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STATE OF MINNESOTA
COUNTY OF RAMSEY

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By BH Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 62-CV-11-5203
Judge Kathleen Gearin

**PETITIONER'S REPLY
MEMORANDUM IN SUPPORT
OF REQUEST FOR RELIEF**

INTRODUCTION

This Memorandum is submitted in reply to the Memorandum of Intervening State Senators ("Objectors").¹ For all the reasons discussed in Petitioner's Memorandum in Support of Motion for Relief ("Petitioner's Memorandum"), including the precedent of the 2001 and 2005 Orders of this Court, Objectors' assertions are without merit.

ARGUMENT

I. OBJECTORS' INTERPRETATION OF THE APPROPRIATION CLAUSE IMPROPERLY IGNORES THE REMAINDER OF THE MINNESOTA CONSTITUTION.

Objectors' argument relies only on the language of the appropriation clause. (Objectors' Mem. at 1). However, other provisions of the State constitution must also be given meaning. *See, e.g., State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986) (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."). *See also Clerk of Court's Compensation for Lyon County v.*

¹ Objectors attempt to raise new issues in this matter. (Objectors' Mem. at 3-5). However, intervenors cannot change the issues or introduce new issues. *See, e.g., Twin City Milk Producers Ass'n v. Helger*, 199 Minn. 124, 128, 271 N.W. 253, 254 (Minn. 1937) (holding "[t]hat an intervenor has no right to change the issues" or "introduce into the action new and foreign issues"); *State ex rel. Jackson v. Willson*, 230 Minn. 156, 156, 40 N.W.2d 910, 912 (Minn. 1950) (stating intervenor cannot change issue in the action).

Lyon County Commissioners, 241 N.W.2d 781, 784 (Minn. 1976) (recognizing that legislature cannot “effectively abolish the court itself through its exercise of financial and regulatory authority.”).

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, as discussed in Petitioner’s Memorandum at 16-20, and as the Minnesota Supreme 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 also 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.”).

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 Petitioner's Memorandum at 2-5, 18. Temporary funding by court order will effectuate the drafters' intent of a continuing government and the "security, benefit and protection of the people," until the current budget impasse is resolved. *See id.* at 18-20. Accordingly, like *Mattson*, Article V, section 1 implicitly places a limitation on the appropriation authority when the absence of appropriation would otherwise prevent the constitutional officers from performing their core functions.

Objectors apparently argue that the Court must consider the appropriation clause in isolation because it is unambiguous. (Objectors' Mem. at 2). This 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. Objectors' 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 Limmer et al. v. Swanson et al.*, A11-1107 (Minn. S. Ct., filed June 20, 2011), Petition for Writ of Quo Warranto at 49-53, *available at* http://www.leg.mn/webcontent/lrl/pdf/Petition_Quo_Warranto.pdf (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 Objectors' own argument. As discussed above, a proper application of the competing provisions of the Constitution fully supports the requested relief.

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 Minn. (Gil.) 81, 88-89 (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).

For all of the above reasons, and as discussed in Petitioner’s Memorandum at 12-20, a proper construction of the Constitution supports the requested relief.

II. THE COURT HAS JURISDICTION TO DECIDE WHETHER THE EXECUTIVE BRANCH CAN CONTINUE ITS CORE FUNCTIONS IN THE ABSENCE OF APPROPRIATION AND MAY ORDER NECESSARY RELIEF.

As discussed in Petitioner’s Memorandum at 7, the Court has jurisdiction to adjudicate the respective powers and responsibilities of the branches of government. *See also Lyon County*, 241 N.W.2d at 784-85 (recognizing that court has authority to issue an order facilitating adequate funding of a branch of government); *Mattson*, 391 N.W.2d at 783 (ordering that funds appropriated to the Department of Finance be transferred to the State Treasurer’s Office).

Consistent with that authority, in 2001 and 2005 this Court issued orders to provide for the continuation of core services of the executive branch of state government to avoid a total government shutdown. In 2005, there were more than 50 requests that certain government services be funded pursuant to the Court's Order. The 2005 Court Order appointed a Special Master (Retired Associate Justice Edward Stringer) to hear and make recommendations to the Court regarding those requests. The Court is already hearing from numerous interested parties whose rights are at stake in connection with the potential government shutdown.

Petitioner's proposed order similarly provides for the use of a Special Master, which should again be of assistance to the Court and the public to expeditiously and properly consider any such requests. *See, e.g.*, Minn. R. Civ. P. 1 (rules of civil procedure shall be administered to secure just, speedy, and inexpensive determination of every action); Minn. R. Civ. P. 53.01 (authorizing appointment of special master). *See also* 9C Wright & Miller, Federal Practice and Procedure: Civil §§ 2602, 2602.1 (3rd ed. 2008) (discussing use of special master to facilitate effective and expeditious consideration of claims). In light of the citizens' constitutional rights affected by the provision of government services, an expeditious resolution of these requests in an open and informal setting will serve the public interest.

CONCLUSION

For the above reasons, and the reasons stated in Petitioner's Memorandum in Support of Motion for Relief, including the precedent of the 2001 and 2005 Orders of this Court, the Court should grant Petitioner's requested relief.

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Respectfully submitted,

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