 2001 on the motion of Petitioner Mike Hatch, Attorney General of the State of Minnesota, for an Order of this Court directing that core functions of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2001. The Order to Show Cause was served on approximately 500 state, county, municipal and school district officials. At the hearing on June 29, 2001 appearances were made by Attorney General Mike Hatch and Chief Deputy Attorney General Alan I. Gilbert on behalf of Petitioner. Other appearances at the hearing are as noted in the record. Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Petitioner Mike Hatch is the Attorney General of the State of Minnesota and in that capacity he represents the public in all legal matters involving the State of Minnesota. He also represents the people of the State in a *parens patriae* capacity.
2. The Minnesota Legislature ended its regular session this year on May 21, 2001 without approving appropriations for nearly all of the executive branch officers and agencies for



PETITION EXHIBIT 1

the fiscal year beginning on July 1, 2001. On June 11, 2001 Governor Jesse Ventura convened the legislature in special session. The special session has not resulted in any appropriations for the executive branch officers and agencies.

3. The Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer). Those core functions of executive branch officials and agencies include ensuring compliance with state and federal constitutional rights of citizens and federal mandates.

4. The following Public Officials appointed by the Governor serve in a variety of capacities in the executive branch of government on behalf of the State of Minnesota, and perform a variety of core functions on behalf of the State, and in some cases, the federal government:

- 1) David Fisher, Department of Administration,
- 2) Gene Hugoson, Department of Agriculture,
- 3) Christine Jax, Department of Children, Families and Learning,
- 4) James Bernstein, Department of Commerce,
- 5) Cheryl Ramstad Hvass, Department of Corrections,
- 6) Earl Wilson, Department of Economic Security,
- 7) Julien Carter, Department of Employee Relations,
- 8) Pamela Wheelock, Department of Finance,
- 9) Jan Malcolm, Department of Health
- 10) Janeen Rosas, Department of Human Rights,

- 11) Michael O'Keefe, Department of Human Services,
- 12) John Swift, Iron Range Resources and Rehabilitation Board,
- 13) Gretchen Maglich, Department of Labor and Industry,
- 14) Major General Eugene Andreotti, Department of Military Affairs,
- 15) Allen Garber, Department of Natural Resources,
- 16) Charles Weaver, Department of Public Safety,
- 17) Matthew Smith, Department of Revenue,
- 18) Rebecca Yannish, Department of Trade and Economic Development,
- 19) Elwyn Tinklenberg, Department of Transportation,
- 20) Jeffrey Olson, Department of Veterans Affairs,
- 21) Karen Studders, Minnesota Pollution Control Agency,
- 22) Dean Barkley, Department of Planning,
- 23) Morris Anderson, Chancellor, Minnesota State Colleges and Universities,
- 24) Howard Bicker, Executive Director, State Board of Investment,
- 25) Katherine G. Hadley, Housing Finance Agency,
- 26) Ted Mondale, Chair, Metropolitan Council,
- 27) Richard Scherman, State Board of Public Defense, and
- 28) David S. Paull, Board on Judicial Standards.

5. In addition to the Public Officials referenced in the preceding paragraph, there are a variety of occupational and licensing boards, regulatory boards, mediation bureaus, minority affairs counsels, and other commissions which act on behalf of state government and perform core functions.

6. Local governmental units such as counties, municipalities and school districts are also charged under Minnesota and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These local government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts to ensure the constitutional obligation of the state to provide an adequate education as part of a "general and uniform system of public schools." Minn. Const. Art. XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid. School districts will be unable to carry out this core function without the State continuing to make timely payments to the school districts.

7. The State of Minnesota has entered into numerous agreements with the United States government which require the State to make payments to individuals or local governmental units, or to undertake certain administrative duties on behalf of or in cooperation with the federal government. Without funding as of July 1, 2001, the State will be unable to carry out these core functions. Examples of such agreements and obligations include the administration and payment of Aid to Families with Dependent Children, medical assistance, general assistance, and a variety of other programs designed to assure the health, safety and welfare of Minnesota citizens.

8. Examples of the federal programs referenced in paragraph 7 include the following welfare programs: the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601 *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396 *et seq.* Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence and medical benefits for

which they were eligible. See 7 U.S.C. § 2020(a); § 2020(d), § 2020(e)(2), (3) and (9); 42 U.S.C. § 602(a)(1) and (4); 42 U.S.C. § 1396a(a)(10) and (9). The State must also share in the cost of operating each program. See 7 U.S.C. § 2025, 42 U.S.C. § 609(7), 42 U.S.C. § 1396a(a)(2). The State is responsible for 50% of the benefit costs of the Medicaid program. It must also maintain prior levels of state spending in the TANF program. Should the State fail to fulfill its numerous responsibilities under any of the three federal programs, it is subject to severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs. See 7 U.S.C. § 2020(g), 42 U.S.C. § 609, 42 U.S.C. § 1396c.

9. Due to the lack of legislative appropriations, the six Constitutional Officers of the State of Minnesota, the executive branch agencies, and the local units of Minnesota government, have insufficient funds to carry out all of their core functions as of July 1, 2001. Any failure to properly fund core functions of the executive branch would have severe consequences for the citizens of Minnesota.

10. With regard to a previous shutdown of the federal government, the Office of Management and Budget ("OMB") and the United States Attorney General used the following criteria to define core or essential government services:

- Those services providing for national security;
- Those services providing for benefit payments in the performance of contract obligations, and
- Conducting essential activities to the extent that they protect life and property.

11. Pursuant to the criteria referenced in paragraph 10 above, the OMB determined that the following activities, among others, were core or essential services necessary to protect life and property:

- Medical care of inpatients and emergency outpatient care;
- Activities essential to ensure continued public health and safety, including safe use of food, drugs, and hazardous materials;

- Continuance of transportation safety functions and the protection of transport property;
- Protection of lands, buildings, waterways, equipment and other property owned by the government;
- Care of prisoners and other persons in the custody of the government;
- Law enforcement and criminal investigations;
- Emergency and disaster assistance;
- Activities that ensure the production of power and the maintenance of the power distribution system;
- Activities essential to the preservation of the essential elements of the financial system of the government, including the borrowing and tax collection activities of the government; and
- Activities necessary to maintain protection of research property.

12. The State of Minnesota is not facing a budget crisis. The State has ample reserves at this time, and the executive branch could continue to operate core functions if it had access to those funds.

#### CONCLUSIONS OF LAW

1. The Attorney General is authorized to commence an action in the courts of this State when he determines that the proceeding is in the interest of the State.

2. This Court has jurisdiction over this matter in accordance with Minn. Stat. ch. 484 (2000) and venue is proper in this Court pursuant to Minn. Stat. § 542.01 (2000).

3. Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to approve appropriations for Minnesota government to operate.

4. The Minnesota Constitution provides that each of the six executive branch Constitutional Officers specified in Article V, the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Auditor, and State Treasurer, have and perform certain core functions which are an inherent part of their Offices. Performance of these core functions may not be abridged. *State ex. rel. Mattson vs. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986). Failure to

fund these independent core functions nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution.

5. The core functions of the executive branch arise from the State and Federal Constitutions, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution.

6. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people . . . ." Article I, Section 1. Minnesota citizens are guaranteed under both the United States and Minnesota Constitutions the right to due process before deprivation of life, liberty or property. U.S. Const. Amendments III and IV; Minn. Const., Article I, Section 7. Minnesota citizens are guaranteed a wide range of rights under the Bill of Rights in both constitutions. U.S. Const. Amendments I-X; Minnesota Const. Article I. These rights and privileges will be infringed if executive branch agencies do not have sufficient funding to discharge their core functions as of July 1, 2001.

7. The Minnesota Constitution requires that the State provide an adequate education through a "general and uniform system of public schools." Article XIII, Section 1. Minnesota school districts ensure this constitutional right with the assistance of substantial State aid.

8. The State of Minnesota has entered into agreements with the United States government to participate in a variety of programs, including, for example, Aid to Families with Dependent Children and other similar welfare or social service programs, and the Section 8 housing program. Under these agreements continued participation in those programs is required once a State has agreed to participate. The Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in federal programs must continue.

9. The core functions of the executive branch, whether conducted by a state agency or local government entities, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions and federal law.

10. Core functions include matters relating to the life, health and safety of Minnesota citizens and the maintenance and preservation of public property. By way of example, core functions include, but are not limited to, the provision of healthcare to patients in state-run facilities and programs and the funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services; the State's education system; the application and maintenance of federal and/or State contracted or mandated programs and projects, such as welfare, medical assistance, emergency and housing programs and construction projects; the preservation of safety in state-run facilities; enforcement of laws involving food, drugs, hazardous materials, safety in modes of transportation and state highways (such as the inspection of products and services provided pursuant to construction contracts), the proper provision of healthcare and the integrity of our judicial system; law enforcement, criminal investigations, and prosecutorial and public defender activities; emergency and disaster assistance; activities that ensure the continued production of power, maintenance of the power distribution system, and telecommunications systems; protecting the state and federal constitutional rights of Minnesota citizens; care of prisoners and others in the custody of the government; protection and maintenance of lands, buildings, waterways, transport property, equipment and other property owned or leased by the state government; activities essential to the preservation of the elements of the financial system of the State, including revenue collection, borrowing, payment of debts, compliance with bond and similar

requirements, maintenance of pensions, retirement programs and investment of state and retirement assets and prompt payment of amounts owed to employees, vendors, and contractors.

## ORDER

1. Minnesota State agencies and officials, county and municipal entities, and school districts shall perform the core functions of government as required by the Minnesota Constitution, the U.S. Constitution and the federal government pursuant to the Supremacy Clause of the U.S. Constitution, and the State of Minnesota shall pay for such services.

2. The Minnesota Commissioner of Finance, Pamela Wheelock, and the Minnesota Treasurer, Carol Johnson, shall timely issue checks and process such funds as necessary to pay for such obligations so that the core functions of government can be discharged.

3. Minnesota state agencies and officials, county and municipal entities, and school districts shall, consistent with the terms of this Order, determine what core functions are required to be performed by each of them. Each government entity shall verify the performance of such core functions to the Commissioner of Finance and the State Treasurer, who shall pay for such services.

4. Esther Tomljenovich is hereby appointed as a Special Master to mediate and, if necessary, hear and make recommendations to the Court with respect to any issues which may arise regarding compliance within the terms of this Order. The fees and expenses of the Special Master shall be paid by the State.

5. This Order shall be effective until the earliest of the following:

a. July 23, 2001;

b. The enactment of a budget by the State of Minnesota to fund the core functions of government after June 30, 2001; or

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

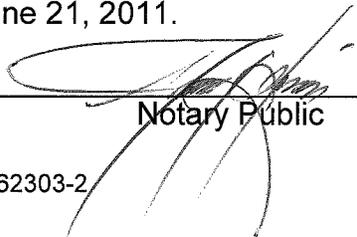
OFFICE OF  
APPELLATE COURTS

JUN 22 2011

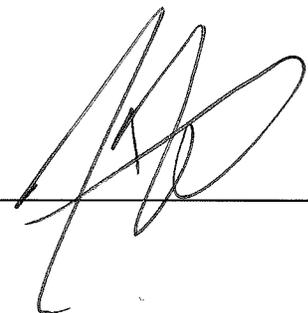
Jeremy Fuchs, being duly sworn, on oath says: that on the 21<sup>st</sup> day of June, 2011, at 4:10pm (s)he served the attached Request for Leave of Court to File an Amicus Curiae Brief upon Senator Warren Limmer, Senator Scott J. Newman, Senator Sean R. Nienow and Senator Roger C. Chamberlain, c/o Erick G. Kaardal, Esq., therein named, personally at 33 South 6<sup>th</sup> Street, #4100, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Leah Maguffee, Receptionist, an expressly authorized agent for service for said Erick G. Kaardal, Esq., a true and correct copy thereof.

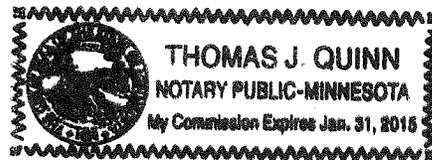
FILED

Subscribed and sworn to before me,  
June 21, 2011.

  
\_\_\_\_\_  
Notary Public

1462303-2

  
\_\_\_\_\_



Re: 25813

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

**METRO LEGAL SERVICES**

OFFICE OF  
APPELLATE COURTS

JUN 22 2011

**FILED**

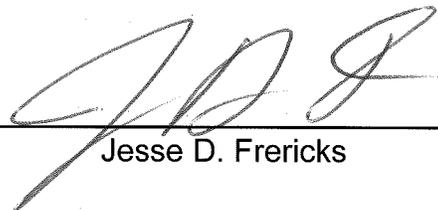
Jesse D. Frericks, being duly sworn, on oath says:

that on June 21, 2011, at 4:50 PM he served the attached:

Request for Leave of Court to File an Amicus Curiae Brief upon:

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

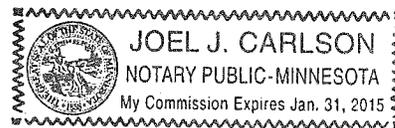
445 Minnesota Street, #1100, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Barb Fehrman, administrative assistant, an expressly authorized agent for said Lori Swanson, Esq., a true and correct copy thereof.



Jesse D. Frericks

Subscribed and sworn to before me on

June 22<sup>nd</sup>, 2011



\*1462303 - 3\*

RE: 25813

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

OFFICE OF  
APPELLATE COURTS

**METRO LEGAL SERVICES**

JUN 22 2011

**FILED**

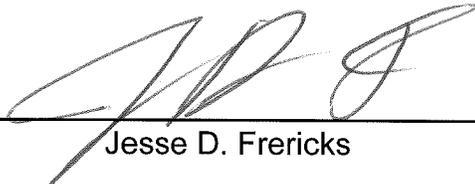
Jesse D. Frericks, being duly sworn, on oath says:

that on June 21, 2011, at 4:38 PM he served the attached:

Request for Leave of Court to File an Amicus Curiae Brief upon:

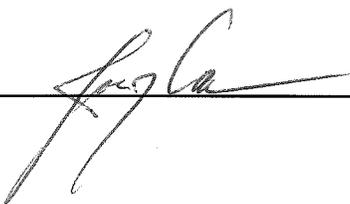
Govenor Mark Dayton, therein named, personally at:

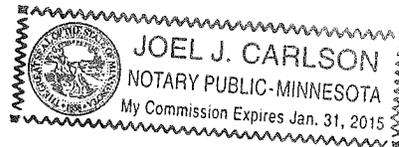
75 Rev. Dr. Martin Luther King Jr. Blvd., #130, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Katie Hulett, administrative assistant, an expressly authorized agent for said Govenor Mark Dayton, a true and correct copy thereof.

  
\_\_\_\_\_  
Jesse D. Frericks

Subscribed and sworn to before me on

June 22<sup>nd</sup>, 2011

  
\_\_\_\_\_



\*1462303 - 4\*

RE: 25813

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

**METRO LEGAL SERVICES**

OFFICE OF  
APPELLATE COURTS

JUN 22 2011

**FILED**

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

that on June 21, 2011, at 4:32 PM he served the attached:

Request for Leave of Court to File an Amicus Curiae Brief upon:

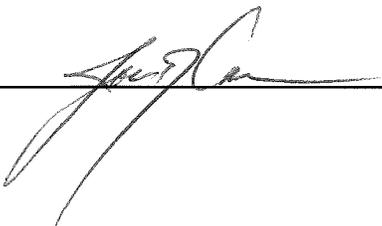
Jim Showalter, Commissioner, Dept. of Management and Budget, therein named, personally at:

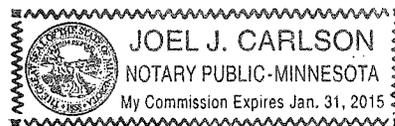
658 Cedar Street, #400, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Diane Savino, administrative assistant, an expressly authorized agent for said Jim Showalter, Commissioner, Dept. of Management and Budget, a true and correct copy thereof.

  
\_\_\_\_\_  
Jesse D. Frericks

Subscribed and sworn to before me on

June 22<sup>nd</sup>, 2011

  
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\*1462303 - 5\*

RE: 25813

STATE OF MINNESOTA

AFFIDAVIT OF SERVICE

COUNTY OF RAMSEY

**METRO LEGAL SERVICES**

OFFICE OF  
APPELLATE COURTS

JUN 22 2011

FILED

Michael D. LeMay, being duly sworn, on oath says:

that on June 21, 2011, at 4:25 PM he served the attached:

Request for Leave of Court to File an Amicus Curiae Brief upon:

Judge Kathleen R. Gearin, therein named, personally at:

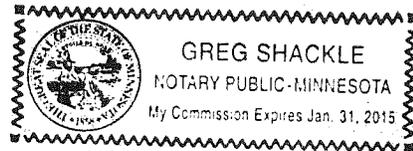
15 West Kellogg Boulevard, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Joe Cassell, Clerk of the Court, an expressly authorized agent for said Judge Kathleen R. Gearin, a true and correct copy thereof.



Michael D. LeMay

Subscribed and sworn to before me on

June 22, 2011



\*1462303 - 6\*

RE: 25813