STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING TEMPORARY MANDATORY INJUNCTIVE RELIEF

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

62-CV-11-5361

On June 21, 2011, this Court issued an Order to Show Cause setting a hearing date of June 27, 2011, on the motion of Petitioners Minnesota Judicial Council and Attorney General Lori Swanson for an Order of this Court directing that the judicial branch of the State of Minnesota continue to operate and be funded on a temporary basis after June 30, 2011. The Order to Show Cause was served on various public officials as indicated by the affidavits of service on file.

A hearing was held on June 27, 2011, with the undersigned Judge of District Court, sitting by special appointment of the Honorable Lorie Skjerven Gildea, Chief Justice of the Minnesota Supreme Court.

Appearances were indicated on the record.

Having considered the pleadings filed in this matter and the oral presentations of counsel, this Court makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Petitioner Minnesota Judicial Council is the administrative policy-making authority for the Minnesota Judicial Branch. The purpose of the Council is to govern the judicial branch through the establishment and monitoring of administrative policies designed to achieve an accessible, fair, and timely system

of justice statewide, and to ensure that the judicial branch functions as an independent and accountable branch of government.

2. Petitioner Lori Swanson is the Attorney General of the State of Minnesota. The Attorney General has the authority under the Minnesota Constitution, Minnesota statutes, and Minnesota common law to represent the State and its interests in all matters before the Court. The Attorney General also represents the people of the State in a *parens patriae* capacity.

3. The affidavit of State Court Administrator Sue Dosal submitted to this Court in support of Petitioners' motion adequately documents that the entire scope of services currently performed by, and the responsibilities currently assigned to, the judicial branch are necessary to preserve the adjudicatory role and to perform the proper administration of justice as contemplated in the U.S. and Minnesota Constitutions.

4. Article XI, Section 1 of the Minnesota Constitution provides that "[n]o money shall be paid out of the treasury of the state except in pursuance of an appropriation by law." Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to pass bills appropriating money for the Minnesota government to operate, subject to approval by the Governor. This authority includes appropriations for the judicial branch.

5. As of today's date, there has been enacted no appropriation to fund the judicial branch in the 2012-13 biennium. The judicial branch has insufficient funds to meet its constitutional obligations as of July 1, 2011. It is undisputed that the State has adequate financial reserves to temporarily continue funding the courts at the level of the 2011 fiscal year. The subparts of the judiciary are interdependent to such a degree that it is impracticable to attempt to rank or prioritize individual functions. For example, judges cannot hear cases without staff to prepare the files and record the proceedings, and criminal cases may not proceed for defendants represented by the public defender's office without appearances by attorneys funded under the judiciary budget umbrella. For meaningful function of the judiciary, funding is necessary at the present funding rate. There has been no challenge to the assertion in the affidavit of the State

Court Administrator that the entire scope of services performed by the judicial branch is necessary to perform the courts' constitutional functions.

6. The tenor of the immediate request for relief by Petitioners sounds in the equitable seeking of temporary injunctive relief. The general expectation is that the legislative and executive branches will eventually enact an appropriation for the judicial branch. It is possible that the parties may seek clarification or amendment of this order or that an evidentiary hearing may be needed. Accordingly, the Court considers those factors set forth in Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

a) Nature and background of the relationship between the parties.

The record adequately describes the position of the judiciary, one independent branch of government seeking to maintain funding from the legislative and executive co-equal branches of government, so as to enable the judiciary to continue fulfilling its constitutional duties.

b) Relative harm if relief is denied, compared with that inflicted if relief is granted.

If the courts are not funded, the basic, essential constitutional rights of the public would be unprotected and fail. The consequences would be irreparable and inestimable. If funding is temporarily ordered at the level authorized for the 2011 fiscal year, there would be no immediate negative unmanageable monetary effect upon the legislative or executive branches.

c) Likelihood of Petitioners eventually prevailing on the merits.

The issues are primarily legal in nature rather than factual. They have been adequately argued by capable counsel, and the Court has carefully considered them in reaching the legal conclusions herein favorable to the Petitioners. Similar arguments would likely be made at any future evidentiary hearing.

d) Aspects of the fact situation permitting or requiring consideration of public policy expressed in statutes.

This case involves an interpretation of statutory and, more substantially, constitutional provisions that on their face are not in harmony. Again, however, able counsel have as officers of the court well raised the arguments presumably available at any further evidentiary hearing.

e) Administrative burdens involved in judicial supervision and enforcement of a temporary order.

The implementation of the temporary order would be self-executing and require little if any court supervision.

In summary, the totality of the factors strongly favors the granting of temporary mandatory injunctive relief.

CONCLUSIONS OF LAW

The Court's conclusions are divided into these portions: Public Constitutional, Inherent Powers of the Court, and Reconcilement Matters.

Public Constitutional

1. The Constitutions of the United States and Minnesota provide the following non-exclusive protections to the citizenry:
   a) The right to be protected from any deprivation of life, liberty, or property without due process of law; or the denial of equal protection of the laws. U.S. Const. amend. XIV, § 1.
   b) The right to receive from the government "security, benefit and protection." Minn. Const. art. I, § 1.
   c) The right to enjoy the common rights and privileges of any citizen, unless deprived of them by law. Minn. Const. art. I, § 2.
   d) The right to a prompt remedy, without delay, for all injuries and wrongs. Minn. Const. art. I, § 8.
   e) The right of defendants to due process of law, including a speedy public trial, and bail. U.S. Const. amend. VI; Minnesota Const. art. I, §§ 5-7.
2. What are some examples of the expected effects of closure of the judicial function? They would include elimination of legal right of law enforcement to hold in custody persons accused of violent crimes, to require psychopathic sexual

offenders to continue in secure treatment facilities, to grant and enforce the thousands of Orders For Protection issued annually to protect physically abused family members, and to grant emergency orders removing minor children from unsafe and threatening environments.

3. Such failures would constitute an abandonment of the constitutional rights of Minnesota citizens, and requires the Court to act to protect the public to fulfill its charge under the Federal and State Constitutions. See State v. Askerooth, 681 N.W.2d 353, 362 (Minn. 2004):

> "It is our responsibility as Minnesota's highest court to independently safeguard for the people of Minnesota the protections embodied in our Constitution."

4. Continuance of the operation of the courts is a constitutional right of Minnesota citizens.

Inherent Powers of the Court

5. The Minnesota Constitution in Article III, Distribution of the Powers of Government, provides:

> Section 1. Division of powers. 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.

6. Article VI of the Minnesota Constitution establishes in detail the organization and description of the judicial branch.

7. Complete absence of funding of any of the three branches of government would effect the withering of that branch, contrary to the clear intent of the Minnesota Constitution. See Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs, 308 Minn. 172, 176-77, 241 N.W.2d 781, 784 (1976).

8. At the motion hearing, remarks by the attorneys for the parties indicated that the executive branch intended to authorize expenditures of certain executive costs if an appropriations bill is not passed. It is likewise necessary to provide emergency funding to the judicial branch to enable it to discharge its duties under the Minnesota Constitution.

Reconcilement Matters

9. The Minnesota Constitution in Article XI, Appropriations and Finances, provides:

> Section 1. Money paid from state treasury. No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.

10. The argument is advanced that the literal reading of Article XI would prohibit the order herein. Whether the order of the Court herein constitutes "an appropriation by law" may be reasonably argued. But it may not reasonably be disputed that if the courts cease to function, the result will be the irreparable violation of the many other constitutional rights of Minnesota citizens.

11. It is one of the fundamental duties of the courts to weigh rules, statutes, and now, constitutional provisions, that appear to be irreconcilable, and attempt to reconcile and harmonize them.

That process in this case leads to the conclusion that the rigidity of Article XI, when the traditional processes of government have failed, must temporarily give way to the safety and protection of Minnesotans.

ORDER

1. The Minnesota Judicial Branch shall continue to perform the functions of that branch necessary to fulfill its obligations, and to ensure citizens' rights, under the Minnesota Constitution and the U.S. Constitution. The State of Minnesota shall continue to pay for such services at the rate provided for in the fiscal year ending June 30, 2011.

2. The Commissioner of the Department of Management and Budget, Jim Schowalter, shall timely issue checks and process such funds as necessary to pay for such obligations so that the functions of the judicial branch can be discharged.

3. This order shall be effective from July 1, 2011, until the earliest of the following:

   1) July 30, 2011, unless extended by the Court;

2) The enactment of a budget by the State of Minnesota to fund the functions of the judicial branch after June 30, 2011; or

3) Further order of this Court. The Court retains jurisdiction to shorten, extend, clarify, or otherwise amend the terms of this order, and to conduct any further evidentiary hearings deemed necessary.

4. The undersigned waives any claim for compensation from funds authorized by this order for any personal services necessary to be rendered after June 30, 2011, in this proceeding.

5. Petitioners shall serve by U.S. Mail a copy of this order to the persons and entities listed in Exhibit A attached to this order.

BY THE COURT:

Dated: June 28, 2011

Bruce W. Christopherson

Bruce W. Christopherson
Judge

Exhibit A

The Honorable Mark Dayton
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The Honorable Kurt Zellers
Speaker, House of Representatives
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The Honorable Paul Thissen
Minority Leader, House of Representatives
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The Honorable Thomas M. Bakk
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The Honorable Sue Dosal
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