State of Minnesota
In Supreme Court

Case No. A11-1222

State Senator Warren Limmer, State Senator Scott J. Newman,
State Senator Sean R. Nienow, State Senator Roger C. Chamberlain,
State Representative Glenn H. Gruenhagen, and
State Representative Ernest G. Leidiger,

Petitioners,

vs.

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

Respondents.

PETITION FOR WRIT OF QUO WARRANTO

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TABLE OF CONTENTS

PURPOSE OF PETITION

Quo warranto is necessitated by the improper and unconstitutional actions of the lower court, precipitated through the actions of the Attorney General's Office.

The instant Petition requests the Minnesota Supreme Court to issue a writ of quo warranto upon the Respondents:

- to show by what specific constitutional or statutory provision the Ramsey County District Court has the authority, in the absence of legislatively-enacted appropriations, to order "that the Commissioner of the Department of Management and Budget shall issue checks and process such funds as necessary"[1] to continue state governmental operations;

- to show by what specific constitutional or statutory provision the Attorney General, as an executive branch office, has the authority to petition the lower court for advisory opinions on political questions and engage the court in governing the State of Minnesota through monetary appropriations that are the sole province of the legislative branch of government; and

- inform the Respondents that in the absence of the demanded showings the Court will enjoin the Respondents from holding any further Ramsey County District Court proceedings in this regard.

In this Petition the Petitioners do not challenge the Ramsey County District Court actions taken in the companion case 62-CV-11-5361.

[1] Atty Gen. Pet. 8 (June 13, 2011). Petitioners Appendix 41.

INTRODUCTION

1. Minnesota's executive and legislative branches of government have failed to enact into law appropriation bills necessary to carry forward certain government functions. The consequence has resulted in economic hardship for individuals, agencies, and other programs dependent upon state funding. The Governor, having the sole authority to call a special session of the legislature to allow the passage of appropriation bills for his consideration, has not done so. In short, the executive and legislative officials responsible for the enactment of appropriation laws are politically deadlocked.

2. Under a *parens patriae* theory of law, and precedents from experiences in 2001 and 2005 in which Minnesota found itself in similar governmental fiscal deadlock, the Minnesota Attorney General sought refuge and relief from the judicial branch of government. Through her most recent Petition in Ramsey County District Court, the Attorney General sought, engaged and provided the lower court the opportunity to operate the government through disbursements of moneys by ordering the Commissioner of Management and Budget to disburse state funds without an appropriation by law.

3. The lower court has accepted the responsibilities of operating the government through an order effective July 1, 2011 (dated June 29, 2011) — *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*[2] — granting the Attorney General's motion for temporary funding.

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[2] *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

4. But the Petitioners contend that Minnesota can ill afford to "sacrifice established principles of constitutional government in order to secure centralized control and high efficiency in administration [that] may easily be carried so far as to endanger the very foundations upon which our system of government rests."[3] As Thomas Jefferson once expounded, the powers of government, legislative, executive, and judicial all under the hands of one person is a dangerous precedent: "concentrating these [powers] in the same hands [here, the Chief Judge of the Ramsey County District Court] is the precise definition of a despotic government."[4]

5. The Chief Judge of the Ramsey County District Court — with the assistance of a Special Master, though both highly regarded and judicially competent — has exceeded the jurisdictional boundaries of the separation of powers doctrine and have indulged in the constitutional powers reserved for the executive and legislative branches of government. The political crisis is not the court's doing; the economic consequences are political, not judiciable. But the Attorney General's actions and the lower court's orders issued since July 1st have created a constitutional crisis that must be resolved by this Court to preserve the integrity of the State's republican form of government.

6. These are exigent circumstances. The writ of quo warranto should be issued accordingly.

Temporary Funding 1- 19 (62-CV-11-5203, Dist. Ct. Ramsey Cty) (June 29, 2011); App. 1-19.

[3] *State v. Brill,* 111 N.W. 639, 640-41.

[4] *Id., quoting* Jefferson, Notes on Virginia 195; Story, Const. Law, vol. 1, § 525.

JURISDICTION

The Supreme Court has the authority to issue a writ of quo warranto under State constitutional and statutory provisions and because exigent circumstances exist, the Court should exercise its jurisdictional discretion.

7. The Minnesota Supreme Court has "original jurisdiction in such remedial cases as are prescribed by law" under Minn. Const. art. VI, § 2. "Remedial cases" include cases where common law remedies would be summarily afforded through the issuance of extraordinary writs such as quo warranto.[5] Likewise, under Minn. Stat. § 480.04, this Court may issue the writ when necessary to execute laws and in the furtherance of justice:

> The [supreme] court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of ... quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice.

8. This Court has further signaled it would exercise the Court's original jurisdiction during "the most exigent of circumstances":

> [P]etitions for the writ of quo warranto and information in the nature of quo warranto *shall be filed in the first* instance *in the district court.* While this court retains its original jurisdiction pursuant to Minn. Stat. § 480.04 (1990), we today signal our future intention to exercise that discretion *in only*

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[5] *Page v. Carlson,* 488 N.W.2d 274, 277-78 (Minn. 1992) *citing Lauritsen v. Seward,* 99 Minn. 313, 322, 109 N.W. 404, 408 (1906).

the most exigent of circumstances.[6]

9. This Court has not opined as to the meaning of "the most exigent of circumstances." But "exigent" does mean "requiring immediate action or aid; urgent."[7] The constitutional issues presented to the Court under the present set of facts that includes the continuing issuance of District Court orders to disburse state moneys — without an appropriation by law and the impermissible blending of executive and legislative political functions into the judiciary — are circumstances demanding resolution, thus exigent in nature; the facts call this Court to exercise its jurisdictional discretion. Therefore, the instant Petition should be favorably received by this Court.

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[6] Sup. Ct. Or. Denying Pet. Quo Warranto, *State of Minnesota ex rel. v. Ingison* 2 (A05-1742) (Sept. 9, 2005)(original emphasis), *quoting Rice v. Connolly,* 488 N.W.2d 421, 244 (Minn. 1992).

[7] *Black's Law Dictionary* 655 (Bryan A. Garner ed., 9th ed., Thomson Reuters 2009).

ISSUES PRESENTED

1. Article XI requires an appropriation by law before money can be paid out of the state treasury. The legislature and governor failed to pass appropriation bills under Article IV to fund state programs or agencies, and no legislative special session was called to enact appropriation laws. Does the district court have the legal authority to order disbursement of state moneys without violating Article III prohibiting the exercise of powers properly belonging to either of the other branches of government?

2. Article III prohibits one branch of government from exercising the authority of the others. The Attorney General as an Executive Branch officer, petitioned the district court to order state funds disbursed that otherwise requires both legislative and governor actions. Does the Attorney General have the legal authority, under the *parens patriae* doctrine, to petition the judiciary to issue advisory opinions in the nature of political questions resulting in orders to disburse state funds without an appropriation by law?

CONSTITUTIONAL PROVISIONS

10. Article IV of the Minnesota Constitution expressly allocates certain powers of government to the Legislative Department. In addition, only the governor may call a special legislative session after a biennial session has ended.

11. Article III, § 1, describes the distribution of state government powers. It prohibits the Executive Department and Judiciary from exercising the power of the Legislative Department without an express constitutional provision allowing it to do so:

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

12. Likewise, Article III prevents the Judiciary from exercising the authority of the Executive.

13. Article XI, § 1 of the Minnesota Constitution provides that state funds may only be disbursed pursuant to an "appropriation by law":

> No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

14. Article IV of the Minnesota Constitution provides a list of requirements for an "appropriation by law" to occur. Among other powers, Article IV, § 23 requires the state legislature to approve an appropriation bill and present it to the Governor. The Governor can either sign the bill into law or vetoes it (including line item vetoes) and, if a veto occurs, and the state legislature if in session, can override the veto:

> Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it ... If he vetoes a bill, he shall return it with his objections to the house in which it originated.
>
> If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. If the legislature is in session, he shall transmit to the house in which the bill originated ... and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor.[8]

Satisfying Article IV's requirements are a prerequisite for an "appropriation by law." An "appropriation by law" is an Article XI prerequisite to the disbursement of state funds.

[8] Art. IV, § 23 is titled, Approval of Bills by Governor; Action of Veto.

STATEMENT OF FACTS

Minnesota's failure to pass appropriation bills has temporarily shut-down the government, but the Attorney General succeeded in engaging the lower court for reprieve through the issuance of orders for temporary funding.

The Petitioners are elected members of the State Senate and House.

15. The Petitioners Warren Limmer, Scott J. Newman, Sean R. Nienow, and Roger C. Chamberlain are duly elected officials as State Senators and are presently serving their respective constituents in the Senate.

16. The Petitioners Glenn H. Gruenhagen and Ernest G. Leidiger are duly elected officials as members of the Minnesota House of Representatives and are presently serving their respective constituents in the House.

17. The state legislature, as an elected body, appropriates money for the funding of state agencies and programs on a biennial basis.

18. The fiscal year for the State of Minnesota is July 1 to June 30.

19. In 2011, the state government failed to enact appropriation laws before the end of its regular session. To-date, the Governor has not called a special session to allow the passage of appropriation bills and subsequent enactment of appropriation laws.

The Minnesota Attorney General petitioned the lower court for judicial intervention to fund "core functions" absent appropriation bills; a motion granted by the Chief Judge of the District Courts.

20. On June 13, 2011, the Minnesota Attorney General filed with the Ramsey County District Court a motion to show cause and a petition seeking

- an order demanding the Commissioner of the Department of Management and Budget issue checks and process funds to pay for certain obligations of the State of Minnesota;[9]

- an order allowing governmental entities to determine what core functions are required and have the Commissioner pay for those services;[10] and

- an order appointing a Special Master to hear and make recommendations to the Court on issues that might arise regarding the terms of the sought after order.[11]

21. The Attorney General also, by way of example, included exhibits to her Petition, 2001 and 2005 listed "core functions."[12] In furtherance of her argument, the Attorney General's supporting memorandum made specific references to groups of people, that the consequences of a government shutdown due to lack of appropriation bills will adversely affect the public interest.[13] Yet each cited group involve programs funded *solely* through appropriation bills passed by the legislature and enacted into law by the Governor:

- 1,288 mentally ill patients:[14]

  Moneys appropriated in 2009, Minn. Laws 79 (2009 HF 1362, Health & Human Services appropriations bill);

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[9] Atty. Gen. Swanson Pet. 8 (June 13, 2011). App. 41.

[10] *Id.*

[11] *Id.*

[12] *Id.* 3; App.36; *see also,* App. 59-87; 98-111.

[13] Atty. Gen. Memo. in Support of Mot. for Relief, 2-5 (June 13, 2011), App. 123-26.

[14] *Id.* at 2, App. 123.

Governor vetoed in 2011, Minn. Laws 41 (2011 SF 760, Health & Human Services appropriations bill).

- 9,000 criminal offenders:[15]

  Moneys appropriated in 2009 Minn. Laws 83 (2009 SF 802, Judiciary & Public Safety appropriations bill);

  Governor vetoed in 2011 Minn. Laws 37 (2011 SF 958, Judiciary & Public Safety appropriations bill).

- 20,000 criminals on probation:[16]

  Moneys appropriated in 2009 Minn. Laws 83 (2009 SF 802, Judiciary & Public Safety appropriations bill);

  Governor vetoed in 2011 Minn. Laws 37 (2011 SF 958, Judiciary & Public Safety appropriations bill).

- 616 sex offenders:[17]

  Moneys appropriated in 2009 Minn. Laws 79 (2009 HF 1362, Health & Human Services appropriations bill);

  Governor vetoed in 2011 Minn. Laws 41 (2011 SF 760, Health & Human Services appropriations bill).

- 754 veterans:[18]

  Moneys appropriated in 2009 Minn. Laws 94 (2009 HF 1122, Agriculture & Veterans Affairs appropriations bill);

  Governor vetoed in 2011 Minn. Laws 40 (2011 SF 1047, State Government & Veterans appropriations bill).

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[15] *Id.*

[16] *Id.* (less county costs for Minnesota's three probation delivery systems).

[17] *Id.* at 3, App. 124.

[18] *Id.*

- State Troopers:[19]

  Moneys appropriated in 2009 Minn. Laws 36 (2009 HF 1309, Transportation appropriations bill);

  Governor vetoed in 2011 Minn. Laws 49 (2011 HF 1140, Transportation appropriations bill).

- Bureau of Criminal Apprehension:[20]

  Moneys appropriated in 2009 Minn. Laws 83 (2009 SF 802, Judiciary & Public Safety appropriations bill);

  Governor vetoed in 2011 Minn. Laws 37 (2011 SF 958, Judiciary & Public Safety appropriations bill).

- Homeland Security & Emergency Management:[21]

  Moneys appropriated in 2009 Minn. Laws 83 (2009 SF 802, Judiciary & Public Safety appropriations bill);

  Governor vetoed in 2011 Minn. Laws 37 (2011 SF 958, Judiciary & Public Safety appropriations bill).

- MnDOT:

  Moneys appropriated in 2009 Minn. Laws 36 (2009 HF 1309, Transportation appropriations bill);

  Governor vetoed in 2011 Minn. Laws 49 (2011 HF 1140, Transportation appropriations bill).

- 600,000 Medical Assistance recipients, seniors, disabled, pregnant women, children:[22]

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[19] *Id.* at 4, App. 125.

[20] *Id.*

[21] *Id.*

[22] *Id.*

Moneys appropriated in 2009 Minn. Laws 79 (2009 HF 1362, Health & Human Services appropriations bill);

Governor vetoed in 2011 Minn. Laws 41 (2011 SF 760, HHS appropriations bill).

- DEED employees to process unemployment benefits:[23]

  Moneys appropriated in 2009 Minn. Laws 78 (2009 HF 2088, Business, Industry & Jobs appropriations bill);

  Governor vetoed in 2011 Minn. Laws 39 (2011 SF 887, Jobs & Economic Development appropriations bill).

- Food-borne outbreak response:[24]

  Moneys appropriated in 2009 Minn. Laws 79 (2009 HF 1362, Health & Human Services appropriations bill);

  Governor vetoed in 2011 Minn. Laws 41 (2011 SF 760, Health & Human Services appropriations bill).

- CHIPS program – Department of Human Services:[25]

  Moneys appropriated in 2009 Minn. Laws 79 (2009 HF 1362, Health & Human Services appropriations bill)

- Department of Revenue collection of taxes:

  Moneys appropriated in 2009 Minn. Laws 101 (2009 SF 2082, State Government appropriations bill);

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[23] *Id.* Unemployment benefits themselves are in statute, but the Attorney General's memorandum is specific only to the employees who process the benefit payments.

[24] *Id.* at 5, App. 126.

[25] *Id.* Although *legal* representation portions of CHIPS cases used to fall under the Board of Public Defense (within the Judiciary & Public Safety budget area), CHIPS legal representation cases are now covered by the counties (at counties' expense); the actual social services/child welfare aspects of CHIPS cases are covered by DHS.

Governor vetoed in 2011 Minn. Laws 40 (2011 SF 1047, State Government & Veterans appropriations bill).

22. The Chief Judge of the District Courts, the Honorable Kathleen R. Gearin, held a hearing on the matter on June 23, 2011 and issued her order on June 29, 2011, effective on July 1, 2011 granting the Attorney General's Petition..[26]

23. The District Court heard a variety of submissions filed with the court, including Governor Mark Dayton's opposition to the Attorney General's Petition, who sought the appointment of a mediator and notifying the court that he is "prepared to use his executive power[s] without an appropriation or court order" to fund certain government programs.[27] The court denied the Governor's request for a court-appointed mediator.

24. The District Court's issued Order specifically commanded that "[t]he Commissioner of the Department of Management and Budget, Jim Schowalter, shall 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."[28]

25. The District Court appointed the Honorable Kathleen Blatz, Minnesota Supreme Court's retired Chief Justice, as Special Master to "hear and make

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[26] App. 1-19.

[27] *Id.* 1; App.1; Gov. Dayton's Resp. to Atty. Gen. Pet. 7 (June 15, 2011), App. 146.

[28] Ct. Or. 16, App. 16.

recommendations to the Court, as necessary, regarding any issue raised by Petitioner [the Attorney General] or others relating to the application of this Order."[29]

26. The Order also noted the OMB Commissioner and the Governor may act to obtain funding to deal with unforeseen emergencies: "Nothing in this order shall be construed as prohibiting the Commissioner of OMB from funding resources necessary to respond to an unforeseen emergency that would place the public or public property in immediate danger. The governor may obtain such funds on an emergency basis. If requested by a party, the need for continuation of such emergency funding will be reviewed by the Special Master."[30]

27. Since July 1, 2011, Judge Gearin has issued additional orders.[31]

The lack of appropriation bills to support programs or agencies to operate government has become a common occurrence in Minnesota.

28. The present lack of appropriation bills for the operation of Minnesota's government causing a "shutdown" because of a so-called "budgetary impasse" is now a common occurrence in Minnesota's recent history. Counting the present state of affairs, three have occurred in the last decade; the first in 2001; the second in 2005. All are similar in nature, except that in 2001 and 2005 the governors called a special session of the legislature during the political controversy.

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[29] *Id.* 18, App. 18.

[30] *Id.* 18-19, App. 18-19.

[31] App. 622, 631.

29. For instance, on May 21, 2001, the Minnesota legislature ended its regular session and 21 days later, on June 11, 2001, Governor Jesse Ventura convened the Minnesota legislature into a special session.

30. On June 21, 2001, Mike Hatch, Attorney General for the State of Minnesota filed a petition and memorandum for an order to show cause with the Ramsey County District Court.[32] Governor Jesse Ventura filed an amicus curiae brief essentially joining the Attorney General's Petition.[33]

31. The lower court granted Attorney Mike Hatch's petition on June 29, 2001.[34] The court ordered, among other things, that core functions of state government be performed, that each state agency, official, county and municipal entity, and school district determine those core functions and verify the performance of such for payment to the Commissioner of Finance and the State Treasurer, and appointed a Special Master.[35]

32. The Special Master was to mediate, hear, and make recommendations to the District Court with regard to any issues arising from the terms or compliance of the court's order.[36]

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[32] "*In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*," Court File No. C9-01-5725 (Dist. Ct. Ramsey Cty. 2001)

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

33. The 2001 Ramsey County Court proceeding, for all intents and purposes, ended on June 29, 2001 when the state legislature enacted additional appropriations – completing its biennial appropriations for the funding of all state agencies and programs.

Within five years, in 2005 another Executive-Legislative budgetary impasse leads to the Attorney General and Governor filing Petitions with the District Court to fund state programs and agencies.

34. On May 23, 2005, the Minnesota legislature ended its regular session after passing ten bills for the appropriation by law of state funds to various state agencies and programs that Governor Tim Pawlenty signed into law. But, not all the necessary state appropriations had been enacted.

35. On May 24, 2005 Governor Tim Pawlenty convened the Minnesota legislature into a special session.

36. Like in 2001, 22 days later, on June 15, 2005. Attorney General Mike Hatch filed a petition and memorandum for an order to show cause with the Ramsey County District Court.[37] Governor Tim Pawlenty also joined in the litigation by filing a petition and motion.[38]

37. The Petitions were granted on June 29, 2005 by Chief Judge Gregg E. Johnson.[39]

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[37] *"In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota,"* Court File No. C0-05-5928 (Dist. Ct. Ramsey Cty 2005).

[38] *Id.*

[39] *Id.*

38. Similar to 2001, the court ordered, among other things, that core functions of state government be performed, that each state agency, official, county and municipal entity, and school district determine those core functions and verify the performance of such to the Special Master.[40]

39. The Special Master was to determine whether the Commissioner of Finance should pay for the performance of certain core functions.[41]

40. The court further ordered the appointment of a Special Master to mediate, hear, and make recommendations to the Court with regard to any issues arising from the terms or compliance of the court's order.[42]

41. From time to time from June 30, 2005 to July 7, 2005, various agencies, programs, and individuals, including individual legislators, filed petitions with the court. These included the Minnesota Council of Airports, the Department of Natural Resources, Metro Transit, the Ramsey County Board of Commissioners, the Greater Twin Cities United Way, the Minnesota Housing Partnership, the Minnesota Council of Nonprofits, the Minnesota Trucking Association and Minnesota Manufactures Homes Association, Joe Pazandak, and State Senator W. Skoglund. The Special Master made determinations as recommendations to the Ramsey County Chief Judge on what constituted core functions and therefore what should be funded through the Commissioner.

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[40] *Id.*

[41] *Id.*

[42] *Id.*.

42. Soon after the Special Master Recommendations were made, Chief Judge Gregg E. Johnson issued orders affirming the recommendations.[43]

43. After the issuance of Chief Johnson's orders, the Commissioner of Finance issued checks from on or about June 30, 2005 through July 14, 2005 disbursing state funds pursuant to the Court's Orders – but without an "appropriation by law."

44. Meanwhile, by July 14, 2005, the Minnesota legislature had passed and the Governor signed all remaining appropriation bills completing its biennial appropriations for the funding of all state agencies and programs.

As a result of the District Court proceedings in 2005, State Legislators petitioned the Supreme Court for a writ of quo warranto, but because the crisis had passed this Court relinquished its original jurisdiction and remanded to District Court.

45. On August 13, 2005, 13 state legislators including the Speaker of the House Steve Sviggum and the Majority Leader, filed a petition for a writ of quo warranto in the Supreme Court against respondent Peggy Ingison, in her official capacity as Commissioner of Finance. The petitioners challenged the constitutionality of expenditures from the state treasury made by the Commissioner on court orders issued in *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota,* No. C0-05-5928 (Dist. Ct. Ramsey Cty 2005), in the absence of a legislative appropriation.

46. The Minnesota Supreme Court on September 9, 2005, dismissed the Petition without prejudice on the grounds that the petitioners had failed to show "the most

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[43] *Id.*

exigent of circumstances" to justify the Supreme Court exercising its original , jurisdiction.[44] The Court noted the relief sought for the end of the next fiscal biennium was almost two years away and that timely District Court relief was possible.[45]

The appellate court never reached the underlying constitutional issues presented here, determined moot moot because the legislature ratified the petitioned disbursements complained about.

47. After the Supreme Court quo warranto denial, 32 state legislators from both political parties, filed an amended petition for writ of quo warranto in the Ramsey County District Court.[46]

48. The Ramsey County District Court denied the state legislators' petition for quo warranto. First, the court held that quo warranto as a remedy, was not an appropriate remedy for *past* official conduct but instead for a continuing course of unauthorized usurpation of authority. Second, the court found the case moot, and not capable of repetition yet likely to evade review. Finally, the district court concluded the state constitution did not bar judicial action to preserve core government functions *pending* necessary appropriations by the legislature.[47]

49. On appeal in 2007 the appellate court held that: (1) the doctrine of laches did not preclude the legislators' action; (2) quo warranto could not be used to challenge the constitutionality of completed disbursement of funds; and (3) the legislature resolved

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[44] *State ex rel. Sviggum v. Ingison,* Minn. St. Sup. Op. 4 (Sept. 9, 2005). Pet. App. 150.

[45] *Id.*

[46] *State ex rel. Sviggum v. Ingison,* 62-C9-05-9413 (Dist. Ct. Ramsey Cty 2005).

[47] *Id.*

the controversy by its ratification of the District Court-ordered funding thus, the issues were no longer justiciable.[48]

50. The present case before this Court, though procedurally consistent with the past, is factually different because in 2011 the governor has not called the legislature into special session. Thus, appropriation bills cannot be passed by the legislature for consideration of the governor. Therefore, the current state of affairs can continue until the next constitutionally required legislative session, here, in 2012. Likewise, the District Court's issuance of orders for "temporary funding" can also continue until that time.

51. The constitutional issues of 2011 are similar to those that existed in 2001 and 2005, but have not been decided by Minnesota appellate courts, and as such, the exigent circumstances continue to exist.

LEGAL ARGUMENT

Introduction

52. The judiciary has no role in the constitutional process of enacting a budget or operating the government through the power of the purse — it violates the separate of powers doctrine. The Petitioners assert claims under the Minnesota Constitution: Article III - one branch of government may not exercise any of the powers of the other; Article IV-requires governor's action on bills passed by the legislature as a prerequisite for an appropriation by law; and Article XI – moneys cannot be paid out of the treasury without

[48] *State ex rel. Sviggum v. Hanson,* 732 N.W.2d 312 (Minn. App. 2007).

an appropriation by law. The need for a writ of quo warranto is to correct the unauthorized assumption or exercise of power by public officials.

53. The Attorney General, through the District Court, has obtained an order that requires the Commissioner of Management and Budget to issue checks disbursing funds to the Executive Branch to carry out so-called "core functions" despite no appropriation by law and the present budget impasse. Yet the court under the Minnesota Constitution, has no power to direct either the Legislature or the Executive branches of government in how they conduct their business.

54. In short, the lower court has usurped the constitutional prerogatives of the Executive and Legislative branches under the single branch of the judiciary. Through the power given unto itself the Court is operating the government through selective and inappropriate funding that otherwise is within the sole discretion of the legislature. A writ is necessary to prevent the named public officials from the unconstitutional use of its authority to usurp the state legislative prerogative to appropriate state funds.

55. As this Court is aware, the writ of quo warranto is a special proceeding designed to correct the unauthorized assumption or exercise of power by a public official or corporate officer.[49] Hence, the writ requires the Respondent officials in this case to show this Court under what authority the officials may exercise the challenged

[49] *State ex rel.* Danielson *v. Village of Mound,* 234 Minn. 531, 542, 48 N.W.2d 855, 863 (1951) (defining quo warranto as remedy to correct "usurpation, misuser, or nonuser of a public office or corporate franchise").

constitutional rights and privileges of office.[50] The Petitioners have legislative and tax payer standing to bring this action before the Supreme Court. Likewise, this Court has original jurisdiction and should grant the Writ of Quo Warranto to the Respondents.

56. The instant Petition is not about a statutory scheme designed to enable the Commissioner, with the governor's approval and after legislative consultation, to compensate for deficits in the general fund.[51] The fundamental issue is how to either cut state agency and program spending or raise revenues to compensate for anticipated deficits in the state budget – political issues – not justiciable controversies. What the Respondents have done is not authorized under Articles III, IV, or XI of the Minnesota Constitution.

57. The Respondents are using an alternative means to bypass the political difficulties (embodied in our republican form of government) and hardships the impasse have brought to the electorate using the courts to make policy and hence, political decisions, to determine which state programs shall be funded and which programs shall not be funded. The court actions have disrupted the checks and balances inherent within the Constitution. The compromises of legislative debate between the legislators themselves or between the legislature and the executive — including his powers to veto including line item vetoes and the legislature's right to override vetoes if in session— are

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[50] *State ex rel. Burnquist v. Village of North Pole,* 213 Minn. 297, 303, 6 N.W.2d 458, 461 (1942).

[51] *See, Rukavina v. Pawlenty,* 684 N.W.2d 525, 533 (Minn. App. 2004).

lost because the judiciary has usurped the powers of both branches that it did does not possess.

I. The Petitioners have standing to bring their constitutional claims as legislators and as taxpayers.

A. Legislative standing is a recognized principle of law necessarily invoked when vote nullification and usurpation of legislative authority occurs as here, with the Attorney General's request for court-approved disbursements of state moneys.

58. Minnesota courts have acknowledged that state legislators may bring claims for vote nullification and usurpation of legislative powers.[52] For legislators to have standing, they must show that their claimed injury is "personal, particularized, concrete, and otherwise judicially cognizable."[53] "Cases considering legislator standing generally fall into one of three categories: lost political battles, nullification of votes and usurpation of power."[54] But only the last two before-mentioned categories confer legislator standing.[55]

59. The U.S. Supreme Court in *Coleman v. Miller* found standing for individual legislators who claimed that their "no" votes were nullified by the legislative act being

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[52] *See Rukavina v. Pawlenty*, 684 N.W.2d 525, 532 (Minn.App. 2004), *review denied* (Oct 19, 2004); *Conant v. Robins, Kaplan, Miller & Ciresi*, L.L.P., 603 N.W.2d 143, 149-150 (Minn.App.1999), *review denied* (Mar 14, 2000).

[53] *Conant,* 603 N.W.2d at 150 (citing *Raines v. Byrd,* 521 U.S. 811, 820 (1997)).

[54] *Silver v. Pataki*, 96 N.Y.2d 532, 539, 755 N.E.2d 842, 730 N.Y.S.2d 482, 2001 N.Y. Slip Op. 06138 (N.Y. Jul 10, 2001) (vote nullification).

[55] *Id.* at 539, *citing Coleman v. Miller,* 307 U.S. 433, (vote nullification); *Dodak v. State Admin. Bd.,* 441 Mich. 547, 495 N.W.2d 539 (usurpation of power .belonging to legislative body).

given effect anyway. There, the Court held that Kansas state legislators who had been locked in a tie vote that would have defeated the State's ratification of a proposed federal constitutional amendment, and who alleged that their votes were nullified when the Lieutenant Governor broke the tie by casting his vote for ratification, had "a plain, direct and adequate interest in maintaining the effectiveness of their votes."[56] The U.S. Supreme Court in *Raines v. Byrd,*[57] restated the *Coleman* holding and further explained that individual legislator standing existed when legislators' no votes were nullified by the legislative act being given effect anyway.

60. Likewise, the New York Court of Appeals in *Silver v. Pataki*[58] held that the Speaker of New York's General Assembly had capacity and standing as a legislator to bring suit seeking to vindicate his rights as a legislator. The Speaker's successful challenge was based on the Governor using the line item veto on non-appropriation bills.

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[56] *Id.,* at 438 (emphasis added).The U.S. Supreme Court in *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 544-545, n. 7 (1986)(dicta), also recognized legislative standing based on vote nullification. The Court stated, "It might be an entirely different case if, for example, state law authorized School Board action solely by unanimous consent, in which event Mr. Youngman might claim that he was legally entitled to protect "the effectiveness of [his] vot[e]." *Coleman v. Miller,* 307 U.S. 433, 438 (1939). . . But in that event Mr. Youngman would have to allege that his vote was diluted or rendered nugatory under state law and even then he would have a mandamus or like remedy against the Secretary of the School Board . . ." 475 U.S. at 544, 545, n. 7 (citations omitted).

[57] *Raines v. Byrd,* 521 U.S. 811, 822 (1997).

[58] *Silver v. Pataki*, 96 N.Y.2d 532, 755 N.E.2d 842, 730 N.Y.S.2d 482, 2001 N.Y. Slip Op. 06138 (N.Y. 2001).

The Court stated that a single legislator had standing on a vote nullification claim regardless of whether or not other legislators decided to join the suit:

> Nor is a controlling bloc of legislators (a number sufficient to enact or defeat legislation) a prerequisite to plaintiff's standing as a Member of the Assembly. The *Coleman* Court did not rely on the fact that all Senators casting votes against the amendment were plaintiffs in the action (*see, Kennedy v. Sampson, supra,* 511 F.2d, at 435 ["In light of the purpose of the standing requirement * * * we think the better reasoned view * * * is that an individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority"]). Moreover, plaintiff's injury in the nullification of his personal vote continues to exist whether or not other legislators who have suffered the same injury decide to join in the suit.[59]

61. According to these precedents, the Petitioners have legislator standing under two categories: first, because of vote nullification. Vote nullification exists under *Coleman* and its progeny because the Petitioners through their "no" votes or legislative inaction did not enact appropriations by law. Despite the lack of appropriations bills enacted by the Legislature, the Respondents have obtained state funding anyway. The actions of the Commissioner and the District Court violated the Petitioner's exclusive legislative prerogative to appropriate state funds by law.

62. Second, the state legislators have standing because the Respondents and Ramsey County District Court have and continue to usurp the exclusive-legislative

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[59] *Id.* at 848-49. *See also, Dodak v. State Admin. Bd.,* 441 Mich. 547, 495 N.W.2d 539 (1993)(A single member of the state house appropriations committee had standing to bring an action alleging that the state administrative board's transfer of appropriated funds from one program to another within a department of state government was unauthorized.)

constitutional authority to appropriate state funds. Because the District Court order of June 29th and all subsequent orders are not "appropriations by law" – they are invalid appropriations. The Constitution directs the Commissioner not to expend the state funds. When the Commissioner did, he usurped a power allocated to the state legislature under Articles III, IV and XI.

63. Additionally, the Petitioners also allege injury because the Ramsey County District Court proceedings unconstitutionally tip the balance of powers in favor of the executive and judiciary branch at the expense of the legislative branch – at a critical juncture in budget negotiations between the Governor and the Legislative leaders. The legislature's power to appropriate funds is its paramount power and its leverage in budget negotiations. When the executive and judiciary branches usurp the power of legislative appropriation, they unconstitutionally deprive the legislature of its power and leverage at the negotiating table.

64. For these reasons, the Petitioners who are state senators have standing as legislators to bring their claims of unconstitutional actions against the Respondents.

B. Because the central issue involves the unlawful disbursement of public moneys, the Petitioners have standing as taxpayers.

65. "[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials."[60] "[I]t has been

[60] *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977) (citation omitted).

generally recognized that a taxpayer has sufficient interest to enjoin illegal expenditures of both municipal *and* state funds."[61] Taxpayers have the right "to maintain an action in the courts to restrain the unlawful use of public funds."[62]

66. The Court in *McKee v. Likins* recognized the well-settled doctrine that taxpayer standing existed to challenge illegal expenditures. The issue in *McKee* was whether taxpayer standing "injury in fact" existed where the expenditure of tax moneys was made under a rule which the plaintiff taxpayer alleged was adopted by a state official without compliance with the statutory rule-making procedures. The Court held that taxpayer standing existed and that the expenditures were illegal for lack of following statutory procedure:

> An important political issue like public financing of abortions ought to, ideally, be decided by the legislature where everyone can have his say. If the legislature has placed the issue in the hands of an administrative official that official's decision ought to be based on a careful expression of all interested viewpoints . . .Therefore, it logically follows that if the legislature delegates authority to an administrative agency and if the administrative agency elects to adopt rules pursuant to that authority, the procedure outlined in the Administrative Procedure Act should be followed in promulgating those rules.[63]

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[61] *Arens v. Village of Rogers*, 240 Minn. 386, 392, 61 N.W.2d 508, 513 (1953).

[62] *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. App. 1999).

[63] *McKee,* 261 N.W.2d at 578.

67. Thus, the Petitioners have standing because they are challenging expenditures made by Respondents without following constitutional procedures. This Petition specifically alleges that the Respondents are violating Articles III, IV and XI of the Minnesota Constitution by making expenditures without an appropriation by law. These allegations satisfy the *McKee* requirements for taxpayer standing. [64]

II. Exigent circumstances exist requiring the Supreme Court to issue a writ of quo warranto.

68. This Court has traditionally exercised its original jurisdiction in quo warranto proceedings to determine the right to an office which turned on the scope of a constitutional officer's constitutionally-granted power or the constitutionality of certain legislative acts.[65]

69. Historically, a writ could only be issued upon the petition of the attorney general *ex officio*.[66] But as the law involving writs of quo warranto evolved, private persons were also permitted, at the discretion of the Court, to file a petition for the writ.[67]

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[64] Neither is Petitioners' standing negated by the doctrine of laches or waiver by failure to somehow undo the state funds unconstitutionally expended by the Respondent. *See Pataki v. New York State Assembly*, 7 A.D.3d 74, 774 N.Y.S.2d 891, 2004 N.Y. Slip Op. 02980 (N.Y.A.D. 3 Dept. Apr 22, 2004) (NO. 91757) (Governor's failure to exercise veto power did not deprive him of standing or effect waiver of his right to challenge constitutionality of defendants' actions).

[65] *See, e.g., State v. ex rel. Palmer v. Perpich*, 182 N.W.2d 182 (1971); *State ex rel. Douglas v. Westfall*, 89 N.W. 175 (1902); *State ex rel. Getchell v. O'Conner*, 83 N.W. 498 (1900); *State ex rel. Douglas v. Ritt*, 79 N.W. 535 (1899).

[66] *See, e.g., State ex rel. Danielson v. Village of Mound,* 48 N.W.2d 855, 860 (1951).

[67] *State ex rel. Simpson v. Dowlan*, 24 N.W. 188, 189 (1885).

While the consent of the attorney general was initially required in cases initiated by private persons, the Minnesota Supreme Court has held that a writ could be issued, in its discretion, even though the attorney general had not consented to the writ.[68] Consequently, private individuals — as here — may seek a writ of quo warranto without the consent of the attorney general.[69]

70. Most recently however, this Court has limited its jurisdictional discretion of petitions for quo warranto: "only [in] the most exigent of circumstances."[70] As previously mentioned, this Court has not delineated the meaning of "the most exigent of circumstances." But "exigent" does mean "requiring immediate action or aid; urgent."[71] The constitutional issues presented to the Court with the continuing issuance of District Court orders to disburse state moneys — without an appropriation by law and the blending of executive and legislative political functions under the judiciary — are exigent circumstances.

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[68] *See Rice v. Connolly*, 88 N.W.2d 241 (Minn. 1992); *Town of Burnsville v. City of Bloomington,* 117 N.W.2d 746 (1962); *State ex rel. Town of Stuntz v. City of Chisholm,* 264 N.W. 798 (1936).

[69] In 2005, Counsel for Petitioners sought an attorney general appointment as special counsel, but it was denied on August 24, 2005. Pet. App. 403-04. Counsel and Petitioners have not made a similar effort in 2011 – based on appearance of futility.

[70] Sup. Ct. Or. Denying Pet. Quo Warranto, *State of Minnesota ex rel. v. Ingison* 2 (A05-1742) (Sept. 9, 2005)(original emphasis), *quoting Rice v.Connolly,* 488 N.W.2d 421, 244 (Minn. 1992)

[71] *Black's Law Dictionary* 655 (Bryan A. Garner ed., 9th ed., Thomson Reuters 2009).

71. Likewise, public interest factors should compel this Court to exercise original jurisdiction in quo warranto proceedings brought by the attorney general in his *ex officio* capacity – claiming *parens patrie* interests – are present in this proceeding. This case involves the constitutional division of powers between the legislative, executive and judicial branches. With the budgetary impasse as the background, the traditional check and balances of government are undermined with the executive and judicial branches usurping powers reserved for the legislative branch – preventing the state legislature from doing its constitutional duties.

72. Importantly, the issues in this proceeding are suitable for this Court to resolve because they are purely legal, constitutional questions with no known disputed facts, requiring immediate resolution.[72]

73. Time is of the essence, unlike 2005 where this Court denied the petition for quo warranto: "[The] petitioners' desire for a final decision by June 30, 2007, almost two years from [the petition's filing], does not present 'the most exigent circumstances.'"[73] As the Court of Appeals also concluded in *State ex rel Sviggum v. Hanson,* that although the court had the power to issue "purely prospective rulings: under the special circumstances test, it could not under the facts then before the court: "[t]he special

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[72] *See Matter of Johnson*, 358 N.W.2d 469 (Minn. App. 1984); *State ex rel.* Law *v. District Court of Ramsey County*, 150 N.W.2d 18, 19 (1967) (writ of prohibition will normally issue only where all essential facts are undisputed); *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 434 (Minn. App. 1985) (where constitutional issues may be involved, a writ of prohibition is proper).

[73] Sup. Ct. Or. Denying Pet. Quo Warranto, *State ex rel. Sviggum v. Ingison,* (2005) at 3.

circumstances test, however, do not permit us to issue substantive decisions about injuries that we cannot redress ... For reasons that relate directly to the separation of powers and the explicit provisions of the legislature's retroactive and superceding appropriations bill, we conclude that the issue raised in this litigation is not redressable."[74]

74. Here, the Petitioners' injuries are real and redressable. The Respondents have created a political and constitutional crisis. The usurpation of power is evident, and the need to determine the district court's lack of jurisdiction is immediate.

75. The issues presented demand immediate resolution.[75]

76. This Court should exercise its original jurisdiction over the Petition for Writ of Quo Warranto.

III. The issues presented cannot be deemed moot because they are capable of repetition but evade review.

77. Like in 2001 and 2005, it is possible, perhaps even likely, that the legislative impasse will be resolved prior to the conclusion of the above-captioned litigation. Petitioners request that in considering those circumstances the instant case not be rendered moot, but rather be found to be under the "capable of repetition, but evade review" exception to mootness.

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[74] *Hanson,* 732 N.W.2d at 322.

[75] Remand to the District Court would be ineffective. The time required for trial court review and appellate review of the trial court decision, along with the possibility of the issue becoming moot, shows that the normal appellate procedure is inadequate. See *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1065-66 (3rd Cir. 1984).

78. Mootness is "a flexible discretionary doctrine, not a mechanical rule that is invoked automatically."[76] The court will dismiss a case as moot if the court is unable to grant effectual relief.[77] The court will deem a case not moot if it implicates issues that are capable of repetition, yet likely to evade review.[78]

79. The U.S. Supreme Court has determined that the "capable of repetition yet evading review" doctrine is "limited to the situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again."[79]

80. The Kentucky Supreme Court in *Fletcher v. Commonwealth of Kentucky,*[80] applied the "capable of repetition yet evading review" doctrine in a case with remarkably similar facts – a perennially deadlocked budgeting process case:

> On three occasions within a ten-year period, the General Assembly convolved itself into a partisan deadlock and adjourned *sine die* without enacting an executive department budget bill... On each occasion, lawsuits were filed to test the constitutionality of those actions ...On each occasion, the

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[76] *Jasper v. Comm'r of Pub. Safety,* 642 N.W.2d 435, 439 (Minn.2002) (*citing State v. Rud,* 359 N.W.2d 573, 576 (Minn.1984)).

[77] *Kahn v. Griffin,* 701 N.W.2d 815(Minn. App. 2005), *citing In re Schmidt,* 443 N.W.2d 824, 826 (Minn.1989).

[78] *Kahn,* 701 N.W.2d 815, *citing Elzie v. Comm'r of Pub. Safety,* 298 N.W.2d 29, 32 (Minn.1980).

[79] *Weinstein v. Bradford,* 423 U.S. 147, 149 (1975).

[80] *Fletcher v. Commonwealth of Kentucky,* 163 S.W.3d 852 (Ky. 2005).

> General Assembly enacted an executive department budget bill and ratified the governor's actions before the issue could be finally resolved by the Court of Justice. *Having no assurance that similar partisan brinkmanship will not recur in the General Assembly, resulting in future gubernatorially promulgated budgets, we conclude that this issue is capable of repetition, yet evading review, and will address its merits.*[81]

The Petitioners' satisfy the two requirements for application of "capable of repetition, yet evade review" doctrine.

81. The first requirement that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration" is satisfied. Both the 2001 and 2005 Ramsey County District Court proceedings were too short to allow for full litigation and adjudication of the constitutional issues involved. The 2001 Ramsey County District Court proceeding lasted eight days before legislative appropriations were made; the 2005 the District Court proceeding lasted 22 days before legislative appropriations were made.

82. The second requirement that "there was a reasonable expectation that the same complaining party would be subjected to the same action again" is also satisfied. This is the third budgetary impasse in ten years. The Court should conclude – as the Kentucky Supreme Court in *Fletcher v. Commonwealth of Kentucky,* did – that there is a reasonable expectation that the state legislature, the Commissioner, and the Ramsey County District Court will find themselves in the same position in the future.

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[81] *Fletchter,* 163 S.W.3d at 859 (emphasis added).

83. Additionally, the Minnesota Supreme Court has stated that it will not deem a case moot and will retain jurisdiction if the case is "functionally justiciable" and is an important public issue "of statewide significance that should be decided immediately."[82] The presented issues are functionally justiciable. The statewide significance is evident – the issues address the fundamental constitutional issues regarding allocation of powers of the state government between the legislative, executive, and judicial branches.

84. For these reasons, alternatively, the Court should find that the Petitioners' claims are not moot because they are capable of repetition, but evade review.

IV. The judiciary has no role between the executive and legislative branches of government when political questions are involved.

85. The separation of powers doctrine is familiar with this Court, but bears repeating because of the significance of the doctrine's role in this controversy: "Under the Separation of Powers Clause, no branch can usurp or diminish the role of another branch. *See* Minn. Const. art. III, § 1."[83]

86. The three departments of state government, the legislative, executive, and judicial, are independent of each other. Neither department can control, coerce, or restrain the action or non-action of either of the others in the exercise of any official power or duty conferred by the Constitution, or by valid law, involving the exercise of discretion.

87. The Minnesota Constitution states in Article III that: "The powers of government shall be divided into three distinct departments: legislative, executive and

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[82] *State v. Brooks,* 604 N.W.2d 345, 347-48 (Minn.2000).

[83] *Brayton v. Pawlenty,* 768 N.W.2d 357, 365 (Minn. 2010).

judicial. No person or persons belonging to or constituting one of these departments shall exercise *any* of the powers properly belonging to either of the others except in the instances *expressly* provided in this constitution."[84] Article III bars any department from assuming or asserting any "inherent powers" — powers not "expressly" given — that properly belong to either of the others. In short, no "department can control, coerce, or restrain the action or inaction of either of the others in the exercise of any official power or duty conferred by the Constitution."[85]

88. There is no role for the judiciary in the enactment of a budget where policy decisions are made whether or not to fund programs and the give-and-take between the Legislature and the Governor regarding proposed legislation regarding appropriations. As this Court described the budgetary and appropriation process in *Brayton,* the legislature establishes the spending priorities through the enactment of appropriation laws. And while the Governor may propose legislation, including a budget for appropriation amounts, the Legislature is free to accept or deny those proposals:

> The Legislature has the primary responsibility to establish the spending priorities for the state through the enactment of appropriation laws. Minn. Const. art. IV, § 22; *id.* art. XI, § 1. The executive branch has a limited, defined role in the budget process. The Governor may propose legislation, including a budget that includes appropriation amounts, which proposals the Legislature is free to accept or reject. But the only formal budgetary authority granted the Governor by the constitution is to approve or veto bills passed by the Legislature. *See* Minn. Const. art. IV, § 23. With respect to appropriation bills,

[84] Emphasis added.

[85] *Id.*

> the constitution grants the Governor the more specific line-item veto authority, through which an item of appropriation can be vetoed without striking the entire bill. *Id.* If the Governor exercises the veto power, the Legislature may reconsider the bill or items vetoed, and if approved by a two-thirds vote, the vetoed bill or item becomes law. [86]

89. If the process of the legislature fails to produce a budget within the regular legislative session, the Governor has the sole authority to call the Legislature into special session under Minn. Const. art. IV, § 12:

> If this process of legislative passage and gubernatorial approval or veto does not succeed in producing a balanced budget within the normal legislative session, the Governor has the authority to call the Legislature into special session.[87]

90. Because the separation of powers is the central principle of Minnesota's state government, the Minnesota Supreme Court has been steadfast in respecting that principle. [88] In *Sharood v. Hatfield,* this Court struck down as unconstitutional a statute that required attorney registration fees be diverted to the state's general fund based on the separation of powers doctrine: "if it is a judicial function that the legislative act purport to exercise, [this Court] must not hesitate to preserve what is essentially a judicial function."[89]

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[86] *Id.*

[87] *Id.*

[88] *See e.g., Irwin v. Surdyk's Liquor,* 599 N.W.2d 132, 141 (Minn. 1999) (limitation on attorney fees violated separation of powers).

[89] *Sharood v. Hatfield,* 296 Minn. 416, 210 N.W.2d 275, 279 (1973).

91. Thus, as in *Sharood,* if the province of passing appropriation bills is an essentially legislative function, then the District Court has no room to intrude on that legislative authority.[90]

92. The District Court in the instant case, has injected itself into the legislative process, conducting legislative business. Likewise, it has injected itself into the executive process conducting its business as to when it orders disbursing of state moneys without an appropriation by law. It is making the policy decisions for the legislative and executive branches when the court has no authority to do so.

93. The "political question" doctrine is grounded primarily in the separation of powers.[91] Under this doctrine, the judicial department should not interfere in the exercise by another department of a discretion that is committed by a textually demonstrable provision of the Constitution to the other department[92] or seek to resolve an issue for which it lacks judicially discoverable and manageable standards.[93]

94. The Attorney General's underlying petition to the District Court sought and obtained the lower court's to determination of what is and what is not a so-called "core function" and if so, command the Commissioner to disburse state treasury moneys to

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[90] *Schermer v. State Farm Fire and Cas. Co.,* 721 N.W.2d 307, 315 (Minn. 2006) (separation of powers principles preclude courts from actions that interfere with legislative functions).

[91] *Baker v. Carr,* 369 U.S. 186, 210(1962).

[92] *Vieth v. Jubelirer,* 541 U.S. 267, 276 (2004). *Powell v. McCormack,* 395 U.S. 486, 518 (1969).

[93] *Id.*

fund that state program. But what constitutes an essential service or "core function" depends largely on political, social and economic considerations, not legal ones. What might constitute a "core function" or "core service" is a nonjusticiable political question.

95. As one court observed, "[w]hat constitutes an essential service [or "core function"] depends largely on political, social and economic considerations, not legal ones."[94] The courts simply are not equipped to decide these political questions. Therefore, the power to appropriate funds is confided to the competency of the legislative branch and the questions regarding disbursing state funds nonjusticiable from the court's standpoint.[95]

96. Whether the public weal demands monetary support for state programs or agencies, even temporarily support, they are political questions which are for debate within the legislative department of the government. In acting on what would otherwise be biennial budget requests, the district court judge would, *per se,* be injected into the political side of the legislative and executive branches of government. The wisdom of fiscal policy and appropriation of revenue is outside the purview of judicial authority.

97. The issues presented in the instant Petition are constitutional issues. But the underlying cause is — the Attorney General's Petition for the court to disburse moneys for state programs or agencies without an appropriation by law and thereby injecting the court into political questions that are not justiciable.

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[94] *Fletcher v. Commonwealth*, 163 S.W.3d 852, 860 (Ky. 2005).

[95] *See State ex rel. Swiggum v. Hanson*, 732 N.W.2d 312, 322-23 (Minn. App. 2007.

98. The concept of "core functions" is foreign to the Minnesota Constitution and does not exist in statute. Thus, the Attorney General's and Governor's court documents impermissibly draw the Ramsey County District Court into political questions where no court jurisdiction exists because no law authorizing the funding exists.

A. The political question doctrine applies to the question of court-ordered spending absent legislative appropriations.

99. The leading U.S. Supreme Court case in the area of political question doctrine is undoubtedly *Baker v. Carr*. The Court outlined six elements of the political question doctrine:

- A "textually demonstrable constitutional commitment of the issue to a coordinate political branch."
- A "lack of judicially discoverable standards."
- The "impossibility for a court independent resolution without expressing a lack of respect for a coordinate branch of the government."
- The "impossibility of deciding the issue without an initial policy decision, which is beyond the discretion of the court."
- An "unusual need for unquestioning adherence to a political decision.
- The "potential embarrassment of various departments" of the government.[96]

100. All six elements apply here. First, the Minnesota Constitution has text which demonstrably commits spending to be a prerogative of the legislative branch. Second, there are no judicially discoverable legal standards to determine what a core function of the government is. Third, it is impossible for the district court to define a

[96] *Baker,* 369 U.S. 186, 217-19.

"core function" and fund it without showing a lack of respect for the legislature. Fourth, it is impossible for the district court to define core function without making an initial policy decision – which is left to the sole discretion of the legislature. Fifth, there is an unusual need in this setting to ensure the Minnesota constitution regarding appropriations is followed. Sixth, the district court does not have expertise in appropriations – so there is danger of potential embarrassment for several agencies of government and for beneficiaries of certain government programs if they are not deemed by the Court as "core functions."

101. In 2001 and 2005 Governors Ventura and Pawlenty convened a special session, and when no resolution occurred commenced a state court action. In 2011, like in 2001 and 2005, the choice not to reach an accord regarding appropriations was that of both the executive and legislative branches. Unlike 2001 and 2005, Governor Mark Dayton has not chosen to call a special session. He does not have to. But like 2001 and 2005, in 2011 it is evident the court is a pawn in a political chess game. Their inability to reach an accord allows the court to operate the government through the power of the purse. The republican form of government has become the despotic government Thomas Jefferson feared:

> All the powers of government, legislative, executive, and judicial, result to the legislative body. The concentrating these in the same hands is the precise definition of a despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not a single one.

> Jefferson, Notes on Virginia, p. 195; Story, Const. Law, vol. 1, § 525.[97]

The lower court has no role in the budget dispute between the legislative and executive branches of Minnesota's government.

B. Three exceptions exist to the requirement for an annual Legislative appropriation: Minnesota constitutional mandate; Minnesota statutes requiring perennial funding; and federal mandates.

102. The Petitioners are not arguing in this Petition that annual appropriations are required to disburse all state funds. In fact, three exceptions exist: Minnesota constitutional mandates, Minnesota statutes requiring perennial funding and federal mandates.

103. First, there are provisions within the Minnesota Constitution which likely require state funds to be disbursed even in the absence of annual legislative appropriations. These might include Article 5, § 4, funding salaries of executive officers (the governor, lieutenant governor, secretary of state, auditor, and attorney general); Article 6, § 5, funding compensation for judges; Article 11, § 7, funding state bonds and debt payments on bonds; Article II, § 8, funding of a permanent school fund; and Article 11, § 14, requiring funding of an environmental and natural resources fund. Here, the Executive branch may have the constitutional authority to disburse funds absent an annual legislative appropriation.

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[97] *Brill,* 111 N.W. at 640-41.

104. Second, Minnesota statutes can be a basis for continued state funding absent an annual legislative appropriation. Educational expenditures present an example of a specific continuing monetary funding statute that requires no annual legislative appropriation. Minnesota Statute §. 126C.20 and Minn. Stat. §. 126C.10 specifically directs how money is to be disbursed to the state's school districts annually without a further appropriation by law. For instance, under Minn. Stat. § 126C.20:

> There is annually appropriated from the general fund to the department the amount necessary for general education aid. This amount must be reduced by the amount of any money specifically appropriated for the same purpose in any year from any state fund.

Likewise, the specific legislative mandated formula, the "general education aid," for the disbursement of funds for education is enumerated under Minn. Stat. § 126C.10.

105. Similarly, Minn. Stat. § 16A.641 governing general state obligation bonds for highway projects, provides for the Commissioner to sell the bonds as authorized by law. The statute also specifically proclaims how to appropriate the proceeds of the bonds without any further appropriation by law or by court order. As Minn. Stat. § 16A.641, subd. 8 provides "(a) [t]he proceeds of bonds issued under each law are appropriated for the purposes described in the law and in this subdivision. This appropriation may never be canceled."

106. Minnesota Statute § 16A.125 governing state trust lands further reflects how the legislature specifically mandates the ability of the Commissioner to disburse state funds without a further appropriation by law or need of a court order. Here, the

Commissioner is to credit revenue from the forest trust fund lands, to a suspense account.[98] After the fiscal year, the receipts credited to the suspense account during that fiscal year are specifically distributed in accordance with the enumerated statutory provisions.[99] Finally, the statute delineates how money accruing and credited to a state development account is to be appropriated to the department of natural resources division of forestry.[100] The statute provides one further limitation is placed on the Commissioner:

> "[a]n obligation to spend money may not be made unless there is an available balance not otherwise encumbered in the appropriation."[101]

107. The Petitioners assert that under all circumstances the district court has no authority to issue orders for the disbursement of funds that are within the legal authority of the Commissioner to disburse in the first instance.

108. What the Petitioners suggest for instance, is that the legislature cannot prevent the implementation of constitutional mandates simply by withholding appropriations. In other words, in the absence of appropriations by law, the Commissioner must fund constitutional mandates at no more than existing levels until the legislature provides otherwise. Therefore, neither a court order is necessary, nor court review necessary.

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[98] Minn. Stat. § 16A.125, subd. 5(b).

[99] *Id.* Subd. 5 (d)(1) - (3).

[100] *Id.* Subd. 5a.

[101] *Id.*

109. There are circumstances that the Commissioner may disburse state funds without an annual legislative appropriation. *In all these instances, a court order is not required.* Issuing such an order would be an improper advisory opinion.[102] Courts only have jurisdiction over justiciable controversies involving definite and concrete assertions of rights on established facts.[103]

110. As the Commissioner of Finance admitted in 2005:

> Based on court-ordered mandated services and programs, $569,623,962 of interim appropriation authority was established. *Of this total, $300,000,000 was established for the July 15 General Education aid payment for which open appropriation authority also exists.* Minn. Stat. § 126C.20 (2004).[104]

111. Thus, the district court on the Attorney General's 2005 petition issued an advisory opinion mandating $300,000,000 of already required spending.[105] This advisory opinion may have been great politics, but it was an improper use of the district court to issue advisory opinions where no case or controversy exists.

112. Third, under certain circumstances federal mandates may require the Commissioner to disburse state funds provided that the United States Constitution

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[102] *See, Izaak Walton League of America Endowment, Inc. v. State Dep't of Natural Res.*, 252 N.W.2d 852, 854 (Minn. 1977).

[103] *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587-88 (Minn. 1977).

[104] *State ex rel. Sviggum v. Ingison,* 62-C9-9413 (Dist. Ct. Ramsey Cty 2005) (submitted Ingison Aff. § 6) (emphasis added).

[105] *See In Re Temporary Funding of Core Functions,* C9-01-5125 (Dist. Ct. Ramsey Cty 2001) Ct. Or. (June 23, 2005).

Supremacy Clause applies. However, there is some doubt about the constitutionality of the federal government mandating states to expend State funds.

113. The Supremacy Clause of the United States Constitution does not authorize any invasion of the State's Legislature's constitutional powers of appropriation – implicating issues of dual sovereignty. The U.S. Supreme Court for instance has held that under our constitutional system of "dual sovereignty" the federal government may not commandeer the states' cooperation in administering or enforcing federal mandates.[106]

114. Certainly the state legislature is intimately interested in the federal programs and monies coming into the state that may affect state appropriations and commitments. Further, state engagement in a federal program does not preclude the necessity of an annual legislative appropriation.

115. Minnesota Statute § 3.3005, requires an opportunity for legislators to review federal monies received by the state and how they are expended:

> A state agency shall not expend money received by it under federal law for any purpose unless a request to spend federal money from that source for that purpose in that fiscal year has

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[106] *Printz v. United States*, 521 U.S. 898, 918-920, 923-924 (1997) ("when a law for carrying into execution the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions we mentioned earlier, it is not a law proper for carrying into Execution the Commerce Clause, and is thus, in the words of The Federalist, merely an act of usurpation which deserves to be treated as such") (internal quotations and citations omitted); *accord New York v. United States*, 505 U.S. 144 (1992) ("monetary incentives" conditioning grant of federal funds upon performance of specified voluntary state action are permissible, but not mandates which invade the province of state sovereignty).

> been submitted by the governor to the legislature as a part of a budget request....[107]

116. Subdivision 5 also reflects the interest of legislators regarding how, when, and where federal monies coming into the state affect state appropriations:

> Federal money that becomes available under subdivision 3 [state matching money], 3a [change in how federal money is to be used], 3b [increase in the amount of federal money available], and 4 [interim procedures when legislature is not in session] may be allotted after the commissioner of finance has submitted the request to the members of the legislative advisory committee for their review and recommendation for further review.[108]

117. Such reviews become necessary in light of what impact state appropriations may have on how much federal money comes into the state especially if matching state funds are required. The fact that the state chooses to participate in a federal program does not necessitate a mandatory state obligation to continue participating with that program at previous state funding limits. These types of decisions are pure aspects of public policy directly tied to appropriations by law governed only through the legislators' votes of "yea" or "nay" within the legislative process. Unless the "federal mandate" via the Supremacy Clause is clear, the Commissioner is limited in disbursing state funds used to support or supplement federal programs.

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[107] Minn. Stat. Sec. 3.3005, Subd.2.

[108] Minn. Stat. Sec. 3.3005, Subd.5.

118. For example, the state is required under the Temporary Assistance to Needy Families Program ("TANF") to share in the cost of the program.[109] However, there remains a state annual legislative appropriation to be made to effect the provisions of Minn. Stat. Sec. 256J.02 that in turn implement TANF block grant money. Failure of the state to maintain a certain historic level of participation under TANF could result in a reduction in federal grant money.[110] Such a reduction may occur through how the state maintains the federal program via state appropriations. This type of control can only be the right of the legislators, again through votes of "yea" or "nay," and not that of a statutorily created figure such as the Commissioner.

119. As the Aging Services of Minnesota Care Providers of Minnesota, Inc. admits in its June 21 filing with the lower court seeking leave to file an *amicus curie* brief, "Minnesota risks the suspension of its federal Medicaid match should it stop Medicaid payments to providers."[111] There is no federal mandate here — "the Medicaid program is dependent on the State of Minnesota *actually spending its matching state share.*"[112] Despite the expressed anticipated hardship, "[s]hould 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

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[109] 42 U.S.C. Sec. 601, *et. seq.*

[110] 42 U.S.C. Sec. 609 (7)(A).

[111] Aging Services of Minnesota Care Providers of Minnesota, Inc. Req. for Leave of Ct to File Amicus Curie Br. 7 (June 21, 2011), App. 245.

[112] *Id.* at 7 (emphasis added), App. 245.

nonpayment..."[113] it is, nevertheless, *a policy decision for the legislature to make* — to fund in whole, or in part, or not at all. Here, the district court must not fill the present void and must play no part in interfering with the legislature's appropriation power.

120. To the extent the Supremacy Clause prevails in these circumstances the Commissioner is legally obligated to spend the funds, but narrowly construed within his own right and certainly without the necessity of any District Court order.

121. In summary, there are certain circumstances that the Commissioner may disburse state funds without an annual appropriation by law. In all these instances, a court order is not required. Issuing such an order is an improper advisory opinion.[114] Without a justiciable controversy involving definite and concrete assertions of rights on established facts the lower court has no jurisdiction.[115]

122. The only time the Court would have jurisdiction at the end of the 2011 fiscal biennium is if the Commissioner failed to disburse state funds in the categories mentioned above. Absence of an annual legislative appropriation, alone, is insufficient to confer subject matter jurisdiction to the Court.

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[113] *Id.* at 3, App. 243.

[114] *See Izaak Walton League of America Endowment, Inc.* v. *State Dep't of Natural Res.*, 252 N.W.2d 852, 854 (Minn.1977).

[115] *St. Paul Area Chamber of Commerce* v. *Marzitelli,* 258 N.W.2d 585, 587-88 (Minn. 1977).

C. The Attorney General's "core functions" approach is not limited to the three exceptions to the annual legislative appropriations requirement – thereby violating the Minnesota Constitution, statutes and the political question doctrine.

123. The fatal flaw in the 2011 Ramsey County District Court proceeding is that the Attorney General's and Governor's "core functions" approach is not limited to the exceptions noted to the annual legislative appropriation requirement explained above: Minnesota Constitutional requirements; statutes making perennial appropriations; and federal mandates.

124. Instead, the Attorney General proceeds on a theory that the Minnesota Constitution requires that every "core function" have an annual legislative appropriation or the Court needs to issue an order disbursing the funds anyway. There is no constitutional authority for this position. The Attorney General's memorandum lists what she identifies as "core functions" which are constitutionally required to be funded even absent an annual legislative appropriation is misplaced despite the hardship it might cause:

- Caring for mentally ill patients
- Securing 9,000 criminal offenders held in prisons
- Supervising 20,000 criminal offenders on supervised release
- Securing 616 sex offenders who are civilly committed
- Caring for 754 veterans in the care of the State's five veterans' homes
- No State Troopers available to patrol and keep safe Minnesota highways

- State of Minnesota Bureau of Criminal Apprehension would not investigate crimes
- State of Minnesota Division of Homeland Security and Emergency Management would not operate
- Over 600,000 low income senior citizens, individuals with disabilities, pregnant women and children and their parents would not receive Medical Assistance
- State Department of Minnesota Department of Employment and Economic Development would not distribute unemployment benefits
- State of Minnesota would be unable to respond to public health crises
- The Child in Need of Protection Services ("CHIPS") program would no longer function.

125. As previously noted, each are funded solely through legislative appropriations — that occurred in 2009 — but vetoed in 2011.[116] The court has no role to play here.

126. The Attorney General also requested that the Ramsey County District Court order each "Government Entity" (defined in Paragraphs 2 through 9 of the Petition) to determine its own "core functions" for funding.

127. Yet, the Attorney General's petition and memorandum fail to identify any specific Constitutional provisions, Minnesota statutory provisions or federal mandates requiring the state funding of "core functions" absent an annual legislative appropriation.

128. In fact, the Attorney General's petition is asking the Court to order the Commissioner to violate state law. Importantly, the Commissioner is not an elected State

[116] *Supra,* 9-12.

Treasurer with constitutional powers.[117] The Commissioner is not a constitutional officer, is not elected and has no powers allocated by the Minnesota Constitution. Minnesota's Constitution -— specifically Article XI, § 1 on Appropriations and Finance - restricts, but does not empower the Commissioner regarding disbursement of State funds:

> No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

Under Article XI, the Commissioner shall not disburse state funds without an appropriation by law enacted by the state legislature and signed by the Governor or otherwise enacted pursuant to Article IV (veto override).

129. Thus, all of the powers of the Commissioner are of a statutory creation – enacted by the state legislature. Minn. Stat. § 16A.01. The most important and mandatory responsibility of the Commissioner is to "receive and record all money paid into the state treasury and safely keep it until lawfully paid out."[118]

130. Minnesota statutes direct the Commissioner that "[u]nless otherwise expressly provided by law, state money may not be spent or applied without an *appropriation, an* allotment, *and* issuance of a warrant or electronic fund transfer."[119] "Appropriation" means an authorization by law to expend or encumber an amount in the treasury." Minn. Stat. § 16A.011, subd. 4.

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[117] *See Mattson v. Kiedrowski,* 391 N.W.2d 777 (Minn. 1986).

[118] Minn. Stat. § 16A.055, Subd. 1(1) (emphasis added).

[119] Minn. Stat. § 16A.57. *See also* Minn. Const. Art. XI, § 1 (emphasis added).

131. State statutes are explicit in restricting the Commissioner's authority to acting only when there has been a legislative appropriation. For instance, the Commissioner may not exceed appropriations or cause the state to incur debt. Minnesota statutes make it a criminal misdemeanor and grounds for removal from office to do so:

> When there has been an appropriation for any purpose it shall be unlawful for any state board or official to incur indebtedness on behalf of the board, the official, or the state in excess of the appropriation made for such purpose. It is hereby made unlawful for any state board or official to incur any indebtedness in behalf of the board, the official, or the state of any nature until after an appropriation therefore has been made by the legislature. Any official violating these provisions shall be guilty of a misdemeanor and the governor is hereby authorized and empowered to remove any such official from office.[120]

132. The above-quoted constitutional and statutory provisions unquestionably restrict the ability of the Commissioner to disburse state funds without an appropriation by law with only the three aforementioned exceptions: Minnesota Constitutional requirements, statutes making perennial appropriations and federal mandates. Since the Attorney General's and Governor's "core functions" approach goes beyond these legally-principled exceptions, the Attorney General and Governor are impermissibly inviting the Ramsey County District Court to order the Commissioner to violate the Minnesota Constitution and Minnesota statutes -- while at the same time violating the political question doctrine.

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[120] Minn. Stat. § 16A.138.

V. The Petitioners should prevail because allowing the district court to proceed to disburse moneys without an appropriation by law will undermine the fundamental foundation of and interpretation of Minnesota's Constitution.

133. When considering constitutional provisions, the Minnesota Supreme Court has "repeatedly observed that it is [its] task to give effect to the clear, explicit, unambiguous and ordinary meaning of the language" of the Constitution.[121] If the language of the provision is unambiguous, it must be given its literal meaning--there is neither the opportunity nor the responsibility to engage in creative construction.[122] The Court has stated its canons for interpretation of constitutional provisions:

> The rules governing the courts in construing articles of the State Constitution are well settled. The primary purpose of the courts is to ascertain and give effect to the intention of the Legislature and people in adopting the article in question. If the language used is unambiguous, it must be taken as it reads, and in that case there is no room for construction. The entire article is to be construed as a whole, and receive a practical, common sense construction. It should be construed in the light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.[123]

134. The Petitioners assert that Articles III, IV and XI of the Minnesota Constitution are unambiguous regarding the exclusive legislative prerogative to

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[121] *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992), *citing State ex rel. Gardner v. Holm*, 62 N.W.2d 52, 55 (1954).

[122] *See, e.g., Village of McKinley v. Waldor*, 170 N.W.2d 430, 433 (1969) (citations omitted).

[123] *State ex rel. Chase v. Babcock*, 220 N.W. 408, 410 (1928).

appropriate state funds. Because these provisions are unambiguous, the Court should give them their literal meaning and find that the Commissioner acts unconstitutionally by expending money without an appropriation by law enacted by the state legislature.

135. First, the Commissioner's expenditures will violate Article III. Article III is unambiguous. Article III's literal meaning prohibits the Executive Department and Judiciary from exercising the power of the Legislative Department without an express constitutional provision allowing it to do so:

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

136. The Commissioner acting pursuant to a district court order usurps a legislative prerogative in violation of Article III by making expenditures without an appropriation by law enacted by the state legislature.

137. Second, the Commissioner's expenditures would violate Article XI of the Minnesota Constitution. Article XI, § 1 is unambiguous. Article XI literally means that state funds can only expended in pursuance of an "appropriation by law:"

> No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

The phrase "appropriation by law" is unambiguous. The phrase literally means appropriation by "law" enacted under Article IV of the Constitution. The phrase "appropriation by law" does not include court orders. Since the Commissioner of Finance in 2005 was paying money from the state treasury pursuant to a Ramsey County

District Court order – not an appropriation by law -- she was violating Article XI's ban on such payments from the state treasury.

138. Third, the Commissioner's expenditures also violate Article IV of the Minnesota Constitution. Article IV is unambiguous. Article IV literally provides a list of requirements for an "appropriation by law" to occur. Article IV,§ 23's literal requirements include the state legislature approving the appropriation bill, then presenting the appropriation bill to the Governor who then signs it into law or vetoes the bill (including appropriation line item veto) and, if a veto occurs, the state legislature voting to override the veto.

139. The actions of the Commissioner paying money out of the state treasury pursuant to a Ramsey County District Court order violates Article IV because the state legislature did not pass the appropriation bill, the appropriations bill was not presented to the Governor and no appropriation bill was enacted. For a lawful expenditure to occur, the appropriation bill must be passed by the state legislature, presented to the Governor and enacted as law by the Governor signing it or by a legislative veto override.

140. The Commissioner is constitutionally required to wait until an appropriation by law is enacted prior to paying money out of the state treasury. Since the Respondents have failed to recognize this fact, the Respondents are violating Articles III, IV and XI of the Constitution.

PRAYER FOR RELIEF

For the foregoing reasons, the Petitioners request that the Court:

1. Grant the Petition for Writ of Quo Warranto;
2. Issue an Order for the Respondents to respond to the Petition by July 15, 2011;
3. Issue an Order allowing the Petitioners to reply by July 22, 2011;
4. Issue an Order for a hearing on this Petition for July 29, 2011;
5. After the hearing, issue an order enjoining the Respondents from further Court proceedings seeking court orders which violate the state legislature's exclusive prerogatives to appropriate funds and enjoining the Respondents from any other executive or judicial actions which violate the state legislature's exclusive prerogatives to appropriate funds;
6. Any final order should take effect seven-days after filing to allow the Executive and Legislative Branches of Government a final opportunity to resolve the budgeting issues;
7. To award to Petitioners statutorily-allowed attorney's fees and costs; and
8. Any other remedy, legal or equitable, that the Court deems just.

MOHRMAN & KAARDAL, P.A.

Dated: July 8, 2011.

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