

STATE OF MINNESOTA  
COUNTY OF RAMSEY

FILED  
Court Administrator  
JUN 27 2011  
By BH Deputy

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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

**INTERVENOR AND PETITIONER  
HENNEPIN COUNTY'S MEMORANDUM  
IN SUPPORT OF INTERVENTION**

Court File No. 62-CV-11-5203

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**INTRODUCTION**

Like most counties, cities, and local units of government, Hennepin County performs key functions on behalf of the state and federal governments, and those functions are critical to the life, health and safety of Minnesota citizens. Hennepin County relies on both state funding and federal pass-through funding to perform those core functions. Unless the Court orders the continued pass-through of federal dollars, a shutdown will result in the immediate loss of critical services. Based on its unique interests in the continued flow of federal dollars, Hennepin County seeks to intervene as a party in this action.<sup>1</sup>

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<sup>1</sup> At the hearing on June 23, 2011, Governor Dayton's counsel suggested that this matter is not yet justiciable. Hennepin County respectfully submits that this matter is ripe and justiciable, given that the State's current budget will expire in less than a week, on June 30, 2011. See *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 448 (Minn. 1978) ("Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issue of a declaratory judgment."), citing *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941); *Minneapolis Fed'n of Men Teachers, Local 238, A.F.L. v. Bd. of Ed. of City of Minneapolis*, 56 N.W.2d 203, 205 (Minn. 1952) ("Jurisdiction exists to declare the rights, status, and other legal relations of the parties if the complainant is possessed of a judicially protectable right or status which is placed in jeopardy by the ripe or ripening seeds of an actual controversy with an adversary party, and such jurisdiction exists although the Status quo between the parties has not yet been destroyed or impaired and even though no relief is or can be claimed or afforded beyond that of merely declaring the complainant's rights so as to relieve him from a present uncertainty and insecurity.").

## FACTUAL AND PROCEDURAL BACKGROUND

The State of Minnesota, through its governor and various state agencies, receives federal funds on behalf of its political subdivisions. *See* Minn. Stat. 4.07. Hennepin County performs a number of critical and core governmental functions in reliance on federal funds that pass through the State, including but not limited to Medicaid; Women Infants, and Children (“WIC”) program, and federal block grants for Minnesota Family Investment Program and Diversionary Work Program (“MFIP/DWP”). *See* Affidavit of David R. Lawless (“Lawless Aff.”) at ¶2. Federal Medicaid funds are critical to Hennepin County’s medical services, including its public hospital, Hennepin County Medical Center (“HCMC”); its federally qualified health center (“FQHC”), NorthPoint Health and Wellness Center (“NorthPoint”), and its health maintenance organization (“HMO”), the Metropolitan Health Plan (“MHP”). *Id.* at ¶¶3-5.

In 2010, HCMC received approximately \$200 million (more than \$16 million per month) from the State of Minnesota for Minnesota Health Care Programs, including Medical Assistance, General Assistance Medical Care and MinnesotaCare, and half of those funds were federal Medicaid match funds. *See* Lawless Aff. at ¶3. HCMC receives its state funding (including federal match funds) on a twice-monthly basis, with each payment totaling more than \$8 million. *Id.* In 2010, NorthPoint received approximately \$3.8 million from the State of Minnesota for Medicaid claims, and half of those payments were federal match funds. *Id.* at ¶4. NorthPoint also received \$6.8 million in FQHC wrap-around payments from the State, and half of those payments were federal match funds. *Id.* NorthPoint receives those state payments (including federal match funds) on a monthly basis. *Id.* MHP provides health care coverage to approximately 19,000 members under contract with the Minnesota Department of Human Services. *Id.* at ¶5. MHP receives approximately \$150 million per year from the State of

Minnesota for its services, through monthly capitation payments, and half of those funds are federal match funds. *Id.* Essentially, Hennepin County receives nearly \$1 million per day in federal pass-through dollars to ensure the public's life, health and safety.

Federal funds are also essential to Hennepin County's human services and public health programs. Hennepin County receives federal funds through the State of Minnesota to staff and administer numerous programs, including but not limited to the federal WIC health program and MFIP/DWP. *See* Lawless Aff. at ¶6. In 2010, Hennepin County received monthly and quarterly payments for WIC totaling \$4 million, all constituting federal pass-through funds. *Id.* Hennepin County also received quarterly payments for MFIP totaling \$21 million, and those funds represent a mix of federal and state money. *Id.* In addition, Hennepin County received monthly and quarterly payments totaling \$59 million to staff and administer numerous health programs, including but not limited to child welfare, adult mental health, children's mental health, and vulnerable adult case management. *Id.* The majority of those payments constituted federal pass-through funds. *Id.*

Hennepin County relies on the timely payment of these federal funds by the State of Minnesota, in order to perform its core governmental functions. *See* Lawless Aff. at ¶7.

## ARGUMENT

### A. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION MANDATES THE STATE TO ADMINISTER AND FUND FEDERAL PROGRAMS DURING A SHUTDOWN, WITHOUT DELAY.

Both Attorney General Swanson and Governor Dayton concede that the Supremacy Clause of the United States Constitution, Art. VI, cl. 2, requires the State to comply with any federal mandates or agreements to administer and pay a variety of public assistance programs.

See Petition at ¶21; Petitioner's Mem. at pp. 10-12; Governor's Response at p. 8.<sup>2</sup> Accordingly, even if a state shutdown occurs, the State must maintain the necessary staff to administer these programs, and it must continue timely payments for these programs to Hennepin County and other entities.

Under Minnesota law, “[t]he governor or any state department or agency designated by the governor shall comply with **any and all** requirements of federal law and any rules and regulations promulgated thereunder to enable the application for, the receipt of, and the acceptance of such federal funds.” Minn. Stat. § 4.07, subd. 3 (emphasis added). **No legislative appropriation is required.** See *State ex rel. Nelson v. Iverson*, 145 N.W. 607, 608 (Minn. 1914) (“The purpose of the Constitution in prohibiting the payment of money from the state treasury, except upon appropriation made by law, was intended to prevent the expenditure of the people’s money without their consent first had and given,” and “[t]he reason for the prohibition does not apply... [where] the portion of the taxes claimed belongs to the municipal divisions of Washington county, and not to the state.”) (citation omitted); see also Mary Jane Morrison, *The Minnesota State Constitution* at p. 252 (2002) (“If the federal government gives the state money for redistribution to counties according to federal schedules, the executive branch may proceed directly with the distribution without awaiting legislative action.”) (emphasis added). Instead, “[a]ll such money received...are hereby appropriated annually in order to enable the governor or the state department of agency designated by the governor for such purpose to carry out the purposes for which the funds are received.” *Id.* (internal citation omitted). Those federal funds “shall be available for expenditure in accordance with the requirements of federal law.” *Id.*

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<sup>2</sup> The responses of the Minnesota House and the Minnesota Senate do not address this issue.

The State of Minnesota is a participant in the federal programs that provide funding for Medicaid, WIC, MFIP/DWP, and many other critical programs essential to the life, health and safety of citizens. *See* Governor's Response at Ex. B (Critical Services for Health and Human Services, among other departments). Given its decision to participate, the State must fulfill its obligations to administer and fund these programs, as required by federal law.

**B. FEDERAL PASS-THROUGH FUNDS CANNOT BE DELAYED, EVEN IN THE EVENT OF A STATE SHUTDOWN.**

Although Governor Dayton concedes that federal law may require ongoing state funding, his response suggests that the State may delay payment of federal pass-through funds during a state shutdown, based on an unnecessary program-by-program review. *See* Governor's Response at p. 8, *citing Dowling v. Davis*, 19 F.3d 445 (9<sup>th</sup> Cir. 1994). Hennepin County respectfully disagrees. Instead, the State must continue to administer and fund federal programs to assure payment on a timely basis.

In *Dowling*, the State of California had deferred payment of Medicaid claims during a state budget impasse, and Medicaid recipients sought a declaratory judgment that the State had violated federal law through the delay. *See Dowling*, 19 F.3d at 447. At issue were the particular time limitations of the Medicaid Act, 42 U.S.C. § 1396a(a)(37) and 42 C.F.R. § 447.45(d)(2), (3) and (4), which required the State to pay 90% of "clean" Medicaid claims within 30 days. *Id.* The Court did not hold that a state has any authority to delay the payment of federal pass-through funds simply as the result of a state budget impasse. Instead, the Court merely concluded that federal law had not been violated because "the State had complied with all time constraints of § 1396a(a)(37)[.]" *Id.* In other words, the budget impasse did not last long enough to run afoul of the 30-day time limit on payment. *See also Dowling v. Davis*, 840 F.Supp. 731, 734 (E.D. Cal. 1992) ("The State concedes it must adhere to these time

requirements.... [I]n no case was there a delay in adopting a budget which exceeded thirty days from July 1, which is the end of the fiscal cycle.”), *aff'd*, 19 F.3d 445 (9<sup>th</sup> Cir. 1994).

In *Dowling*, the State had also delayed payment of In-Home Support Services (“IHSS”) claims, which were funded through a federal block grant. *See Dowling*, 19 F.3d at 447, 448. Again, the Court found no violation of federal law as a result of the delays, but for a different reason: with respect to IHSS, the Court found that the underlying federal statute and regulations “impose neither specific standards nor time constraints upon the State[.]” *Id.* at 448.

However, other Courts have reached the opposite conclusion. *See Knoll v. White*, 595 A.2d 665, 668 (Pa. Cmwlth. 1991) (“Budget impasses and the absence of state funding appropriations do not allow a state to forego its obligation to fund the federal [Aid to Families With Dependent Children (“AFDC”)] program.”); *Pratt v. Wilson*, 770 F.Supp. 539, (E.D. Cal. 1991) (“While state participation in the AFDC program is voluntary, a state’s election to participate obligates it to comply with the federal statutes and regulations which govern the program.”) (footnote omitted); *compare* Minn. Stat. § 4.07, subd. 3 (“None of such federal money so deposited in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.”).

Notably, the federal law at issue in *Knoll* and *Pratt* did not have an explicit timeframe for payment, unlike the Medicaid regulations at issue in *Dowling*, which required payment within 30 days. In *Pratt*, the state defendants argued that federal law had not been violated, because the AFDC program only required payment with “reasonable promptness.” *See Pratt*, 770 F.Supp. at 543 n. 14, *citing* 42 U.S.C. § 602(a)(10)(A). Accordingly, the defendants argued that the federal law was “flexible enough to allow for a delay in payments due to a budget impasse[.]” *Id.* However, the Court squarely rejected that argument as contrary both to the plain meaning of the

law and “inappropriate” in the context of the AFDC program. *Id.* The Court specifically noted that “[r]ecipients typically depend on the twice-a-month AFDC benefits for basic necessities, such as food and shelter,” thus “[v]irtually any delay in the payment of benefits poses a substantial threat of imminent hardship to recipients.” *Id.* As a result, even where federal law does not include an explicit timeframe, a state may not delay the regular schedule of payments simply as a result of a budget impasse.

**C. BASED ON ITS UNIQUE INTEREST IN FEDERAL PASS-THROUGH FUNDS, HENNEPIN COUNTY IS ENTITLED TO INTERVENE IN THIS ACTION, OR SHOULD BE PERMITTED TO INTERVENE.**

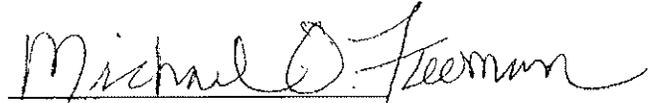
Hennepin County is entitled to intervene, given its unique interests in the temporary funding of certain core functions, particularly through federal pass-through funds. “Under [Minn. R. Civ. P.] 24.01, a nonparty is entitled to intervene if it (1) makes a timely application; (2) has an interest relating to the property or transaction that is the subject of the action; (3) demonstrates that the disposition of the action may as a practical matter impair or impede the party’s ability to protect that interest; and (4) shows that it is not adequately represented by the existing parties.” *In re Crablex, Inc.*, 762 N.W.2d 247, 251 (Minn. App. 2009), *rev. denied* (Minn., Apr. 29, 2009), *citing Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). “Minnesota has a ‘policy of encouraging all legitimate interventions.’” *Id.*, *quoting Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981). The applicant “ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.” *Costley*, 313 N.W.2d at 28-29, *quoting* 7 A C. Wright & A. Miller, *Federal Practice & Procedure*, § 1909, at 524 (1972). Hennepin County satisfies all four requirements for intervention as of right.

Alternatively, the Court should exercise its discretion to grant permissive intervention to Hennepin County. "Permissive intervention lies within the district court's discretion and, after considering whether intervention will unduly delay or prejudice the rights of the other parties, the court may grant a request for permissive intervention when an applicant's claim or defense and the main action have a common question of law or fact." *Nash v. Wollan*, 656 N.W.2d 585, 591 (Minn. App. 2003), *citing* Minn. R. Civ. P. 24.02 and *Heller v. Schwan's Sales Enters., Inc.*, 548 N.W.2d 287, 292 (Minn. App. 1996), *rev. denied* (Minn., Aug. 6, 1996). Again, Hennepin County meets the requirements for permissive intervention.

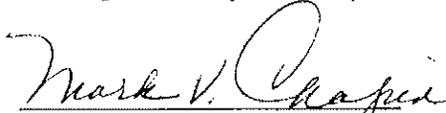
In plain terms, the State's failure to pass through federal dollars without delay will immediately impact people who need help – people who are not part of the political posturing that resulted in a budget impasse. Those federal funds do not belong to the State and cannot be held captive by a political battle. Hennepin County must be allowed to intervene in order to protect its interests in the continued flow of federal pass-through funds.

**CONCLUSION**

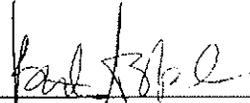
For the reasons expressed above, Hennepin County respectfully seeks intervention, and submits that the State of Minnesota must continue to administer and timely fund federal programs, even during a state shutdown.



MICHAEL O. FREEMAN (31860)  
Hennepin County Attorney



MARK V. CHAPIN (138393)  
Chief Deputy County Attorney



BETH A. STACK (387967)  
Assistant County Attorney  
Attorneys for County of Hennepin  
2000C Government Center  
Minneapolis, MN 55487  
Telephone: (612) 543-1357  
Fax No: (612) 348-8299

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**ACKNOWLEDGMENT**

Hennepin County, by its attorney, acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: June 24, 2011

