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<b>FILED</b>	
STATE OF MINNESOTA	Court Administrator
COUNTY OF RAMSEY	JUN 15 2005
	By  Deputy
In the Matter of Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota	DISTRICT COURT SECOND JUDICIAL DISTRICT  Case Type: Civil Court File No. <u>CO 05 5988</u> (Chief Judge Gregg E. Johnson)  PETITION OF GOVERNOR TIM PAWLENTY

The Honorable Tim Pawlenty, Governor of the State of Minnesota, by and through his attorneys, respectfully submits the following Petition for Relief in the above-referenced matter.

**PARTIES**

1. Petitioner, Mike Hatch, is the duly elected Attorney General of the State of Minnesota. Attorney General Hatch has filed as both the Petitioner, and as Counsel of Record for Petitioner, in the above-referenced matter.

2. Petitioner, Tim Pawlenty, is the duly elected Governor of the State of Minnesota. Both the Minnesota Constitution and accompanying statutes state clearly that Governor Pawlenty has the duty to "take care that the laws be faithfully executed,"

prepare a unified state budget, safeguard state property and manage the operations of Executive Branch agencies. See, Minn. Const. Art. V., Sec. 3; *Minnesota Statutes* §§ 4.01; 4.035; 4.07; 4.075 (2004). Moreover, by statute, the Governor has a significant role in the authorization of the use of federal funds by agencies of the Executive Branch. See, *Minnesota Statutes* § 3.3005 (2004).

### **JURISDICTION AND VENUE**

3. Proper jurisdiction lies with this Court pursuant to Article VI, Section 1 of the Minnesota Constitution and *Minnesota Statutes* § 484.01 (1) (2004).

4. If “established and reasonable procedures have failed” to result in sufficient appropriations for constitutionally-mandated functions, this Court, under the rule announced in *Clerk of Courts Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781 (Minn. 1976), may provide relief to aggrieved officials.

5. Venue is appropriate in the Second Judicial District of Minnesota pursuant to *Minnesota Statutes* §§ 542.01 and 542.09 (2004).

### **FACTUAL BACKGROUND**

6. Under Article IV of the Minnesota Constitution, the Minnesota Legislature is given the authority to make such appropriations as are necessary for agencies of state government to perform delegated functions.

7. 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.”

8. The Minnesota Legislature ended its regular session this year on May 23, 2005, without approving appropriation bills for certain “core functions” of state government and other “critical services” of state government.

9. A “core function,” of State Government is one where the duty to perform services is required by:

- a. the Minnesota Constitution;<sup>1</sup>
- b. the United States Constitution;<sup>2</sup>
- c. federal statute or regulation;<sup>3</sup> or,
- d. contractual agreements with agencies of the United States.<sup>4</sup>

10. A “critical service,” of State Government is one where the performance of services is necessary to:

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<sup>1</sup> See, Memorandum Opinion and Order, *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. C9-01-5725, slip op. at 6-7 (Ramsey Cty. Dist. Ct. 2001).

<sup>2</sup> See, U.S. Const., Art. VI, Clause 2 (“This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be Supreme Law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding”); *In Re Temporary Funding*, at 6-7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- a. protect the lives, health and safety of those residing in Minnesota;<sup>5</sup> or,
- b. safeguard public property against loss or casualty during any period in which government services may be interrupted.<sup>6</sup>

11. Accompanying this Petition (as Attachment 1 to the Affidavit of Eric L. Lipman) is a true and correct copy of the listing of Core Functions and Critical Services of State Government for which no appropriation has been adopted as of June 15, 2005.

12. On May 23, 2005, Governor Pawlenty caused to be filed with the Secretary of State a Proclamation calling members of the Minnesota Legislature into Special Session one minute after the last house adjourned from its 2005 Regular Session. Compare, Minn. Const. Art. VI., Sec. 12 with Attachment 2 of the Lipman Affidavit, *Proclamation for Special Session 2005* (May 23, 2005).

13. Notwithstanding more than 3 weeks of Special Session, the Minnesota Legislature has failed to approve appropriation bills for certain “core functions” of state government and other “critical services” of state government. As a result of this failure to appropriate monies, Governor Pawlenty’s ability to fulfill his managerial duties under the Minnesota Constitution is compromised.

14. The following officials direct government agencies that perform core functions of state government, critical services of state government, or both; and for

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<sup>5</sup> See, *In Re Temporary Funding*, at 8.

<sup>6</sup> See, *id.*

which there have been no appropriations made for the Fiscal Year beginning on July 1, 2005:

- a. Gene Hugoson, Department of Agriculture,
- b. Alice Seagren, Department of Education,
- c. Glenn Wilson, Jr., Department of Commerce,
- d. Matt Kramer, Department of Employment and Economic Development,
- e. Dianne Mandernach, Department of Health,
- f. Kevin Goodno, Department of Human Services,
- g. Scott Brener, Department of Labor and Industry,
- h. Gene Merriam, Department of Natural Resources,
- i. Michael Campion, Department of Public Safety,
- j. Carol Molnau, Department of Transportation,
- k. Sandy Layman, Iron Range Resources,
- l. Sheryl Corrigan, Minnesota Pollution Control Agency,
- m. Timothy E. Marx, Minnesota Housing Finance Agency, and,
- n. Peter Bell, Metropolitan Council.

*Compare, generally, Minnesota Statutes § 15.06 (2004).*

15. In addition to the Executive Branch officials referenced in the paragraph above, there are a variety of occupational licensing boards that act on behalf of State

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Government and perform functions that are critical to protecting the lives, health and safety of those residing in Minnesota.

16. Local governmental units such as counties, municipalities and school districts are also charged under both state and federal law with the responsibility to perform certain core functions on behalf of the state and federal governments. These government units receive state and federal funds to perform these core functions. Amongst the most important of these responsibilities is that of school districts, which assist the state fulfilling the constitutional obligation to provide a "general and uniform system of public schools." *See*, Minn. Const. Art. XIII, Section 1. Without the timely payment of certain state aids, state government would not be able to meet its obligations under Article XII of the Minnesota Constitution.

17. The State of Minnesota has entered into numerous agreements with departments of the United States government which require the State to make certain payments to individuals or local governmental units, or to perform certain duties in support of federal objectives. Examples of such obligations include payments of Aid to Families with Dependent Children, medical assistance and general assistance. Without the required appropriations from the Minnesota Legislature, as of July 1, 2005, the State will be unable to fulfill these core functions of government.

18. The penalty for default on the State's contractual obligations with the federal government can be severe. For example, if the State of Minnesota should fail to

meet its obligations under the Food Stamp Program, the Temporary Assistance to Needy Families (TANF) Program, or the Medicaid Program, it is subject to "severe federal fiscal sanctions and, indeed, could be banned from continued participation in the programs." *Compare*, 7 U.S.C. § 2020(g); 42 U.S.C. § 609; and 42 U.S.C. § 1396c with Memorandum Opinion and Order, *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. C9-01-5725, slip op. at 4-5 (Ramsey Cty. Dist. Ct. 2001).

#### **REQUEST FOR RELIEF**

Wherefore, Petitioner Tim Pawlenty, respectfully requests the following relief:

19. A declaration that, notwithstanding the lack of a legislative appropriation, the Governor and other Executive Branch employees are authorized to undertake such "core functions," as ordered by this Court, that are required by:
  - a. the Minnesota Constitution;
  - b. the United States Constitution;
  - c. federal statute or regulation; and,
  - d. contractual agreements with agencies of the United States.
  
20. A declaration that, notwithstanding the lack of a legislative appropriation, the Governor and other Executive Branch employees are authorized to undertake such other "critical services," as ordered by this Court, that are necessary to:
  - a. protect the lives, health and safety of those residing in Minnesota; and,

b. safeguard public property against loss or casualty during any period in which government services may be interrupted.

21. Appropriate orders directing the Commissioner of the Department of Finance, and her agents, to issue checks and process such funds as are necessary to pay for the services that are authorized by this Court.

22. Appropriate orders as may be necessary to hold, segregate and maintain such monies collected by the agencies of State Government for later disbursement as authorized by this Court.

23. The appointment of a Special Master to hear disputes that may arise as to the terms and effects of this Court's Orders, and to make recommendations to the Court as to the nature and extent of any further relief that may be required.

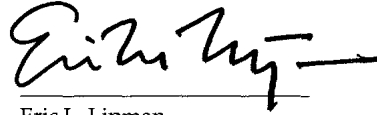
24. An Order authorizing the payment of the reasonable fees and expenses of the Court-appointed Special Master from state funds.



25. Granting of all other relief as may be necessary and just.

Date: June 15, 2005

Respectfully submitted,



Eric L. Lipman  
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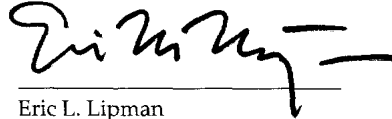
*Attorneys for Petitioner  
Governor Tim Pawlenty*

**ACKNOWLEDGEMENT**

The party on whose behalf this pleading is served, acknowledges, through the undersigned counsel, that sanctions may be imposed pursuant to *Minnesota Statutes* § 549.211 (2004).

June 15, 2005

Date



Eric L. Lipman  
Attorneys for Petitioner  
Governor Tim Pawlenty

**CERTIFICATE OF SERVICE**

I, Eric L. Lipman, certify that on this 15<sup>th</sup> day of June, 2005, I have caused a copy of the foregoing series of documents:

- (1) Governor Pawlenty's Notice of Motions and Motions for Intervention and Leave to File a Petition for Relief;
- (2) Governor Pawlenty's Petition for Relief;
- (3) Governor Pawlenty's Memorandum of Law in Support of his Motions for Intervention and Leave to File a Petition for Relief;
- (4) the Affidavit of Eric L. Lipman; and,
- (5) Governor Pawlenty's Proposed Order.

to be served by hand delivery upon the following:

Honorable Mike Hatch  
Attorney General of Minnesota  
1800 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101-2134

FURTHER AFFIANT SAYETH NAUGHT:

Date: June 15, 2005

  
Eric L. Lipman

STATE OF MINNESOTA )

) ss.

COUNTY OF RAMSEY )

Subscribed and sworn to before me, this 15<sup>th</sup> day of June, 2005.

  
Notary Public's Signature

