

DECLARATION OF JAMES SCHOWALTER

Pursuant to 28 U.S.C. § 1746, I, James Schowalter, declare as follows:

1. My name is James Schowalter. I am the Commissioner of the Department of Management and Budget. I was appointed by the Governor of the State of Minnesota and report to him. At the Governor's direction, I also chair the Statewide Contingency Response Team ("SCRT"), which has prepared a contingency plan to maintain critical services in the event of a government shutdown.

2. As the Commissioner of Management and Budget, I am present for, and play a key role in, the ongoing budget negotiations between the Governor and the Legislature. As the Commissioner and as chair of the SCRT, I play a key role in the plans for a government shutdown. Currently I work on these responsibilities about 18 hours a day.

3. Earlier this month, the SCRT prepared Recommended Statewide Objectives, attached hereto as Exhibit A. The SCRT also established four Statewide Priority Service Levels. Priority 1 Critical Services are those necessary due to an immediate threat to public health and/or safety. Priority 2 Critical Services are those that, if not delivered in a few days, create the risk of disorder or severe, statewide economic impact.

4. The Governor, through the SCRT, directed that all agencies identify services that are Priority 1 and Priority 2 Critical Services. The SCRT then reviewed the submissions and made recommendations to the Governor on which services should be continued in the event of a shutdown. The Governor has accepted the recommendations of the SCRT.

5. On June 13, 2011, the Attorney General commenced a proceeding in Ramsey County District Court, captioned *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. 62-CV-11-5203, before Chief Judge Kathleen Gearin.

6. On June 23, 2011, Chief Judge Gearin held a hearing on the Attorney General's petition to determine whether the Court should issue an order as to what "core functions" or "critical services" should continue in the event of a shutdown. Attorneys for the Governor, the Minnesota House of Representatives, and the Minnesota Senate appeared. Also appearing, by way of motion to intervene or motion to be an amicus, were approximately 20 organizations and associations who had an interest in continuing to receive state funds in the event of a shutdown.

7. On June 29, 2011, Chief Judge Gearin issued a comprehensive order. She identified the core functions and critical services to be continued in the event of a shutdown. In most respects, she adopted the SCRT's list of critical services as accepted by the Governor.

8. In Paragraph 1 of her Order, Chief Judge Gearin specifically directed me to "timely issue checks and process such funds as necessary to pay for the performance of the critical core functions of government as set forth in this Order." In Paragraph 11 of her Order, she authorized me "to make payments necessary to carry out the critical core functions of the executive and legislative branches consistent with Exhibit A [Exhibit B hereto] and the findings of fact and conclusions of law contained in this order. She also ordered me "to fund programs where funding is mandated by the Supremacy clause of the U.S. Government and make payments such as LGA payments that have already been

lawfully appropriated.” In Paragraph 16 of her Order, she authorized me to fund resources “necessary to respond to an unforeseen emergency that would place the public or public property in immediate danger.”

9. In paragraph 13 of her Order, Chief Judge Gearin appointed former Chief Justice Kathleen Blatz as a special master to make recommendations “relating to the application of this Order.” I understand that if the Governor or I are uncertain about the application of Chief Judge Gearin’s Order, we are to go to Special Master.

10. In just the last 24 hours, I or my Department have been named as a defendant in several lawsuits in counties other than Ramsey County regarding the government shutdown and, specifically, the same subjects that are the subjects of *Executive Proceeding* before Chief Judge Gearin.

11. On June 28, 2011, the State of Minnesota and I were sued in Scott County, First Judicial District by Canterbury Park Holding Corporation and the Minnesota Horsemen’s Benevolent & Protective Association, Court File No. 70-cv-11-13433 (“*Canterbury Case*”). Plaintiffs allege that they are entitled to a Temporary Injunction requiring me to pay funds to the Minnesota Racing Commission and restraining the State from defunding or closing the Minnesota Racing Commission.

12. A hearing on the *Canterbury Case* is scheduled for tomorrow, Friday, June 30 in Shakopee. Because of my ongoing duties in the budget negotiations and in implementing the government shutdown pursuant to Chief Judge Gearin’s Order, I cannot be present for the *Canterbury Case* hearing.

13. In her Order, at Paragraph 5, Chief Judge Gearin allowed the Horsemen’s Benevolent Association to intervene in *Executive Proceeding*. However, at Finding of

Fact 34, she specifically determined that the regulation of horse racing was not a core function of government. She noted that granting intervention would allow the Association to seek emergency review by an appellate court.

14. On June 29, 2011, the Office of Minnesota Management & Budget was sued in Dakota County, First Judicial District by the Minnesota Zoological Garden, Court File No. Unknown (“*Zoo Case*”). Plaintiff alleges that it is entitled to a Temporary Restraining Order and/or Writ of Mandamus requiring my department to pay funds to the Zoo.

15. A hearing on the *Zoo Case* was held today at 2 p.m. in Hastings. Because of my ongoing duties in the budget negotiations and in implementing the government shutdown pursuant to Chief Judge Gearin’s Order, I was not able to be present for the *Zoo Case* hearing.

16. In her Order, at Paragraph 9, Chief Judge Gearin allowed the Zoo to intervene in *Executive Proceeding*. However, at Finding of Fact 36, she specifically determined that the only critical core function of the Zoo that would be supported would be keeping the animals and zoo property safe, secure, and healthy.

17. On June 29, 2011, the State of Minnesota and I were sued in Anoka County, Tenth Judicial District, by Minnesota Harness Racing, Inc., and North Metro Harness Initiative, LLC (“*Harness Case*”), Anoka County, Tenth Judicial District, Court file No. 02-cv-11-4462. Plaintiffs allege that they are entitled to a Temporary Restraining Order and a Writ of Mandamus requiring my department to pay funds to the Minnesota Racing Commission.

18. A hearing on the *Harness Case* is to be held tomorrow at 1 p.m. in Anoka. Because of my ongoing duties in the budget negotiations and in implementing the government shutdown pursuant to Chief Judge Gearin's Order, I am not able to be present for the *Harness Case* hearing.

19. Upon information and belief, another lawsuit has been filed against me or my department in International Falls, Minnesota. I expect more lawsuits by organizations and agencies that wish they were "critical services" as determined by Chief Judge Gearin.

20. With what appear now to be five lawsuits regarding the government shutdown, with the likelihood of more, I am extremely concerned about being subject to conflicting or inconsistent court orders as I perform the important official duty of directing the disbursement of funds not regularly appropriated by the Legislature to the executive, legislative, and judicial departments. I am particularly concerned about the possibility of inconsistent orders on subjects already treated by Judge Gearin: horse and harness racing and the Zoo.

21. It would be of an enormous benefit to the performance of my duties in the budget negotiations and in planning the government shutdown to have all litigation regarding the shutdown in Saint Paul before Chief Judge Gearin, the first judge assigned to such litigation, and the first to issue an order. Further, it is clear that the *Executive Proceeding* is the most comprehensive litigation regarding government shutdown issues.

22. It would also be of enormous benefit to be able to communicate easily with counsel representing me or my department. If the litigation is not consolidated, I will have to try to connect with counsel during breaks in budget negotiations or shutdown

meetings while counsel is driving one place or another. This communication problem is already happening.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2011.

A handwritten signature in black ink, appearing to read "J. Schowalter", written over a horizontal line.

James Schowalter, Commissioner
Department of Management and Budget