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STATE OF MINNESOTA
IN SUPREME COURT

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.

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LEGAL ISSUES

1. Is this matter a proper *quo warranto* action?

   Apposite Authority: *Rice v. Connolly*, 488 N.W.2d 241 (Minn. 1992); *People ex rel. Town of Richwoods v. City of Peoria*, 225 N.E.2d 48 (Ill. App. Ct. 1967); *State ex rel. Grozbach*, 237 Minn. 150, 54 N.W.2d 130 (1952).

   This issue was not raised before the district court.

2. Must mandates of the United States and Minnesota Constitutions continue to be performed and funded, even absent a duly enacted state appropriation?

   Apposite Authority: U.S. Const. amend. XIV; Minn. Const. art. I, § 7; *Watson v. City of Memphis*, 373 U.S. 526, 83 S. Ct. 1314 (1963); *Abbott v. Burke*, 20 A.3d 1018 (N.J. 2011).

   The district court held in the positive.

3. Must the State of Minnesota, pursuant to the Supremacy Clause of the United States Constitution, continue to administer and fund certain programs the State participates in with the federal government, even absent a duly enacted state appropriation?

   Apposite Authority: U.S. Const. art. VI, cl. 2; *Testa v. Katt*, 330 U.S. 386, 67 S. Ct. 810 (1947); *Knoll v. White*, 595 A.2d 665 (Pa. Commw. Ct. 1991).

   The district court held in the positive.

4. Must core functions of the executive branch constitutional officers continue to be performed and funded, even absent a duly enacted state appropriation?

   Apposite Authority: *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986); *Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 308 Minn. 172, 241 N.W.2d 781 (1976).

   The district court held in the positive.

STATEMENT OF THE CASE

A. The Attorney General's Petition.

The primary duty of the Attorney General is to enforce and uphold the mandates and protections set forth in the United States and Minnesota Constitutions. Indeed, the first act of the Attorney General is to take an oath to uphold the two constitutions. Minn. Const. art. V, § 6.

In this capacity, on June 13, 2011, Respondent Attorney General Lori Swanson ("Attorney General") filed a petition in the Ramsey County District Court requesting that the court direct that the core functions of the executive branch constitutional officers be performed after June 30, 2011, in the event the state budget impasse was not resolved. *See* 2011 Executive Branch Petition, App. 34-121. On June 15, the court issued an Order to Show Cause why it should not grant the requested relief and scheduled a hearing for June 23. *See* Order to Show Cause, App. 169-70. Approximately 464 state and local government officials and entities were served with the Order to Show Cause and the petition. *See* Service List, App. 173-208.

Respondent Governor Mark Dayton ("Governor") filed a response to the petition on June 15 stating, among other things, that he had the authority to issue an executive order providing for ongoing funding of critical government services in the event the budget impasse was not resolved by July 1. Governor's Response to Petition, App. 143-168. Approximately 24 motions to intervene, to submit *amicus curiae* briefs, or to otherwise participate in this proceeding were filed on behalf of various interested parties, including the Minnesota House of Representatives ("House"), the Minnesota Senate

("Senate"), and the four individual state senators who are Petitioners in this *quo warranto* action ("Four State Senators"). *See, e.g.*, Notice of Intervention of Four State Senators, App. 223-35, Minnesota House and Senate's Response to Petition, App. 428-38. The Four State Senators asked the Court to require the Governor to call a special session of the Legislature. Notice of Intervention of Four State Senators, App. 229-34.

B. The June 23 Hearing.

At the June 23 hearing, the court considered a request by the Governor for the court to order mediation of the budget impasse. The court denied the motion, finding that no branch of government can "control, coerce, or restrain the action or nonaction 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." Order Denying Mediation, App. 606-07 (quoting *State ex rel. Birkeland v. Christianson*, 179 Minn. 337, 340, 229 N.W. 313, 314 (1930)). The court then addressed the various motions to intervene. Most of the prospective interveners decided to withdraw their requests for intervention and participate in the proceeding informally or as *amicus curiae* in support of their respective positions. The court orally denied the Four State Senators' motion to intervene. *See In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, 62-CV-11-5203 (Ramsey Co. D. Ct., filed June 29, 2011) ("*Executive Branch Core Functions Order 2011*"), App. 2-3, ¶ 6.

Finally, the court heard arguments regarding the Attorney General's petition. The Attorney General asserted that the rights, privileges, and protections afforded to

Minnesota citizens under the United States and Minnesota Constitutions, including the core functions of the executive branch of government, cannot be nullified due to a failure to resolve the budget impasse. June 23, 2011, 1:30 p.m. Hearing Trans. at 6-7, 12-14. The Attorney General also asserted that the Supremacy Clause of the United States Constitution mandates the State's continued participation in certain federal programs, regardless of the budget process. June 23, 2011, 1:30 p.m. Hearing Trans. at 7, 10. The Attorney General's proposed findings of fact, conclusions of law and order provided, *inter alia,* that the State pay for the performance of these core functions and that disputes regarding application of the Order be resolved by the court with the assistance of a Special Master. Attorney General's Proposed Order, App. 377-78.

The Governor argued that the court did not have the authority to issue an order as to him because the Governor had the inherent right to unilaterally decide to spend unappropriated funds if the budget impasse was not resolved. June 23, 2011, 1:30 p.m. Hearing Trans. at 33-34. In his proposed order, the Governor requested that the court's order not apply to him. Governor's Proposed Order Denying Petition Relative to the Governor at 2. Neither the House nor the Senate opposed the Attorney General's requested relief. Rather, they both asked the court to order funding to process and administer payments to the Legislature after June 30 if the budget impasse remained unresolved. June 23, 2011, 1:30 p.m. Hearing Trans. at 39, 43-45.

C. The Court's Order.

On June 29, 2011, the court issued its Findings of Fact, Conclusions of Law, and Order ("Order") granting the Attorney General's Petition. *Executive Branch Core*

Functions Order 2011, App. 1-31. The court found that "the Minnesota Constitution entrusts certain core functions to the executive branch of government and to each of the five executive branch constitutional officers . . . [which] include ensuring compliance with state and federal constitutional rights of citizens and federal mandates." *Id.* at 4, ¶ 14. The court stated that the failure to properly fund these core functions of the executive branch "will violate the constitutional rights of the citizens of Minnesota."[1] *Id.* at 4, ¶ 15.

The court recognized that "the Minnesota Constitution . . . provides that each of the five executive branch constitutional officers specified in Article V, namely, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor, have and perform certain core functions which are an inherent part of their offices." *Id.* at 14, ¶ 3, 15, ¶ 4. The court stated that the designation of these constitutional offices in Article V, Section 1, "'implicitly places a limitation on the power of the legislature' so that the core functions of the executive branch officers, and their performance of those functions, may not be abridged" by a withholding of appropriations. *Id.* at 14-15, ¶ 3 (quoting *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986)). The court held that "[f]ailure to fund these independent core functions, even temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution." *Id.* at 15, ¶ 3.

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[1] The court noted that in both 2001 and 2005, the then-Attorney General petitioned the court to preserve the operation of the core functions of the executive branch of government during a budget impasse and that in both instances, the court issued orders providing for the continued performance of the core functions of the executive branch. *Id.* at 4-5, ¶ 16. In 2001, the court also issued an order providing for the continued funding of the judicial branch's core functions. *Judicial Branch Core Functions Order 2001*, App. 53-58. In 2005, the legislature appropriated funding for the judiciary.

The court noted that Article XI, Section 1 of the Minnesota Constitution provides that "no money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." *Id.* at 14, ¶ 3. However, the court found that this provision must be interpreted within the context of the entire Minnesota Constitution and the provisions of the United States Constitution. *Id.* at 14, ¶ 3. The court found that Article I, Section 1 of the Minnesota Constitution — "Government is instituted for the security, benefit, and protection of the people . . ."— as well as other sections of the Minnesota Constitution "impose a variety of core functions upon the five constitutional officers which may not be abridged" due to a lack of appropriations. *Id.* at 6, ¶ 20.

The court also concluded that core functions of the executive branch arise from the mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution. *Id.* at p. 7, ¶¶ 22, 24, p. 15, ¶ 4. The court recognized the State of Minnesota has entered into numerous agreements with the United States government to participate in a variety of programs which require the State's continued participation. *Id.* at 15, ¶ 5. As the court stated: "The Supremacy Clause of the United States Constitution, Article VI, clause 2, mandates that any funds paid by the State as a result of participation in these federal programs must continue."[2] *Id.* at 15-16, ¶ 5; *see also id.* at 7, ¶ 24 (stating the withholding of funding under federal agreements "will violate the Supremacy Clause").

[2] The court also held that funds that had already been lawfully appropriated should continue to be paid on schedule during the budget impasse. *Id.* at p. 14, ¶ 39, p. 18, ¶ 11.

The court therefore held that "[t]he core functions of the executive branch arise from the state and federal constitutions, including the independent functions inherent in each executive office, *Mattson*, 391 N.W.2d at 782-83, as well as mandates of the federal government pursuant to the Supremacy Clause of the United States Constitution." *Id.* at 15, ¶ 4. The court ordered that the critical core functions of the executive, as well as the legislative, branch of government must continue to operate and receive adequate funding, even in the absence of a duly enacted appropriation. *Id.* at p. 16, ¶¶ 1, 6; p. 16-18, ¶¶ 1, 11.

The court stated that critical core functions of the executive branch include matters relating to the life, health and safety of Minnesota citizens, the protection of rights of citizens under the Minnesota and United States Constitutions, and the maintenance and preservation of public property. *Id.* at 15, ¶ 4. As to the Governor, the court attached to its Order, with minor modifications, a list of critical services previously submitted to the court by the Governor to be performed by the agencies he oversees. *Id.* at p. 9, ¶ 28; p. 17-18, ¶ 1.[3]

In addition, the court appointed the Honorable Kathleen Blatz, Retired Chief Justice of the Minnesota Supreme Court, as Special Master "to hear and make recommendations to the Court, as necessary, regarding any issue raised by [the parties] or others relating to the application of [the court's] Order." *Id.* at 18, ¶ 13; *see also id.* at 12,

[3] The court's Order was effective until the earliest of: (a) July 31, 2011, which may be extended by the court; (b) the enactment of a budget by the State of Minnesota to fund all of the core functions of government after June 30, 2011; or (c) further order of the court. *Id.* at 18, ¶ 14.

¶ 35 (recognizing a Special Master "creates an orderly process to resolve requests for, or objections to, funding," thereby promoting judicial economy and efficiency as well as preventing the necessity of adjudicating multiple individual lawsuits). The Special Master has conducted numerous hearings and issued recommendations to the court. *See, e.g.*, Orders Adopting Special Master's Recommendations, App. 622-37.

D. The *Quo Warranto* Petition.

On July 8, 2011, Petitioners initiated the present action by filing a Petition for Writ of *Quo Warranto* directly with this Court. Petitioners challenge the expenditure of state monies to fund executive branch functions in the absence of duly enacted appropriations.[4]

The Four State Senators previously filed a similar Petition for Writ of *Quo Warranto* with this Court on June 20, 2011. Petition for Writ of *Quo Warranto*, A11-1107 (Minn., filed June 20, 2011). On that same day, the Attorney General filed a motion to dismiss the petition, which the Governor later joined, arguing that *quo warranto* was not an appropriate remedy and that this Court should decline original jurisdiction over the matter. *See* Attorney General's Motion to Dismiss, A11-1107 (Minn., filed June 20, 2011); Governor's Joinder, A11-1107 (Minn., filed June 22, 2011).

On June 22, 2011, this Court issued an order finding the petition did not satisfy the established standards for its exercise of original jurisdiction over a petition for a writ of *quo warranto*. Minnesota Supreme Court Order, A11-1107 (filed June 22, 2011). Thus,

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[4] It is unclear whether Petitioners are challenging the funding that was requested by both the House and Senate, and granted by the district court, to facilitate the operations of the Legislature during the budget impasse. *See Executive Branch Core Functions Order 2011*, App. p. 16, ¶ 6; pp. 17-18, ¶ 11.

this Court dismissed the petition without prejudice. *Id.* Subsequently, the Four State Senators attempted to intervene in the Ramsey County District Court proceeding and, as noted above, their motion to intervene was denied. *See Executive Branch Core Functions Order 2011*, App. 2-3, ¶ 6.

STATEMENT OF FACTS

A. THE CONSEQUENCES OF A COMPLETE GOVERNMENT SHUTDOWN.

An impasse existed with respect to agreement on a State budget, and therefore monies had not been appropriated for almost all of the departments and agencies of state government for the biennium beginning July 1, 2011.[5] Without a State budget or court order providing for the continued funding for at least some government services, state government would be completely shut down. Such a shutdown would deprive Minnesota citizens of the rights guaranteed under the Minnesota and United States Constitutions, and the life, health, safety, and liberty of citizens would be profoundly and irreparably impacted.

For example, there are currently about 1,288 mentally ill patients entrusted to the care of the State of Minnesota, including patients with severe and profound developmental disabilities, schizophrenia, and psychotic disorders. Without a state

[5] Only the Department of Agriculture, the Board of Animal Health, and the Agricultural Utilization Research Institute had been funded. *See* ch. 14 (S.F. 1016) § 3-5, 87th Sess. (Minn. 2011); 2011 J. Minn. House 2454; 2011 J. Minn. Senate 1396. In addition, there were standing appropriations which relate to a few executive branch functions. *See, e.g.,* Minn. Stat. §§ 126C.20 and 477A.03, subd. 2 (standing appropriation for certain aid to school districts and local governments). However, there may not have been appropriations to administer and/or process these payments. On July 14, 2011, the Governor and legislative leaders indicated that they had agreed to a tentative settlement of the State's budget.

budget or court order providing for the continued care of those patients, they would either have to be released or left unattended in state facilities.

There are currently more than 9,000 criminal offenders held in prisons operated by the State of Minnesota, approximately half of whom were convicted of crimes against persons. Without guards and personnel to provide for their security, housing, food, and care, these prisoners would have to be released, in violation of state sentencing statutes and court orders, jeopardizing the safety of the public.

There are also currently about 20,000 criminal offenders in the community who are being supervised by the State of Minnesota Department of Corrections because they were released from prison on supervised release, subject to state-imposed conditions of release. About 1,200 of them are high-risk offenders on intensive supervised release. If the State were to shut down, many of these offenders would be unsupervised. Moreover, even in counties where county agents are involved in supervision, offenders in the community who violate their conditions of release could not be arrested or reimprisoned, since the Minnesota Department of Corrections is the agency authorized to issue warrants, conduct revocation hearings, and reimprison released violators.

The 616 sex offenders who have been civilly committed to the State of Minnesota Sex Offender Program as sexually psychopathic personalities or sexually dangerous persons—all of whom have been determined by a court to be highly likely to reoffend or dangerous due to an inability to control their sexual impulses—would have to be released from State care. Likewise, predatory offenders, including Level III sex offenders, would be released from prison without risk level assessments, community notification, or

screening by the State for possible civil commitment, since these functions are normally performed by the State of Minnesota Department of Corrections.

There are about 754 veterans—men and women who honorably served this country—in the care of the State's five veterans' homes. They are soldiers and service members who are "without adequate means of support and unable by reason of wounds, disease, old age, or infirmity to properly maintain themselves."[6] Some of these retired soldiers and service members suffer from diseases like Alzheimer's, dementia, and coronary and pulmonary disease. Others lost portions of their bodies while protecting our country, rendering them unable to protect themselves. Without funding to operate, these homes would have to shut down, leaving the veterans without care or services necessary to maintain their physical and mental health.

Without a budget or court order, State Troopers would no longer be available to patrol and keep safe Minnesota highways. The State of Minnesota Bureau of Criminal Apprehension could not investigate crimes or provide forensic science services in criminal investigations.

The State of Minnesota Division of Homeland Security and Emergency Management—which, for example, coordinates the State's response in matters involving national security—could not operate. The State of Minnesota Department of Transportation could not respond to highway emergencies, such as vehicle collisions, barricade replacements, bridge damage and guardrail repair, potentially causing accidents on state highways.

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[6] Minn. Stat. § 198.022(1); Minn. R. 9050.0050.

Over 600,000 low income senior citizens, individuals with disabilities, pregnant women, and children and their parents rely on Medical Assistance. Without funding, their health could be jeopardized or disrupted, and the State would be in violation of its obligations to the federal government. Many of these people are low-income senior citizens in nursing homes. Low-income families with children would lose cash and food assistance benefits through the Minnesota Family Investment Program and Temporary Assistance to Needy Families program, leaving these households with little or no income to pay for basic life necessities during the economic downturn. People who are disabled or otherwise unable to work, including many who are homeless, would lose General Assistance benefits, which are funded with state dollars. Others would lose basic food assistance benefits.

A shutdown would preclude the State of Minnesota Department of Employment and Economic Development from distributing unemployment benefits to the many eligible Minnesotans in the midst of the recession. New applicants for unemployment benefits would not have their applications processed.[7]

The State of Minnesota would be unable to respond to food-borne outbreaks like *E. coli* and *Salmonella,* and infectious diseases, like tuberculosis, which infected 135 Minnesotans last year. The Child in Need of Protection Services ("CHIPS") program, which protects children suffering from abuse or neglect, would lose state supervision and state funding.

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[7] Minnesota courts have long recognized that "[u]nemployment benefits are an entitlement protected by the procedural due process requirements of the fourteenth amendment." *Schulte v. Transp. Unlimited, Inc.,* 354 N.W.2d 830, 832 (Minn. 1984).

B. FEDERALLY-MANDATED PROGRAMS.

The State has entered into a variety of agreements with the federal government that require the State to make payments to individuals or local governmental units, and/or to undertake certain administrative duties on behalf of, or in cooperation with, the federal government. Some of these programs require the State to maintain a certain level of state funding or to match federal funding under the federal laws establishing such programs. Such programs include, but are not limited to, administration and payment of medical assistance, general assistance, and a variety of federal and government programs designed to assure the safety and welfare of Minnesota citizens.[8]

For example, the State participates in the following federal health and welfare programs: the Supplemental Nutrition Assistance Program (Food Stamp Program), 7 U.S.C. § 2011, *et seq.*; the Temporary Assistance to Needy Families (TANF) Program, 42 U.S.C. § 601, *et seq.*; and the Medicaid Program, 42 U.S.C. § 1396, *et seq.* The Department of Human Services is responsible under state law for administering the state programs relating to each of these three federal programs. *See* Minn. Stat. §§ 245.771 (Food Stamp Program); 256J.02 (TANF Program); 256.01, subd. 2 (Medicaid Program).

Before the State was allowed to participate in these programs, it was required to assure the federal government, through certification or a state plan submission, that Minnesota residents would be promptly provided the food, subsistence, and medical

[8] The State also is the recipient of federal funds on behalf of various entities, including Minnesota political subdivisions. The State is required to administer these federal "pass-through" funds and distribute the funds to the appropriate entity. If the administering state agency has no personnel, it cannot timely administer or pay these pass-through federal funds, as required by federal law.

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

C. THE 2001 AND 2005 BUDGET IMPASSES.

The budget impasse experienced in 2011 is similar to that which occurred in June 2001 and June 2005. In 2001, approval of the Ramsey County District Court was sought to maintain the operation of the core functions of the executive and judicial branches of state government. The court granted the relief sought, directing that funding be maintained for core functions of the executive and judicial branches. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C9-01-5725, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 29, 2001) ("*Executive Branch Core Functions Order 2001*"), and *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, No. C6-01-5911, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 29, 2001) ("*Judicial Branch Core Functions Order 2001*").

In 2005, approval of the Ramsey County District Court was sought to maintain the operation of the core functions of the executive branch of government.[9] The Court again granted the requested relief. *See In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C0-05-5928, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 23, 2005) and subsequent Orders (filed June 30, 2005 and July 7, 2005) ("*Executive Branch Core Functions Order 2005*"). A copy of the Findings of Fact, Conclusions of Law, and Orders Granting Motion for Temporary Funding in both the 2001 and 2005 actions are contained in the Appendix at pages 43-58 and 88-121.

SCOPE OF REVIEW

Issues of constitutional interpretation are questions of law and reviewed by the Court de novo. *State v. Brooks*, 604 N.W.2d 345, 348 (Minn. 2000).

SUMMARY OF ARGUMENT

This matter is not an appropriate *quo warranto* case because the actions challenged by Petitioners were within the scope of Respondents' lawful authority and jurisdiction. The remedy of *quo warranto* is also inapplicable because Petitioners do not claim Respondents were absolutely without authority or jurisdiction to perform their challenged acts. Further, the district court properly granted the Attorney General's petition for a number of reasons.

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[9] In 2005, the legislature enacted funding for the judicial branch as part of a larger "Public Safety" appropriation bill. *See* Act of June 2, 2005, ch. 136. In 2001, the legislature had not enacted funding bills for either the executive or judicial branches.

First, citizens of Minnesota are entitled to certain rights and privileges under both the United States and Minnesota Constitutions that must be protected by the executive branch. Second, many government entities receive federal funding in connection with federal programs carried out by such entities. These programs require regular payments and continued participation. The Supremacy Clause of the United States Constitution mandates that participation in such programs by the State continue regardless of the budget process. Third, based on the Minnesota Supreme Court decisions in *State ex rel. Mattson v. Kiedrowski,* 391 N.W.2d 777 (Minn. 1986) and *Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs*, 308 Minn. 172, 241 N.W.2d 781 (1976), as well as a proper construction of the Minnesota Constitution, the core functions of the state government must continue even in the absence of appropriated funds.

The judicial branch has jurisdiction to decide — based on the circumstances presented — the rights and responsibilities of the constitutional officers who comprise the executive branch of government of the State of Minnesota. Indeed, as exemplified by both *Mattson* and *Lyon County*, the Court is authorized and obligated to adjudicate the respective powers and obligations of the branches of State government. *See, e.g.*, *State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (recognizing the court's responsibility "to independently safeguard for the people of Minnesota the protections embodied in our constitution."); *Minnesota State Bd. of Health v. City of Brainerd*, 308 Minn. 24, 40 n.5, 241 N.W.2d 624, 633 n.5 (1976) (finding an "indispensable feature of our constitutional system" is that "it is emphatically the province and duty of the judicial department to say

what the law is" and that any assertion to the contrary "would be to enthrone official lawlessness and lawlessness if not checked is the precursor of anarchy"); *Petition for Integration of Bar of Minnesota*, 216 Minn. 195, 199, 12 N.W.2d 515, 518 (1943) (stating, "[t]he supreme court is . . . the final authority and last resort in the protection of the human, political, and property rights guaranteed by the constitution"); *In re McConaughy*, 106 Minn. 392, 416, 119 N.W. 408, 417 (1909) ("[T]he judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.").

ARGUMENT

I. *QUO WARRANTO* IS NOT AN APPROPRIATE REMEDY.

Quo warranto is an equitable remedy which is rarely invoked by the courts. *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992) (recognizing the Court has exercised its discretion to issue the writ of *quo warranto* "infrequently and with considerable caution"). It is an appropriate remedy only in cases where a public official has absolutely no authority to perform the subject act. *See, e.g.*, *State ex rel. Grozbach*, 237 Minn. 150, 153, 54 N.W.2d 130, 133 (1952) (indicating writ of *quo warranto* may properly issue where it is claimed elected school board officials have no authority or jurisdiction to hold their respective offices).

Petitioners challenge the Attorney General's authority to file a petition in Ramsey County District Court on behalf of the State of Minnesota in her *parens patriae* capacity, seeking an order that the core functions of the executive branch be performed if the current budget impasse was not resolved by July 1, 2011. However, the Minnesota

Constitution, Statutes, and common law clearly vest the Attorney General with the plenary authority to initiate such an action on behalf of the State. Minn. Const. art. V § 4; Minn. Stat. § 8.01 (2010); *Slezak v. Ousdigian*, 260 Minn. 303, 308, 110 N.W.2d 1, 5 (1961). *See also State ex rel. Peterson v. City of Fraser*, 191 Minn. 427, 432. 254 N.W. 776, 778-79 (1934) (recognizing the Attorney General has plenary authority and discretion to determine "what litigation shall or shall not be instituted"); *State ex rel. Young v. Robinson*, 101 Minn. 277, 288-89, 112 N.W. 269, 272 (1907) (holding the Attorney General "may institute, conduct and maintain all such suits and proceedings as [s]he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights.").

Likewise, the Ramsey County District Court not only had the authority — but also the obligation — to adjudicate the Attorney General's petition, including the respective powers and authority of the different branches of state government under the Minnesota Constitution. See *supra* at 17-18.

Petitioners also erroneously challenge the authority of the Commissioner of Management and Budget, acting on behalf of the Governor, to comply with the district court's Order. The Commissioner acted pursuant to a court order. And, in any event, Petitioners do not claim that he lacks all authority to fund governmental services in the absence of appropriations. Rather, they concede that State funds may be paid to effectuate the mandates of the Minnesota Constitution and federal law even absent duly enacted appropriations. (Petition at 41-48). *People ex rel. Town of Richwoods v. City of Peoria*, 225 N.E.2d 48, 51 (Ill. App. Ct. 1967) (stating that *quo warranto* "raises only the

question of whether, by reason of a total absence of power or jurisdiction, the [official conduct] is a nullity."); *see also State ex rel. Lommen v. Gravlin*, 209 Minn. 136, 137, 295 N.W. 654, 655 (1941) ("[T]he writ of quo warranto is not allowable as preventative of, or remedy for, official misconduct and can not be employed to test the legality of the official action of public . . . officers.").

Thus, for the above reasons, this matter is not an appropriate *quo warranto* action, and the petition should be denied for that reason alone.

II. EXECUTIVE BRANCH CORE FUNCTIONS MUST CONTINUE TO PROVIDE MINNESOTA CITIZENS THE RIGHTS GUARANTEED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

As the district court concluded, Minnesota citizens are guaranteed certain rights under both the United States and Minnesota Constitutions, and those rights would be infringed if executive branch agencies do "not have sufficient funds to carry out their core functions." *Executive Branch Core Functions Order 2011*, App. 4, ¶ 15; *see also Executive Branch Core Functions Order 2005*, App. 94, ¶ 6; *Executive Branch Core Functions Order 2001*, App. 49; ¶ 6; *see also* Minn. Const. art. I, § 1 (stating that "government is instituted for the security, benefit and protection of the people . . . .").

Specific constitutional guarantees include the right of due process of law under both the Fourteenth Amendment to the U.S. Constitution and Article I, Section 7, of the Minnesota Constitution. In addition, for example, Minnesota schools provide the constitutional guarantee of "a general and uniform system of public schools" with the assistance of substantial State aid. *Executive Branch Core Functions Order 2011*,

App. 6, ¶ 21; *see also Executive Branch Core Functions Order 2005*, App. 94, ¶ 7; *Executive Branch Core Functions Order 2001*, App. 49, ¶ 7.

It is well-settled that states cannot abridge or ignore the constitutional rights of their citizens simply because funding has not been appropriated to meet those constitutional obligations. In *Watson v. City of Memphis,* 373 U.S. 526, 83 S. Ct. 1314 (1963), the Supreme Court reviewed a lower court's decision ordering the City of Memphis to immediately desegregate its public parks and other recreational facilities. As one of its defenses, the city claimed that it should be given more time to desegregate because a number of the recreational facilities would have to be closed because of the inadequacy of the present park budget. *Watson*, 373 U.S. at 537, 83 S. Ct. at 1320–21. The Supreme Court rejected this justification for delay by noting that "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Id.* at 537, 83 S. Ct. at 1321.

Recently, the New Jersey Supreme Court, in *Abbott v. Burke*, 20 A.3d 1018, 1024-25 (N.J. 2011), required the state to fully fund a state constitutional right to education despite a lack of legislative appropriation. The court rejected the state's argument that the court must defer to legislative authority based upon the appropriation clause in the New Jersey Constitution, and that judicial relief would constitute an impermissible intervention into the budgetary process. *Id.* at 1024, 1036-38. The court held that the state "may not use the appropriations power as a shield from its responsibilities," *id.* at 1024 and concluded that the appropriation clause "creates no bar to judicial enforcement" of the requirements of other constitutional provisions. *Id.* at 1024, 1038.

Indeed, courts have often ordered relief to protect constitutional rights, notwithstanding fiscal constraints. *See, e.g.*, *Brown v. Plata,* 131 S. Ct. 1910, 1938-1939 (2011) (upholding court-imposed population caps and early release of inmates to remedy Eighth Amendment violations caused by prison over-crowding resulting from state's budgetary constraints); *Barker v. Wingo,* 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (delays in criminal justice process may violate defendants' due process rights, and overcrowded courts are not a defense); *Harris v. Champion,* 15 F.3d 1538, 1562-63 (10th Cir. 1994) (neither lack of funding for public defender system nor mismanagement of resources by public defender constitute acceptable excuses for lengthy delays in adjudicating direct criminal appeals); *Williams v. Bennett,* 689 F.2d 1370, 1387-88 (11th Cir. 1982) ("Defendants clearly may not escape liability [for an Eighth Amendment violation] solely because of the legislature's failure to appropriate requested funds. . . . If . . . a state chooses to operate a prison system, then each facility must be operated in a manner consistent with the Constitution"); *Gates v. Collier,* 501 F.2d 1291, 1320 (5th Cir. 1974) ("shortage of funds is not a justification for continuing to deny citizens their constitutional rights."); *United States v. Terrell County*, 457 F. Supp. 2d 1359, 1367 (M.D. Ga. 2006) (recognizing lack of funds is not a defense or legal justification for the deprivation of constitutional rights); *Stell v. Bd. of Pub. Educ. for the City of Savannah and the County of Chatham,* 724 F. Supp. 1384, 1405 (S.D. Ga. 1988) (federal court has broad equitable powers to remedy evils of segregation, including a narrowly defined power to order an increase in local tax levies on real estate, after exploration of every other fiscal alternative), (citing *Liddell v. State of Missouri,* 731 F.2d 1294, 1320 (8th

Cir.)), *cert. denied,* 469 U.S. 816 (1984); *Welsch v. Likins,* 550 F.2d 1122, 1132 (8th Cir. 1977) (finding state's constitutional requirements cannot be permitted to yield to financial considerations); *Jackson v. Bishop,* 404 F.2d 571, 580 (8th Cir. 1968) (holding constitutional requirements are neither measured by nor limited by financial considerations).

The absence of funding may not eliminate the constitutional rights of five million Minnesota men, women and children. The relief provided by the district court's order ensures that constitutional protections continue to be afforded to the citizens of this State.

III. UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, THE STATE MUST CONTINUE TO ADMINISTER AND FUND ITS SHARE OF FEDERAL PROGRAMS MANDATED BY CONGRESS.

The Supremacy Clause of the United States Constitution, Article VI, makes the United States Constitution and federal laws the supreme law of the land. *Testa v. Katt,* 330 U.S. 386, 67 S. Ct. 810 (1947). The State Constitution and laws are subordinate to such federal requirements. As a result, the Supremacy Clause requires that payments be made and programs continue under the applicable federal laws.

The district court correctly held that "[t]he Supremacy Clause of the United States Constitution, Article VI, mandates that any funds paid by the State as a result of participation in these federal programs must continue." *Executive Branch Core Functions Order 2011*, App. 15-16, ¶ 5; *see also Executive Branch Core Functions Order 2005*, App. 7-8, ¶ 8; *Executive Branch Core Functions Order 2001*, App. 49, ¶ 8. In numerous other cases involving budget impasses and public assistance payments, courts have ordered such payments to be continued despite the lack of any appropriation by the

legislature. *See Coal. for Basic Human Needs v. King,* 654 F.2d 838, 841 (1st Cir. 1981) (ordering state to pay Aid to Families with Dependent Children ("AFDC") payments despite budget impasse and citing multiple decisions requiring states to pay to comply with state-federal cooperative federalism programs like AFDC and Medicaid); *Pratt v. Wilson,* 770 F. Supp. 539, 543–44 (E.D. Cal. 1991) (finding violation of federal law where state department of social services sent letter to county welfare directors advising that state would not release state or federal AFDC funds absent enactment of a state budget); *Ala. Nursing Home Ass'n v. Califano*, 433 F. Supp. 1325, 1330 (M.D. Ala. 1977) (recognizing inadequate funding does not excuse failure to comply with federal Medicaid program standards); *Coal. for Econ. Survival v. Deukmejian,* 171 Cal. App. 3d 954, 957 (Cal. App. 2 Dist. 1985) (interim stay ordering state to refrain from withholding AFDC payments during budget impasse).

Of particular note is the case of *Knoll v. White,* 595 A.2d 665 (Pa. Commw. Ct. 1991). At issue in that case was a provision in the Pennsylvania Constitution pertaining to appropriations, which is virtually identical to that contained in the Minnesota Constitution. *See Knoll*, 595 A.2d at 668. When no appropriations were made by the Pennsylvania legislature, the *Knoll* court held that under the Supremacy Clause and federal law, Pennsylvania was required to continue making payments with respect to federally-based programs, including aid for dependent children, food stamps, and medical assistance. *Id.* at 668–69. The court held that the federal mandate, being supreme over the state constitutional requirement for appropriations authorization, required the continuation of such payments. *Id.* at 668.

In short, the State must comply with various federal programs, as the district court recognized.

IV. THE CORE FUNCTIONS OF THE EXECUTIVE BRANCH CANNOT BE TERMINATED BY A BUDGET IMPASSE.

A. The Court's Decision In *Mattson* Compels The Continuation Of The Core Functions Of The Executive Branch Constitutional Officers, And The Judicial Branch, Not An Executive Branch Officer, Has The Authority To So Order.

This Court's precedent in *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777 (Minn. 1986) establishes that the State Constitution requires the continuation of the executive branch's core functions even though there is an absence of appropriations. The decision further demonstrates that the judiciary has the authority to determine the right to such relief.

At the time of the *Mattson* decision, the position of Minnesota's State Treasurer (along with the other executive branch constitutional officers) was mandated by Article V, Section 1 of the Minnesota Constitution.[10] Minn. Const. art. V, § 4. The Legislature had previously prescribed the Treasurer's duties. *Mattson,* 391 N.W.2d at 778-79. However, in 1985, the Legislature transferred almost all of the Treasurer's responsibilities to the Commissioner of Finance. *Id.* at 778. It also appropriated money for fiscal years 1986 and 1987 to the Commissioner, and not the Treasurer, to perform these duties. *Id.* at 778-79 & note 3. Although some nominal duties remained with the

[10] On November 3, 1998, the Constitution was amended to abolish the position of State Treasurer. *See* Minn. Const. art. V, § 1 (amended, Nov. 3, 1998).

Treasurer, the Court described the Office of State Treasurer to be an "empty shell." *Id.* at 782.

The Treasurer sued the Commissioner of Finance. The Treasurer claimed that, notwithstanding the unambiguous language of Article V, Section 4, the Legislature did not have the authority to transfer his core functions and therefore, the Commissioner was unable to perform the Treasurer's duties. The Treasurer sought the return of his constitutional responsibilities and an appropriation to perform such duties. *Mattson,* 391 N.W.2d at 780, 783.

Relying in part on case law from other states, *id.* at 780-81, the Court agreed with the Treasurer and granted the requested relief. *Id.* at 783. The Court concluded that the core functions of the Treasurer were implied in the title of that office as set forth in Article V, Section 1 of the State Constitution. *Id.* at 782. Although the Court acknowledged that Article V, Section 4 unambiguously authorized the Legislature to change the duties of the Treasurer, it held that Article V, Section 1 included an "implied limitation" precluding the Legislature from abolishing the core functions of that office. *Id.*

The Court reasoned that such an implied limitation "prevent[s] the legislature from abolishing all of the independent functions inherent in an executive office. To allow the legislature to abolish all such functions of an executive office is to allow it to do violence to the title the drafters afforded the office and the core functions necessarily implied therefrom." *Id.* at 782. It also concluded that "[t]o permit the legislature to gut an

executive office . . . is to hold that our state constitution is devoid of any meaningful limitation on legislative discretion in this area." *Id.* at 783.

In so doing, the Court reasoned that all relevant provisions of the Constitution must be given meaning. *Id.* In addition to Article V, Sections 1 and 4, the Court referred to Article IX of the Constitution. Article IX provides that a constitutional office can only be abolished by an amendment to the Constitution, which must be approved by a vote of the people. *Id.*

The Court determined that the Legislature could not, even temporarily, abolish all the core functions of an executive branch constitutional officer. *Id.* at 781-83. It therefore ordered that the functions and positions of the Treasurer transferred to the Department of Finance "be returned to the Treasurer and the funds appropriated to the Department of Finance for such transferred functions and positions are to be added to the appropriation of the State Treasurer's Office for the fiscal year 1987." *Id.* at 783.

Mattson applies with equal force to this case. The Supreme Court noted that even though certain functions of the State Treasurer were preserved, the office "now stands as an empty shell." *Id.* at 782. In the absence of funding after June 30, 2011, the executive branch constitutional officials — the Governor, Lieutenant Governor, Attorney General, Secretary of State and State Auditor — would have no ability to operate and would effectively be nullified. The absence of funding would therefore "strip [the executive branch offices] of all [their] independent core functions" as certainly as the legislative enactment did in *Mattson*. *See id.* *See also Executive Branch Core Functions Order 2011*, App. 15, ¶ 3 (holding that "[f]ailure to fund these independent core functions, even

temporarily, nullifies these constitutional offices, which in turn contravenes the Minnesota Constitution").

Mattson also makes clear that the judiciary is the branch of state government to adjudicate such disputes. The involved constitutional officers do not unilaterally declare such rights. *See, e.g.*, 391 N.W.2d at 778, note 1 (citing Article VI, Section 2 of the State Constitution and recognizing the Court's remedial authority) and 783 (ordering that funds appropriated to the Department of Finance be transferred to the State Treasurer's Office). *See also Judicial Branch Core Functions Order 2011*, Supplemental Record at 1-7 (adjudicating the continued funding of the judicial branch of government in the absence of appropriations). Indeed, in our system of government, the judiciary is responsible for determining the rights and duties of each branch of government and the respective constitutional officers. *See, e.g.*, *Minnesota State Bd. of Health*, 308 Minn. at 40 n.5, 241 N.W.2d at 633 n.5 ("'[i]t is emphatically the province and duty of the judicial department to say what the law is.'") (quoting *Marbury v. Madison*, 5 U.S. 137 (1 Cranch. 137), 2 L. Ed. 60 (1803)); *Petition for Integration of Bar of Minnesota*, 216 Minn. at 199, 12 N.W.2d at 518 ("The supreme court is . . . the final authority and last resort in the protection of the human, political, and property rights guaranteed by the constitution"); *In re McConaughy*, 106 Minn. at 416, 119 N.W. at 417 ("[T]he judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.").

B. This Court's Decision In *Lyon County* Also Supports The Conclusion That The Core Functions Of The Executive Branch Continue In The Absence Of Appropriation, And The Court Has The Authority To Grant Such Relief.

Similar to *Mattson,* this Court in *Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs*, 308 Minn. 172, 241 N.W.2d 781 (1976) observed as follows:

> Obviously, the legislature could seriously hamper the court's power to hear and decide cases or *even effectively abolish the court itself* through its exercise of financial and regulatory authority. If the court has no means of protecting itself from unreasonable and intrusive assertions of such authority, *the separation of powers becomes a myth.*

308 Minn. at 177, 241 N.W.2d at 784 (emphasis added). The Court also acknowledged that any relief necessitated by "intrusive assertions of such authority" must be obtained through an "independent judicial proceeding," *id.* at 177, 181, 241 N.W.2d at 784, 786, presided over by "an impartial and disinterested district court" which makes findings of fact and conclusions of law and "orders appropriate relief." *Id.* at 181, 241 N.W.2d at 786.

Accordingly, like *Mattson* and the district court's order, *Lyon County* prohibits one branch of government from "effectively abolishing" another. It also makes clear that it is the judicial branch that adjudicates any such claims.

C. Decisions From Other States, As Well As The United States Supreme Court, Also Support Continuation Of Executive Branch Core Functions.

The *Mattson* and *Lyon County* opinions are consistent with decisions in other states. *See, e.g., Halvorson v. Hardcastle*, 163 P.3d 428, 439-40 (Nev. 2007) (finding that each branch of government has, "by virtue of its mere constitutional existence," the

inherent authority to carry out its basic functions); *46th Circuit Trial Court v. County of Crawford*, 719 N.W.2d 553, 560 (Mich. 2006) (holding that separation of powers requires that each branch of government must be allowed adequate resources to carry out its constitutional responsibilities); *Case v. Lazben Fin. Co.*, 121 Cal. Rptr. 2d 405, 415 (Cal. Dist. Ct. App. 2002) (recognizing the legislature cannot act to defeat or impair another branch's exercise of its constitutional power or the fulfillment of its constitutional function); *Williams v. State Legislature of the State of Idaho,* 111 Idaho 156, 722 P.2d 465 (1986) (concluding that legislature cannot eliminate core functions of state auditor); *Bd. of Elementary & Secondary Educ. v. Nix*, 347 So.2d 147, 155 (La. 1977) (holding that legislature may not prevent a branch of government from performing its constitutional function); *Jones v. State*, 803 S.W.2d 712, 715–16 (Tex. Crim. App. 1991) (recognizing the legislature violates the separation of powers doctrine if it unduly interferes with another branch); *O'Coin's, Inc. v. Treasurer of County of Worcester*, 287 N.E.2d 608, 612 (Mass. 1972) (finding that the legislature, through the exercise of its powers, may not prevent another branch from fulfilling its constitutional responsibilities) (quoted in *Lyon County*); *Thompson v. Legislative Audit Comm'n*, 448 P.2d 799, 801-02 (N.M. 1968) (holding legislature cannot abolish the core functions of the constitutional office of state auditor); *Hudson v. Kelly*, 263 P.2d 362, 368-69 (Ariz. 1953) (holding legislature cannot effectively abolish the constitutional office of state auditor by denuding it of all its inherent powers and duties) (quoted in *Mattson*); *Am. Legion Post No. 279 v. Barrett*, 20 N.E.2d 45, 51 (Ill. 1939) (recognizing constitutional officers have core powers and duties implied from the nature of their prescribed offices, which the

legislature may not take away) (quoted in *Mattson*); *Ex Parte Corliss*, 114 N.W. 962, 965 (N.D. 1907) (denying the legislature the "power to strip [constitutional] offices, even temporarily, of a portion of their inherent functions and transfer them to officers appointed by central authority.") (quoted in *Mattson*); *Morris v. Glover*, 49 S.E. 786 (Ga. 1905) (finding that legislature cannot expressly abolish the office of county treasurer and cannot indirectly accomplish the same result by transferring its duties to another office).

The *Mattson* and *Lyon County* decisions are also supported by long-standing U.S. Supreme Court precedent, which recognizes that the principle of separation of powers requires that each co-equal branch of government be free from control by the other branches. "The general rule is that neither department (of government) may . . . control, direct or restrain the action of the other." *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S. Ct. 597, 601 (1923). *See also O'Donoghue v. United States*, 289 U.S. 516, 530, 53 S. Ct. 740, 743 (1933) ("[E]ach department should be kept completely independent of the others-independent not in the sense that they shall not cooperate to the common end of carrying into effect the purposes of the Constitution, but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to the coercive influence of either of the other departments."); *Humphrey's Executor v. United States*, 295 U.S. 602, 629-30, 55 S. Ct. 869, 874 (1935) ("The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly

open to serious question. So much is implied in the very fact of the separation of the powers . . . .").[11]

D. Petitioners' Interpretation Of The Appropriation Clause Improperly Ignores The Remainder Of The Minnesota Constitution.

Petitioners' argument relies on the language of the appropriation clause, but ignores other relevant constitutional provisions. (Petition at 51). As *Mattson* held, other pertinent provisions of the State Constitution must also be given meaning. *Mattson*, 391 N.W.2d at 782 (stating Article V, Section 1 of the Minnesota Constitution "implicitly places a limitation on the power of the legislature," which "prevent[s] the legislature from abolishing all of the independent functions inherent in an executive office."); at 783 ("We must give meaning to Section 1 of Article V as well as Article IX."). *See also Lyon County*, 308 Minn. at 177, 241 N.W.2d at 784 (recognizing that legislature cannot "effectively abolish the court itself through its exercise of financial and regulatory authority."); *State ex rel. Mathews v. Houndersheldt,* 151 Minn. 167, 170-71, 186 N.W. 234, 236 (1922) ("The constitution must be read as a whole so as to harmonize its various

[11] In *Sviggum v. Hanson*, 732 N.W.2d 312 (Minn. Ct. App. 2007), a group of legislators petitioned for a writ of *quo warranto* challenging the constitutionality of the Commissioner of Finance's disbursement of funds pursuant to the district court's Order in *Executive Branch Core Functions Order 2005*. The court found the remedy of *quo warranto* to be inapplicable because the legislature had retroactively appropriated funds for the Commissioner's disbursements. *Id.* at 320 (holding that "*quo warranto* cannot be used to challenge the constitutionality of completed disbursements of public funds."). The court therefore declined to reach the merits, but stated that the legislature could avoid future judicial intervention to fund core services of a coordinate branch of government by enacting legislation to address potential future budget impasses. *Id.* at 323. As recognized by the district court in this case, the Legislature had not done so. *Executive Branch Core Functions Order 2011*, App. 4, ¶ 13.

parts."); *State ex rel. Chase v. Babcock,* 175 Minn. 103, 107, 220 N.W. 408, 410 (1928) (recognizing that constitution must "receive a practical, common sense construction.").

For example, the Constitution explicitly requires that the constitutional officers faithfully execute the law. *See, e.g.,* Minn. Const. art. V, § 3 (stating Governor "shall take care that the laws be faithfully executed"), § 6 (requiring constitutional officers to take an oath of office "to support the constitution of the United States and of this state and to discharge faithfully the duties of [their] office[s]"). The plain and literal language of these provisions require the faithful execution of the law without any qualification for the absence of appropriations. Article I, Section 1 of the Minnesota Constitution further provides for the "security, benefit and protection of the people," again without reference to an exception if no appropriation exists. Accordingly, and as the Court did in *Mattson,* 391 N.W.2d at 781-83 (harmonizing three different unambiguous constitutional provisions), the Constitution must be construed to determine the drafters' intent.

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

with a "literalness that would undermine [their] ultimate constitutional objective as illuminated by history.").

In addition, "[t]he rules applicable to the construction of statutes are equally applicable to the constitution," *Clark v. Ritchie,* 787 N.W.2d 142, 146 (Minn. 2010) (citing *Houndersheldt,* 151 Minn. at 170, 186 N.W. at 236). The Court therefore presumes that the framers of the Constitution did "not intend a result that is absurd, impossible of execution or unreasonable." Minn. Stat. § 645.17(1); *see, e.g., Minnesota Baptist Convention v. Pillsbury Acad.*, 246 Minn. 46, 57, 74 N.W.2d 286, 294 (1955) (rejecting an "absurd" construction of the Minnesota Constitution).

1. A proper construction of the State Constitution requires a continuing state government and not a lawless society.

It is apparent that the drafters of the Minnesota Constitution did not intend a lawless society and no functioning state government in the absence of appropriations. *See supra* at 9-15. For example, as discussed *supra* at 9-11, a full shutdown of state government would severely impact public safety; among other things, criminals, sexual predators, and those committed because they are mentally ill and dangerous would either be left unattended and uncared for, or released. A full shutdown would similarly impact citizens' health and human dignity; for example, disabled veterans and individuals with developmental disabilities who are cared for in State facilities would be discharged or left to fend for themselves. See *supra* at 11-12. These results could not have been intended by the drafters of the Minnesota Constitution.

Temporary funding by court order effectuates the drafters' intent of a continuing government whose object is the "security, benefit and protection of the people," until the current budget impasse is resolved. Accordingly, like in *Mattson*, Article V, section 1 implicitly places a limitation on the appropriation authority when the absence of appropriations would otherwise prevent the Article V constitutional officers from performing their core functions.

Numerous court decisions have similarly construed state constitutions to effectuate their purpose and intent. *See, e.g.*, *46th Circuit Trial Court*, 719 N.W.2d at 560 ("Although the allocation of resources through the appropriations . . . authorit[y] lies at the heart of the *legislative* power . . . in those rare instances in which the legislature's allocation of resources impacts the ability of [another] branch to carry out its constitutional responsibilities, what is otherwise exclusively a part of the legislative power becomes, to that extent, a part of the [co-ordinate branch's] power."); *Williams*, 722 P.2d at 470 (construing the Idaho Constitution and framers' intent as prohibiting the legislature from reducing appropriations to a constitutional officer below the level necessary to carry out his core functions); *Nix*, 347 So.2d at 155 (holding legislature's reduction of education board's staff deprived board of its ability to perform its core functions and therefore was an unconstitutional violation of the separation of powers); *Thompson*, 448 P.2d at 801-02 (construing New Mexico Constitution and finding framers could not logically have intended legislature to abolish a constitutional office; thus, legislature's attempt to strip state auditor of core functions and reduce salary to $1.00 was unconstitutional); *Hudson*, 263 P.2d at 366-69 (construing Arizona Constitution and

finding, by creating constitutional office of state auditor, the framers intended certain core functions to be performed by that office, which implicitly limited the legislature's power to transfer or abolish those core functions); *Ex Parte Corliss*, 114 N.W. at 964-65 (construing North Dakota Constitution and finding framers intended to implicitly restrict the legislature's authority to strip constitutional offices of their core functions by titling the offices); *Morris*, 49 S.E. at 787 (recognizing framers of Georgia Constitution established separate and distinct constitutional offices and never contemplated legislature had the power to render such offices an empty shell); *Love v. Baehr*, 47 Cal. 364, 367-68 (Cal. 1874) (holding framers of the California Constitution intended to implicitly limit legislature's power to prescribe the duties of the constitutional officers by the title given to the different constitutional offices, and where the legislature has "manifestly transcended" its authority, it is the duty of the court to enforce the Constitution) (quoted in *Mattson*). *See also Fletcher v. Commonwealth of Kentucky*, 163 S.W.3d 852, 866-69 (Ky. 2005) (invalidating governor's executive order appropriating funds, but holding that certain executive branch functions must be funded by the state treasurer even in the absence of a legislative appropriation); *id.* at 876-877 (Lambert, Chief Justice, concurring and dissenting in part) (stating the Kentucky Constitution "must be interpreted to further its purpose of supporting the endurance of a representative republic" and "[a]llowing the General Assembly to control the executive by way of the appropriations clause strikes at the heart of the purpose of separation of powers . . . . The logical extension of such an idea would be the destruction of government.").

2. The appropriation clause cannot be read in isolation.

Petitioners apparently argue that the Court must consider the appropriation clause in isolation because it is unambiguous. (Petition at 54-55). As noted above, such an argument is contrary to *Mattson*, which did not simply apply the unambiguous language of Article V, Section 4, but also gave meaning to the other pertinent provisions of the Constitution. 391 N.W.2d at 781-83. *See also Lyon County*, 308 Minn. at 177, 241 N.W.2d at 784 (stating one branch of government cannot "effectively abolish" another). Petitioners' argument is also contradicted by their own admission that some executive branch functions must continue to be funded after June 30, 2011, even if no appropriation is in place. (See Petition 41-48) (acknowledging that State funds may be paid to effectuate the mandates of the Minnesota Constitution and federal law, even in the absence of an appropriation).

In addition, the constitutional requirement imposed on the executive branch constitutional officers to faithfully execute the law or faithfully discharge their duties is itself unambiguous, and should therefore be given its literal meaning according to Petitioners' own argument. As discussed above, a proper application of the competing provisions of the Constitution fully supports the Attorney General's position. *See also Wulff v. Tax Court of Appeals,* 288 N.W.2d 221, 223 (Minn. 1979) ("Notwithstanding the separation of powers doctrine, there has never been an absolute division of governmental functions in this country, nor was such even intended.").

Moreover, even an unambiguous provision of the Constitution cannot be applied in a manner that creates an absurd result. *See, e.g., Olson v. Ford Motor Co.,* 558

N.W.2d 491, 494 (Minn. 1997) (stating that when "the literal meaning of the words of a statute would produce an absurd result, we have recognized our obligation to look beyond the statutory language to other indicia of legislative intent"); *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 643 (Minn. 1979) (stating courts must be guided by the "fundamental principle that "in interpreting a statute, form should not be exalted over substance and literal constructions should not override the general policy and objectives of the law."); *Kellerman v. City of St. Paul,* 211 Minn. 351, 353, 1 N.W.2d 378, 379-80 (1941) ("although it is true that if the meaning of a statute is plain there is ordinarily no room for construction . . . it is equally true that the legislature should not be taken to intend absurd or contradictory consequences."); *Taylor v. Taylor,* 10 Gil. (Minn.) 81, 88-89, 1865 WL 940 at *6 (1865) (rejecting the plain meaning of a provision of the Minnesota Constitution because it "leads to such practical inconvenience, hardship, and absurdity, we cannot believe it to be in accordance with the spirit and meaning of that instrument" and instead interpreting the provision in accordance with the intention and meaning of the framers).

E. *Fletcher* Also Supports the District Court's Order.

Petitioners do not even discuss *Mattson* or *Lyon County,* or the many cases from other states and the United States Supreme Court cited by the Attorney General that support her Petition. They do refer, in passing, to *Fletcher v. Commonwealth of Kentucky*, 163 S.W.3d 852 (Ky. 2005). As noted above, *Fletcher* also supports the Attorney General's position.

In *Fletcher,* the Governor of Kentucky issued an executive order appropriating funds to continue the performance of his executive branch functions. The court held that "[w]e reject the proposition that a Governor can unilaterally declare an emergency and spend unappropriated funds to resolve it." *Id.* at 871. However, the court decided, as the Attorney General asserts here, that services required under the state constitution or pursuant to a federal mandate must be provided even in the absence of an appropriation.[12] *Id.* at 867 (stating that "constitutional mandates must be implemented") and 868 (stating supremacy clause "requires compliance with any valid federal mandate.")

In a concurring and dissenting opinion, Kentucky Chief Justice Joseph E. Lambert concluded that other services of government must also be funded because "the people's business must continue" even in the absence of appropriations. *Id.* at 879. Chief Justice Lambert's opinion reasoned in part:

> [T]he question presented has been *considered by other jurisdictions*, and in limited circumstances the appropriations power has given way to other compelling interests *when a strict adherence to the literal language would violate separation of powers*. It has been said that the constitution is *not a suicide pact*, and must be interpreted to further its purpose of supporting the *endurance of a representative republic*. Allowing the General Assembly to control the executive by way of the appropriations clause *strikes at the heart of the purpose of separation of powers*, especially in Kentucky where it is overwhelmingly expressed in Sections 27 and 28 of the Constitution. *The logical extension of such an idea would be destruction of government.*

Id. at 877 (emphasis added). Chief Justice Lambert stated further:

> So the principle by which the Governor may spend unappropriated funds—those which are required by the constitution but may not be properly deemed constitutional appropriations—is in the performance of his

[12] The court also acknowledged that statutory "self-executing appropriations" must continue. *Fletcher*, 163 S.W.2d at 866.

> *constitutional obligation to see that the laws are faithfully executed.* This result is consistent with the purpose, history, and spirit of the appropriations clause; fulfillment of separation of powers principles *by not allowing the legislature to handcuff the other branches of government*; and the role of government in promoting *the advancement of a representative republic to secure the liberty of the people.*

Id. at 878 (emphasis added).

In reaching its decision, *Fletcher* also held that the court has the authority to adjudicate the constitutionality of the governor's action. *Id.* at 859 (rejecting political question argument).

The Minnesota Constitution was drafted to effectuate the operation of government. Indeed, the first operative sentence of the Minnesota Constitution states, under the provision entitled "Object of Government," that the State "[g]overnment is instituted for the security, benefit and protection of the people." Minn. Const. art. I, § 1. A contrary construction is not only inconsistent with *Mattson* and *Lyon County*, but is also unsupported by basic principles of constitutional interpretation. The constitutional mandate that the executive branch act to protect the rights of the citizens of the State of Minnesota must be given meaning, and the rights of the citizens must be protected.

The five executive branch constitutional officers must be able to perform their respective core functions in the absence of appropriations. *See, e.g.*, *Mattson*, 391 N.W.2d at 782-83; *Lyon County*, 308 Minn. at 177, 241 N.W.2d at 784. The judicial branch has the authority to resolve disputes regarding these core functions, and the appointment of a Special Master is appropriate to assist the Court in this regard. *See Executive Branch Core Functions Order 2011*, App. 12, ¶ 35 (recognizing a Special

Master "creates an orderly process to resolve requests for, or objections to, funding," thereby promoting judicial economy and efficiency as well as preventing the necessity of adjudicating multiple individual lawsuits).

CONCLUSION

For the above reasons, the Court should deny the petition for *quo warranto*.

Dated: July 18, 2011

Respectfully submitted,

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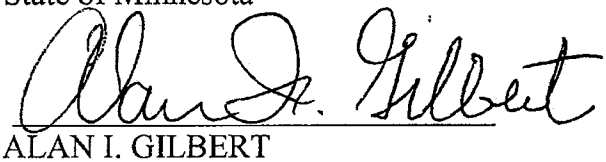

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