

No. A04-1538

STATE OF MINNESOTA
IN SUPREME COURT

In re the Marriage of:

Darlene Gerber,
Respondent,

vs.

John Truman Gerber,
Respondent,

County of Anoka,
Appellant.

**MINNESOTA DEPARTMENT OF HUMAN SERVICES'
AMICUS BRIEF**

DARLENE GERBER
nka Darlene Nelson
2821 Cutters Grove, #112
Anoka, MN 55303

RESPONDENT *PRO SE*

ROBERT A. HOWARD
Atty. Reg. No. 17595X
Hicken, Scott & Howard, P.A.
300 Anoka Office Center
2150 Third Ave. No.
Anoka, MN 55303
(763) 421-4110

MIKE HATCH
Attorney General
State of Minnesota

ERIKA SCHNELLER SULLIVAN
Assistant Attorney General
Atty. Reg. No. 0288056
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 296-1427 (Voice)

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF HUMAN
SERVICES

ATTORNEY FOR RESPONDENT
JOHN TRUMAN GERBER

(List of counsel continued on next page)

ROBERT M.A. JOHNSON
Anoka County Attorney

BETHANY A. FOUNTAIN LINDBERG
Assistant Anoka County Attorney
Atty. Reg. No. 276637
Anoka County Government Center
2100 Third Ave., 7th Floor
Anoka, MN 55303
(763) 323-5671

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
LEGAL ISSUES.....	1
INTEREST OF THE DEPARTMENT OF HUMAN SERVICES	2
STATEMENT OF THE CASE AND OF THE FACTS	2
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT	4
I. STATUTORY BACKGROUND.....	4
II. THE COURT OF APPEALS’ DECISION THAT INCOME WITHHOLDING IS A JUDICIAL REMEDY IS AT ODDS WITH THE EXPLICIT LANGUAGE AND PURPOSE OF THE FEDERAL LAWS THAT GOVERN MINNESOTA’S CHILD SUPPORT PROGRAM.....	5
A. Federal IV-D Laws Require Use Of Income Withholding Without The Need For Judicial Action.	5
B. The Legislative History Of The Federal Withholding Requirement Confirms The Importance Of Income Withholding As A Non- Judicial Remedy.	8
III. MINNESOTA’S STATUTORY INCOME WITHHOLDING PROCESS FOLLOWS THE FEDERAL MANDATE THAT INCOME WITHHOLDING BE A NON-JUDICIAL REMEDY.....	11
IV. THE COURT OF APPEALS’ DECISION THAT INCOME WITHHOLDING IS A JUDICIAL REMEDY IS AT ODDS WITH THIS COURT’S PREVIOUS DECISIONS CONCERNING THE DISTINCTION BETWEEN JUDICIAL AND ADMINISTRATIVE REMEDIES.	15
V. THE COURT OF APPEALS’ RULING THAT INCOME WITHHOLDING IS SUBJECT TO THE STATUTE OF LIMITATIONS WILL ADVERSELY IMPACT THE COLLECTION OF PAST DUE CHILD SUPPORT ACROSS MINNESOTA.....	21

CONCLUSION 23

TABLE OF AUTHORITIES

	Page
STATE CASES	
<i>Bednarek v. Bednarek</i> , 430 N.W.2d 9 (Minn. Ct. App. 1988)	18
<i>Donaldson v. Chase Securities Corp.</i> , 13 N.W. 1 (Minn. 1943).....	15
<i>Har-Mar v. Thorsen</i> , 218 N.W.2d 751 (Minn. 1974).....	passim
<i>In re Daniel's Estate</i> , 294 N.W. 465 (Minn. 1940).....	15
<i>Martin v. City of Rochester</i> , 642 N.W.2d 1 (Minn. 2002).....	11
<i>Muirhead v. Johnson</i> , 46 N.W.2d 502 (Minn. 1951).....	17
<i>State v. Kaml</i> , 233 N.W. 802 (Minn. 1930).....	15
<i>Wage and Hour Violations of Holly Inn, Inc.</i> 386 N.W.2d 305 (Minn. Ct. App. 1986)	18
FEDERAL CONSTITUTION, STATUTES AND RULES	
42 U.S.C.A. §§ 601-619 (2003)	4
42 U.S.C.A. §§ 602(a)(2) (2003).....	4
42 U.S.C.A. §§ 651-669b (2003)	4
42 U.S.C.A. § 654 (2003).....	4, 5
42 U.S.C.A. § 654(4)(A) (2003)	5
42 U.S.C.A. § 655(a) (2003)	4

42 U.S.C.A. § 666(a)(1)(A) (2003)	6
42 U.S.C.A. § 666(b)(1) (2003)	6
42 U.S.C.A. § 666(b)(2) (2003)	1, 7
42 U.S.C.A. § 666(b)(3)(A) (2003)	7
42 U.S.C.A. § 666(b)(3)(B) (2003)	7
42 U.S.C.A. § 666(b)(4)(A) (2003)	8
42 U.S.C.A. § 666(c) (2003)	8
45 C.F.R. § 300.100(d)(4) (2004)	8
45 C.F.R. § 301.1 (2004)	6
45 C.F.R. § 301.10 (2004)	4
45 C.F.R. § 302.31(a) (2004)	5
45 C.F.R. § 302.33(a)(1)(i) (2004)	5
45 C.F.R. § 303.100(a)(2) (2004)	6
45 C.F.R. § 303.100(a)(4) (2004)	7
45 C.F.R. § 303.100(a)(7)(i) (2004)	6
45 C.F.R. § 303.100(g) (2004)	7

STATE CONSTITUTION, STATUTES AND RULES

1987 Minn. Laws ch. 403, art. 3, § 82	14
1999 Minn. Laws ch. 196, art. 1, § 2	13
1999 Minn. Laws ch. 196, art. 1, § 7	13
2005 Minn. Laws ch. 98, art. 1, § 23	12
1997 Minn. Laws ch. 245, art. 1 § 27	14
Minn. Stat. § 256.01, subd. 2 (2004)	2

Minn. Stat. § 256J.01, subd. 2 (2004)	4
Minn. Stat. § 484.702 (2004)	13
Minn. Stat. § 518.5513, subd. 5 (2004).....	12
Minn. Stat. § 518.5513, subd. 5(a) (2004)	13
Minn. Stat. § 518.5513, subd. 5(a)(5) (2004).....	1, 12, 19
Minn. Stat. § 518.5513, subd. 5(a)(7) (2004).....	1, 13, 19
Minn. Stat. § 518.5852 (2004)	2
Minn. Stat. § 518.6111 (2004)	2
Minn. Stat. § 518.6111, subd. 2 (2004).....	1
Minn. Stat. § 518.6111, subd. 3 (2004).....	1, 12, 19
Minn. Stat. § 518.6111, subd. 7 (2004).....	1, 19, 20
Minn. Stat. § 518.6111, subd. 7(b) (2004)	12
Minn. Stat. § 518.6111, subd. 8 (2004).....	20
Minn. Stat. § 518.6111, subd. 10(c) (2004)	1, 14, 19
Minn. Stat. § 518.615, subd. 3 (2004).....	22
Minn. Stat. § 518.6195(a) (2004)	14
Minn. Stat. § 518.6195(b) (2004).....	14
Minn. Stat. § 541.04 (2004)	1, 19, 20
Minn. Stat. § 548.091, subd. 3b (2004).....	20
Minn. Stat. § 645.45(2) (2004).....	17
Minn. R. Civ. App. P. 129.03.....	2

MISCELLANEOUS

H.R. Rep. No. 98-527 (1983) 9, 10

S. Rep. No. 98-387 (1984) 11, 21

Minn. Dep't of Human Servs., Child Support in Minnesota:
Facts and Figures 1 (2005)..... 4

Research Dep't, Minn. House of Representatives, TANF Background 2 (2001) 5

LEGAL ISSUES

Where federal and state law specifically mandate that income withholding to collect child support be an administrative enforcement remedy that does not require additional judicial action, did the trial court properly find that Minnesota's ten-year statute of limitations for actions on judgments did not apply to Anoka County's attempt to collect approximately \$90,000 in past due child support?

The trial court ruled that income withholding is an administrative remedy that is not subject to the ten-year statute of limitations for actions on judgments found in Minnesota Statutes section 541.04.

The Minnesota Court of Appeals reversed, holding that income withholding to collect child support requires judicial action and is therefore subject to the statute of limitations.

42 U.S.C.A. § 666(b)(2)(2003).

Minn. Stat. § 518.6111, subds. 2, 3, 7, 10(c) (2004).

Minn. Stat. § 518.5513, subd. 5(a)(5), (7) (2004).

Har-Mar v. Thorsen, 218 N.W.2d 751 (Minn. 1974).

INTEREST OF THE DEPARTMENT OF HUMAN SERVICES

The interest of the Department of Human Services (“Department”) in this matter is public in nature. The Department is responsible for supervision of the Minnesota child support program, the administration of the state payment center that processes all income withholding in the state, and the establishment of state child support policies and procedures that comply with federal and state requirements. *See* Minn. Stat. §§ 256.01, subd. 2 (2004); 518.6111 (2004); 518.5852 (2004). As such, the Department has an interest in furthering state and federal policies of strengthening the effective and efficient collection of child support through administrative procedures including income withholding.¹ If the court of appeals decision is not reversed, the state may be prevented from collecting over fifty million dollars in past due child support owed to families across the state.

STATEMENT OF THE CASE AND OF THE FACTS

The Department concurs with and adopts the Statement of the Case and Statement of Facts as set forth in Petitioner Anoka County’s brief.

SUMMARY OF THE ARGUMENT

The court of appeals’ decision should be reversed because it conflicts with federal statutory requirements for state child support programs, is inconsistent with prior decisions of this Court regarding the survival of non-judicial remedies, and will

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the Department and its counsel certify that this brief was authored entirely by counsel for the amici and that no person or entity other than the amici made a monetary contribution to the preparation or submission of the brief.

negatively impact thousands of Minnesota families by barring the effective collection of their child support arrearages through income withholding. In ruling that income withholding is a judicial remedy subject to the statute of limitations, the appellate court failed to fully consider the federal and state statutory schemes governing child support collection in Minnesota. As a condition of federal funding, states are required to enact statutes that implement income withholding to collect child support *without* requiring judicial authorization for withholding. Minnesota has enacted statutory withholding processes in compliance with federal law. Both the text and purpose of federal and state withholding statutes clearly establish an intent to authorize income withholding as a non-judicial, administrative collection remedy.

Moreover, it is a settled principle of state law that statutes of limitation on actions limit the availability of *judicial* remedies, but do not affect the availability of *non-judicial, administrative* remedies. The appellate court's decision differed from this Court's established analysis regarding the determination of whether a remedy is judicial, and subject to the statute of limitations, or is non-judicial, and therefore exempt.

Finally, the court of appeals ruling, if allowed to stand, will negatively impact the State's ability, through county child support agencies, to collect over fifty million dollars in past due support owed to thousands of families across Minnesota. Such a result unfairly rewards those who successfully evade their financial obligations at the expense of their children. The court of appeals' determination that withholding is a judicial remedy subject to the statute of limitations should therefore be reversed.

ARGUMENT

I. STATUTORY BACKGROUND.

Minnesota receives federal funds to operate its child support program pursuant to the federal requirements of Title IV-D of the Social Security Act. *See* 42 U.S.C.A. §§ 651-669b (2003).² Federal funding is conditioned on the State's operation of a program pursuant to a federally approved state plan that complies with federal child support laws. *See* 45 C.F.R. § 301.10 (2004); *see also* 42 U.S.C.A. § 654 (2003) (setting forth state plan requirements). Federal funds received by the State account for more than half of the cost of operating Minnesota's child support program. *See* 42 U.S.C.A. § 655(a) (2003).³

Operating a IV-D child support program consistent with federal requirements is also a condition of receiving federal funding for the State's Temporary Assistance to Needy Families ("TANF") program. *See* 42 U.S.C.A. §§ 602(a)(2), 651-669b (2003).⁴ Accordingly, the failure to comply with federal IV-D requirements may result in the loss of federal funds that support both the IV-D child support program and the TANF

² Child support services provided under Title IV-D of the Social Security Act are commonly referred to as "IV-D services."

³ In 2004, total expenditures for Minnesota's child support program totaled \$144 million. Federal funding accounted for approximately 75 percent of this amount. *See* Minn. Dep't of Human Servs., Child Support in Minnesota: Facts and Figures 1 (2005), available at http://www.dhs.mn.us/main/groups/publications/documents/pub/DHS_id_005308.pdf.

⁴ TANF provides block grants to states to meet that subsistence needs of low income families with children. *See* 42 U.S.C.A. §§ 601-619 (2003). The federal TANF block grant program replaced the Aid to Families with Dependent Children program in 1996. In Minnesota, the TANF program is known as the Minnesota Family Investment Program ("MFIP"). *See* Minn. Stat. § 256J.01, subd. 2 (2004).

program.⁵ Without this funding, the State would be required to replace this funding source for both programs or reduce available services and benefits.

II. THE COURT OF APPEALS' DECISION THAT INCOME WITHHOLDING IS A JUDICIAL REMEDY IS AT ODDS WITH THE EXPLICIT LANGUAGE AND PURPOSE OF THE FEDERAL LAWS THAT GOVERN MINNESOTA'S CHILD SUPPORT PROGRAM.

The court of appeals' decision failed to consider the federal statutory scheme that shapes the state child support program's withholding laws and procedures. Both the text and legislative history of the federal laws that govern withholding for child support show a clear intent to *mandate* the use of income withholding as a non-judicial, administrative collection remedy.

A. Federal IV-D Laws Require Use Of Income Withholding Without The Need For Judicial Action.

Federal law requires states to provide a broad array of child support services related to the establishment, modification and enforcement of child support orders under an approved state plan. *See* 42 U.S.C.A. § 654 (2003). States must provide child support services for children who receive certain forms of public assistance, and for any other child for whom the state receives an application for child support services. *See* 42 U.S.C.A. § 654(4)(A) (2003); 45 C.F.R. § 302.31(a) (2004); 45 C.F.R. § 302.33(a)(1)(i) (2004).

⁵ Minnesota's federal TANF block grant is approximately \$267.2 million per year. *See* Research Dep't, Minn. House of Representatives, TANF Background 2 (2001), available at <http://www.house.leg.state.mn.us/hrd/pubs/tanfbkgd.pdf>.

In addition, to satisfy state plan requirements,

each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, *to increase the effectiveness of the program which the State administers under this part . . . [including] . . . [p]rocedures . . . for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.*

42 U.S.C.A. § 666(a)(1)(A) (2003) (emphasis added).

This federal law mandates that Minnesota's income withholding processes ensure that "[i]n the case of each noncustodial parent against whom a support order is or has been issued or modified in the state, and is being enforced under the State plan, so much of the parent's income must be withheld . . . as is necessary to comply with the order. . . ."

42 U.S.C.A. § 666(b)(1) (2003).

The federal requirement for withholding applies to the collection of both ongoing child support obligations and past due child support payments. The amount of income withheld from the non-custodial parent's wages must be sufficient to cover the amount of support ordered for ongoing support, and must also "include an amount to be applied toward liquidation of overdue support."⁶ 45 C.F.R. § 303.100(a)(2) (2004). Withholding terminates when "there is no longer a current order for support and all arrearages have been satisfied." 45 C.F.R. § 303.100(a)(7)(i) (2004). The only circumstances in which income withholding may be waived are where a party demonstrates, and a court or

⁶ "Overdue support" is defined in federal regulation as " a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child" 45 C.F.R. § 301.1 (2004)

administrative tribunal finds, good cause not to require immediate withholding, or where the parties agree in writing to an alternative arrangement. *See* 42 U.S.C.A. § 666(b)(3)(A) (2003). Even if a good cause exception is granted, however, the non-custodial parent's income must still become subject to withholding on the date that support payments become delinquent. *See* 42 U.S.C.A. § 666(b)(3)(B) (2003).

Federal law is absolutely clear that, once a child support obligation has been ordered, states must undertake income withholding without the need for additional judicial action. State withholding procedures must provide that “such withholding must occur *without the need for any amendment to the support order involved or for any further action . . . by the court or other entity which issued such order.*” 42 U.S.C.A. § 666(b)(2) (2003) (emphasis added). *See also* 45 C.F.R. § 303.100(a)(4) (2004) (reiterating requirement that withholding must occur “without the need for any amendment to the support order involved *or any other action* by the court or entity that issued it . . .”) (emphasis added). Withholding must occur regardless of whether the order establishing the support obligation contains a withholding provision. *See* 45 C.F.R. § 303.100(g) (2004) (while “[c]hild support orders issued or modified in the State . . . must have a provision for withholding [t]his requirement does not alter the requirement . . . that enforcement under the State plan must proceed *without the need for a withholding provision in the order*”) (emphasis added).

The mandatory and administrative nature of income withholding is further evidenced in the federal law requiring that states create expedited procedures for child

support collection, and in the limited grounds allowed to challenge withholding. Federal law requires that the state have in effect laws establishing expedited procedures

which give the State agency the authority to take the following actions relating to . . . establishment, modification or enforcement of support orders, *without the necessity of obtaining an order from any other judicial or administrative tribunal: . . .*

F. Income Withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section . . .

H. For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages . . .

42 U.S.C.A. § 666(c) (2003) (emphasis added). Expedited procedures are subject to due process safeguards including the right to challenge the administrative action. However, the non-custodial parent may only challenge income withholding in certain circumstances “on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.” 42 U.S.C.A. § 666(b)(4)(A) (2003); *see also* 45 C.F.R. § 300.100(d)(4) (2004) (stating that the non-custodial parent must be notified that “*the only basis for contesting the withholding is a mistake of fact*”).

B. The Legislative History Of The Federal Withholding Requirement Confirms The Importance Of Income Withholding As A Non-Judicial Remedy.

In addition to the clear language of the federal withholding statutes, Congress’s intent to require income withholding without the need for additional judicial action is further supported by the federal withholding statutes’ legislative history. The legislative history shows that Congress intended that withholding be available as a non-judicial

remedy to increase the effectiveness and efficiency of state child support collections and thereby improve the standard of living for children of unmarried or separated parents.

Congress first required that state child support programs adopt administrative income withholding procedures in 1984 to address concerns that children were suffering financial hardship from lack of support from absent parents. *See* H.R. Rep. No. 98-527, at 30 (1983) (citing census data showing that less than half of all children with child support orders receive full payments and more than one fourth receive no support at all). Federal law initially required that states implement income withholding to collect support when an absent parent became one month delinquent in making ordered support payments. Child Support Enforcement Amendments of 1984, § 3(b), 1984 U.S.C.C.A.N. (98 Stat.) 1305, 1307-08. Under the 1984 amendments, once an absent parent's support payments became delinquent, states were required to collect both child support arrearages and ongoing support. *Id.* Congress specifically mandated that such income withholding must "occur without the need for any amendment to the support order involved or for any further action . . . by the court or other entity which issued the order." *Id.*

The House and Senate reports accompanying the 1984 amendments confirm both the benefit of income withholding as a collection tool and the importance that income withholding take place *without* the need for additional judicial action. The House report noted the significance of income withholding as an efficient and economical way to

collect child support and thereby protect the standard of living of children in one parent households. The report states:

Income withholding has proven to be one of the most effective, efficient and low-cost techniques for bringing child support obligations into paying status and keeping them there. . . . Because withholding support from income is such a low cost and effective collection technique, the Committee believes that its widespread usage will result in a substantially higher rate of compliance with support obligations. It will also permit the concentration of personnel and resources on difficult cases which require more complicated and labor-intensive responses. . . .

Withholding usually brings about reliable, timely compliance with support obligations and helps to avoid lost, incomplete or delayed payments. This regularity of support payments permits the custodial parent to plan on using the payments as part of the over-all budget for supporting the child rather than reducing the standard of living and using support for occasional or unusual expenses.

H. R. Rep. No. 98-527, at 31 (1983).

The congressional reports on the 1984 amendments also establish Congress's paramount concern that income withholding be implemented without the necessity of court action to ensure prompt withholding and to avoid delay and additional expense to the custodial parent. In emphasizing that withholding must be available without the need for additional judicial action, the House report explained:

The Committee intends that States' procedures for withholding will provide prompt remedy when support orders have not been paid, *without the necessity for obligees taking additional legal steps or having to incur substantial cost or time from lost work.*

H.R. Rep. No. 98-527, at 32 (1983) (emphasis added).

The Senate report similarly states:

Withholding must occur without amendment of the order or further action by the court. The Committee believes that *this requirement is particularly crucial to the effectiveness of any income withholding provision* because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order.

S. Rep. No. 98-387, at 27 (1984) (emphasis added).

The court of appeal's ruling that income withholding is a judicial remedy is accordingly contrary to the plain language and purpose of the federal income withholding statutes. It should be reversed.

III. MINNESOTA'S STATUTORY INCOME WITHHOLDING PROCESS FOLLOWS THE FEDERAL MANDATE THAT INCOME WITHHOLDING BE A NON-JUDICIAL REMEDY.

Minnesota has complied with federal IV-D income withholding requirements by enacting statutory procedures allowing income withholding *without* the necessity of obtaining a court order that specifically authorizes withholding.⁷ The appellate court's finding that a court order is necessary to effect income withholding is accordingly at odds with both federal and state laws governing income withholding.

⁷ Minnesota's income withholding statutes should be interpreted in a manner that is consistent with the federal requirements that they implement. The State's failure to comply with the requirements of federal child support law may not only subject the State to large financial penalties, but also raises the possibility of constitutional conflict with federal law. *See Martin v. City of Rochester*, 642 N.W.2d 1, 17 (Minn. 2002) (noting the Court's obligation to construe statutes to avoid constitutional defect).

Minnesota's income withholding statute provides, in part, that

[e]very support order must address income withholding. Whenever a support order is initially entered or modified, the full amount of the support order must be subject to income withholding from the income of the obligor.

Minn. Stat. § 518.6111, subd. 3 (2004).

Minnesota's income withholding statute also includes a specific provision authorizing the public authority to initiate income withholding in the absence of a specific order for withholding. The statute provides that for "support orders that do not contain provisions for income withholding . . . withholding *shall result*" in the following circumstances:

- b) For cases in which the public authority is providing child support enforcement services to the parties, *the income withholding under this subdivision shall take effect without prior judicial notice to the obligor and without the need for judicial or administrative hearing . . . when:*
 - 1) the obligor requests it in writing to the public authority;
 - 2) the obligee or obligor serves on the public authority a copy of the notice of income withholding, a copy of the court's order, an application, and the fee to use the public authority's collection services; or
 - 3) the public authority commences withholding according to section 518.5513, subdivision 6, paragraph (a), clause (5).⁸

Minn. Stat. § 518.6111, subd. 7(b) (2004) (emphasis added).

⁸ The cross-reference in this statute to section 518.5513, subdivision 6, paragraph (a), clause (5) was apparently in error as subdivision 6 refers to information sharing and contains no subparagraphs. The error was corrected by the 2005 legislature. *See* 2005 Minn. Laws ch. 98, art. 1 § 23 (correcting citation to read "518.5513, subdivision 5, paragraph (a), clause (5)").

State law also honors the federal requirement that Minnesota have in effect expedited processes that allow the child support agency to implement withholding administratively. In 1999, the legislature authorized the Court to create an expedited child support hearing process “to handle child support and paternity matters in compliance with federal law.” 1999 Minn. Laws ch. 196, art. 1, § 2 (codified at Minn. Stat. § 484.702 (2004)). As part of the expedited process, the legislature also granted county child support agencies the authority to initiate income withholding administratively. *See* 1999 Minn. Laws ch. 196, art. 1, § 7 (codified at Minn. Stat. § 518.5513, subd. 5(a) (2004)) (stating that the agencies may “take the following actions relating to . . . establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any judicial or administrative tribunal . . . (5) order income withholding of child support under section 518.6111”)

State law not only makes a court order for withholding unnecessary to collect an *ongoing* support obligation, but it also makes such an order unnecessary to collect child support arrearages. The administrative authority of county child support agencies includes the authority to, “for the purpose of securing overdue support, increase the amount of the monthly support payments by an additional . . . 20 percent of the monthly support payment to include amounts for debts or arrearages.” Minn. Stat. § 518.5513, subd. 5(a)(7) (2004). Moreover, income withholding may be used to collect support

arrears even *after* the underlying court order that established the support obligation has expired. Minnesota's withholding statute states:

Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, *income withholding shall continue in effect or may be implemented* in an amount equal to the support order plus an additional 20 percent of the monthly child support obligation, until all arrears have been paid in full.

Minn. Stat. § 518.6111, subd. 10(c) (2004); *see also* § 518.6195(a) (2004) (emphasis added) (providing that all remedies available under chapter 518 for the collection of support (which includes administrative income withholding) apply to cases where the children are emancipated and the obligor owes past due support as of the date of emancipation).⁹

The above statutes make clear that while courts are required to address income withholding in the order that establishes the support obligation, the existence of a specific court order for withholding is not a prerequisite to initiate withholding.¹⁰ Rather, the legislature clearly intended to ensure that the remedy of income withholding would be available regardless of whether a court has specifically ordered withholding. The court of

⁹ Significantly, in enacting this law, the legislature specifically extended these collection remedies to apply retroactively to arrearages that accrued prior to the statute's enactment. Minn. Stat. § 518.6195(b) (stating "[t]his section applies retroactively to any support arrearage that accrued on or before the date of enactment and to all arrearages accruing after the date of enactment.") Accordingly, upon enactment of this provision in 1997, *all* child support arrearages became subject to administrative collection. *See* Minn. Laws 1997, ch. 245, art. 1, § 27.

¹⁰ Minnesota statutes have authorized income withholding in the absence of specific court order since 1987 for cases in which the payment of support is delinquent. *See* 1987 Minn. Laws ch. 403, art. 3, § 82.

appeals' decision failed, however, to properly consider these state law provisions, which clearly authorize income withholding as a non-judicial, administrative collection remedy in accordance with federal child support law. The court of appeals' finding that a court order is required to "authorize the remedy of wage withholding" conflicts with the federal laws setting forth the withholding requirement and with the text of the state statutes that implement the federal requirements.

IV. THE COURT OF APPEALS' DECISION THAT INCOME WITHHOLDING IS A JUDICIAL REMEDY IS AT ODDS WITH THIS COURT'S PREVIOUS DECISIONS CONCERNING THE DISTINCTION BETWEEN JUDICIAL AND ADMINISTRATIVE REMEDIES.

While the application of the statute of limitations to income withholding for child support is an issue of first impression, this Court has long recognized the principle that general statutes of limitations bar remedies, but do not otherwise extinguish the rights of the parties. *See, e.g., State v. Kaml*, 233 N.W. 802, 804 (Minn. 1930) (stating that "the statute of limitations affect[s] the remedy and not the right"); *Donaldson v. Chase Securities Corp.*, 13 N.W. 1, 4 (Minn. 1943) (recognizing that a general statute of limitations may "take away certain remedies or forms of action, but leaves the property rights of the parties unaffected"); *In re Daniel's Estate*, 294 N.W. 465, 469 (Minn. 1940) (stating that "limitations of time within which an action may be brought relates to the remedy"). Consistent with this principle, the Court has recognized that non-judicial remedies are not barred by the statute of limitations "solely because such claim[s] would be barred if asserted in an action in court." *Har-Mar v. Thorsen*, 218 N.W.2d 751, 755 (Minn. 1974). Under this principle, a non-custodial parent's underlying obligation to pay

child support clearly survives the expiration of a judgment for support. The question presented here is whether the particular remedy of income withholding is time-barred.

Although the Court has not addressed this question in the context of a child support obligation, it has addressed whether the statute of limitations applies to non-judicial, arbitration proceedings in *Har-Mar v. Thorsen*, 218 N.W.2d 751 (Minn. 1974). The court of appeals' finding that income withholding is not an administrative remedy departs from the analysis this Court developed in *Har-Mar* to determine the scope of application of statutes of limitations and it should be reversed.

In *Har-Mar*, the parties were involved in a contractual dispute concerning architectural services provided by Thorsen. Thorsen sought to arbitrate the dispute pursuant to the parties' contract and Har-Mar brought an action in court to enjoin the arbitration. The question presented was whether Thorsen's right to arbitration was time-barred by the statute of limitations. The trial court granted Har-Mar's request to enjoin the arbitration, finding that the statute of limitations barred both arbitration and judicial proceedings. The Supreme Court reversed the trial court, however, stating that the statute of limitations, which by its terms bars "actions" not commenced within six years, does not apply to non-judicial processes.

In analyzing whether arbitration was barred under the applicable limitations period, the Court first looked to the language of the applicable statute of limitations. The statute of limitations at issue in *Har-Mar* provided that "actions" "upon a contract or other obligation, express or implied, as to which no other limitation is expressly

prescribed” “shall be commenced within six years.” 218 N.W.2d at 74 (quoting Minn. Stat. § 541.05).

The Court next considered whether arbitration constituted an “action” within the meaning of the limitations statute. The Court noted that “action” is defined in statute as “any proceeding in any Court of this state.” *Id.* (quoting Minn. Stat. § 645.45(2)). Since the limitations statute pre-dated the statutory definition of “action,” however, the Court found that the definition in section 645.45 was not controlling. Looking to the common law, the Court then found that the term “action” had been defined as “the prosecution *in a court* of justice of some demand or assertion of right by one person against another.” 218 N.W.2d at 152, 153 (quoting *Muirhead v. Johnson*, 46 N.W.2d 502, 505 (Minn. 1951) (emphasis added)). The Court concluded that because the term “action” “was intended to be confined to judicial proceedings” it could not be held to include arbitrations, which are proceedings out of court. *Id.* at 153.

In holding that arbitrations were not “actions,” the Court squarely rejected Har-Mar’s contention that the limitations on actions should apply to arbitrations because arbitration proceedings are similar to judicial proceedings. Har-Mar had asserted that arbitrations “employ[] procedures common to judicial proceedings, such as the subpoena of witnesses, the taking of depositions, and judicial action to confirm, vacate, modify, correct, and enforce an arbitration award.” 218 N.W.2d at 153. The Court disagreed, finding that the very purpose of the Uniform Arbitration Act is to encourage an efficient and inexpensive way to resolve contract disputes *without the need for court proceedings*.

Id. The Court concluded that applying the statute of limitations on actions to bar arbitrations would therefore be contrary to the Act's purpose. The Court therefore held that the statute of limitations on actions did not bar arbitration of the contract dispute. *Id.* at 154.¹¹

This Court's analysis in *Har-Mar* strongly supports reversal of the court of appeals' holding that income withholding is a judicial remedy subject to the statute of limitations. There is no basis under *Har-Mar* to prohibit the non-judicial collection of past due child support through income withholding, but permit the arbitration of commercial disputes after the statute of limitations has expired.

The appellate court's finding that income withholding is a judicial "action" within the meaning of the statute of limitations conflicts not only with this Court's analysis in *Har-Mar* but also with the language and the purpose of statutes governing judgments and income withholding in Minnesota.

¹¹ The court of appeals has applied the reasoning of *Har-Mar* in at least two prior cases that provide persuasive authority that income withholding is an administrative remedy. See *Bednarek v. Bednarek*, 430 N.W.2d 9 (Minn. Ct. App. 1988) (holding that the ten-year statute of limitations applicable to actions on judgments does not bar the county's interception of tax refunds to pay past due child support because tax intercept is an administrative remedy and not an *action* upon a judgment). See also *Wage and Hour Violations of Holly Inn, Inc.*, 386 N.W. 2d 305 (Minn. Ct. App. 1986) (holding that the statute of limitations on actions for the recovery of wages, overtime or damages does not apply to the Department of Labor and Industry's administrative proceedings). Both cases followed the principle established by this Court that the statute of limitations bars judicial actions, but does not bar agency actions taken outside of a court process. Administrative income withholding, like the tax intercept process in *Bednarek* and the agency action to remedy wage and hour violations in *Holly Inn*, involves agency action outside of court.

The statute of limitations at issue in this case states:

No *action* shall be maintained upon a judgment or decree of a court of the United States, or any state or territory thereof, unless begun within ten years after the entry of such judgment.

Minn. Stat. § 541.04 (2004) (emphasis added).

Income withholding for child support does not constitute an action as defined by either statute or common law. No court action or proceeding is necessary to initiate the collection of support through income withholding. State law clearly requires that income withholding be initiated to collect child support regardless of whether the court order establishing the support obligation addresses withholding. *See* Minn. Stat. § 518.6111, subd. 7 (2004). State law specifically authorizes the public authority to implement income withholding “without the necessity of obtaining an order from any judicial or administrative tribunal.” *See* Minn. Stat. § 518.5513, subd. 5(a)(5) (2004) The public authority may also administratively increase the amount of withholding to recover past due support. *See* Minn. Stat. § 518.5513, subd. 5(a)(7) (2004). Moreover, the agency may initiate withholding to collect arrearages even after the underlying court order for support has expired. *See* Minn. Stat. § 518.6111, subd. 10(c) (2004). No court action is needed to initiate income withholding. Administrative withholding is accomplished simply by the public authority’s service of notice of withholding on the obligor and the obligor’s employer. *See* Minn. Stat. § 518.6111, subd. 3 (2004) (providing that a payor of funds shall commence withholding upon receipt of a notice of withholding); *see also* Minn. Stat. § 518.5513, subd. 5(a)(5) (2004) (setting forth the administrative authority to

institute withholding). Such administrative action clearly does not constitute commencement of a judicial proceeding.

The administrative nature of withholding is further supported by the limited basis permitted to challenge withholding. The only basis allowed for an obligor to contest administrative withholding is “on the limited grounds that the withholding or the amount withheld is improper due to mistake of fact.” Minn. Stat. § 518.6111, subd. 8 (2004). The obligor who chooses to challenge income withholding must file a motion to be heard pursuant to the rules of the expedited child support process. The court’s authority in hearing such a motion is limited to correcting errors of fact concerning the amount of support owed or withheld. *See* Minn. Stat. § 518.6111, subd. 7 (2004). Such a limited process does not approach the judicial-like process of arbitration that this Court found to be administrative in *Har-Mar*. Nor does it transform the administrative income withholding process into a judicial remedy.¹²

Finally, as in *Har-Mar*, the purpose of administrative income withholding supports a finding that withholding is a non-judicial remedy. As the federal legislative history for withholding establishes, Congress enacted the income withholding requirement with the

¹² Nor does the existence of a statutory process to renew child support judgments show a legislative intent to alter the availability of income withholding as a non-judicial collection remedy. To be sure, the ability to renew child support judgments until they are paid in full prevents the *loss of judicial remedies* to collect support, which would otherwise be barred by Minnesota Statutes section 541.04 when the support judgment expires. Nothing in the judgment renewal statute evidences an intent to bar *non-judicial* collection remedies, however, which do not require “actions” on judgments. *See* Minn. Stat. § 548.091, subd. 3b.

specific goal of preventing the costs and delays involved in judicial actions. Congress found that the requirement that withholding occur without additional judicial action was “*particularly crucial to the effectiveness* of any income withholding provision.” S. Rep. No. 98-387, at 27 (1984). Minnesota’s statutory income withholding process clearly incorporates this federal intent and does not require judicial action subject to the statute of limitations.

V. THE COURT OF APPEALS’ RULING THAT INCOME WITHHOLDING IS SUBJECT TO THE STATUTE OF LIMITATIONS WILL ADVERSELY IMPACT THE COLLECTION OF PAST DUE CHILD SUPPORT ACROSS MINNESOTA.

Finally, the court of appeals’ ruling will prevent thousands of Minnesota families from recovering past due support and may have a ripple effect on state assistance programs. The Department estimates that if the court of appeals’ ruling is not reversed, county child support agencies will be barred from using income withholding to collect approximately \$52.8 million in child support arrearages owed in upwards of 8,200 child support cases administered by counties across the State. This dollar amount represents support payments that accrued more than ten years ago and are subject to expired judgments.

As a consequence of the appellate court’s decision, thousands of families may be prevented from recovering child support that non-custodial parents were obligated to pay years ago. While tax intercept may still be available as an administrative remedy, the loss of withholding, which Congress has recognized as a particularly effective child support collection remedy, may effectively prevent these families from recovering any further on

the support owed to them.¹³ Such a result rewards individuals who have successfully avoided their support obligations at the expense of the financial well-being of their children, many of whom may have been forced to live for years without the financial support owed to them.

Public welfare policy concerns also support the reversal of the appellate court decision. By allowing non-custodial parents to avoid financial accountability for support of their children, the appellate decision will likely have a devastating financial impact on single parent families.¹⁴ The inability to collect past due support from non-custodial parents may cause some families or individuals to seek public assistance that they otherwise may not have needed. Such a result frustrates the overriding federal and state policy of reducing the financial hardships on single parent families that lead to reliance on public assistance. The inability to use income withholding also raises the possibility that the counties will be unable to recover child support arrearages that are owed to the State

¹³ The tax intercept process is not an adequate substitute for income withholding because income withholding is a more prompt remedy and is more difficult for a non-custodial parent to avoid. Because the tax intercept process depends on the existence of a tax refund owed to a non-custodial parent, individuals who seek to avoid their support obligations can manipulate their withholding levels. In contrast, income withholding is performed by an employer that is subject to sanction if it fails to withhold support from a non-custodial parent's income. See Minn. Stat. § 518.615, subd. 3 (providing that an employer is liable to the custodial parent for amounts that it fails to withhold).

¹⁴ In 2001, the national poverty rate was 25 percent for families that received either no child support or only partial payments, while the poverty rate was 14.6 percent for families who received full payment. U.S. Census Bureau, U.S. Dep't of Commerce, *Custodial Mother and Fathers and Their Child Support: 2001*, 7 (Oct. 2003), available at <http://www.census.gov/prod/2003pubs/p60-225.pdf>.

as reimbursement for public assistance provided to the custodial parent and the child.
The court of appeals' decision should therefore be reversed.

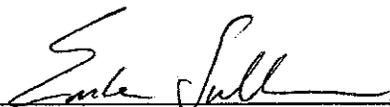
CONCLUSION

For the foregoing reasons, the Court should reverse decision of the Minnesota Court of Appeals and hold that income withholding is an administrative remedy that is not subject to the ten-year statute of limitations on judgments.

Dated: September 2, 2005

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota


ERIKA SCHNELLER SULLIVAN
Assistant Attorney General
Atty. Reg. No. 0288056

445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
(651) 296-1427 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR MINNESOTA
DEPARTMENT OF HUMAN SERVICES