

STATE OF MINNESOTA  
COUNTY OF RAMSEY

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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

**RESPONSE OF THE MINNESOTA  
STATE BOARD OF PUBLIC DEFENSE  
TO THE PETITION OF THE ATTORNEY  
GENERAL**

**Introduction**

The Minnesota State Board of Public Defense ("Board") performs essential functions that must remain in operation despite any possible shutdown of state government. Specifically, the Board acts as a guarantor of fundamental rights protected by the United States and Minnesota Constitutions. The Board therefore requests that it be included on any list of entities whose functions the Court may order to continue.

**Background**

The Board occupies a unique position in state government because it is, by statute, "part of, but is not subject to the administrative control of, the judicial branch of government." Minn. Stat. § 611.215, subd. 1(a). In that sense, the Board is an orphan of sorts. It can rely only on itself, and on no other branch of government, to protect its functions and priorities.<sup>1</sup>

<sup>1</sup> The Board is grateful to be included on the Governor's list of "Recommended Priority One and Priority Two Critical Services" contained as part of his Response in this matter - as well as in the Minnesota Judicial Council's separate and related Petition. But because of the Board's unusual status among government entities, the Board chooses to submit this separate Response on its own behalf.

The Board's duties are vital and well-defined. State statute requires that the Board "approve and recommend to the legislature a budget for the [B]oard, the office of state public defender, the judicial district public defenders, and the public defense corporations." Minn. Stat. § 611.215, subd. 2(a). Additionally, the Board has the responsibility for establishing funding procedures and operational standards for all public defense work in the state. Minn. Stat. § 611.215, subd. 2(b), (c). Through those procedures and standards, the Board provides legal representation to indigent persons who are charged with felonies, gross misdemeanors, and misdemeanors -- and to minors over age 10 in juvenile court proceedings.<sup>2</sup> Minn. Stat. § 611.14. If the Board does not perform those functions, indigent criminal defendants, and juveniles, will have no meaningful opportunity for legal representation.

### Argument

**1. The Functions of the Minnesota Board of Public Defense are Essential because they are Constitutionally Required.**

The Board performs essential services that must be funded because they are required by the Minnesota and United States Constitutions. Indigent persons accused of felonies are entitled to effective assistance of counsel funded at public expense under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution. *Gideon v. Wainwright*, 372 U.S. 335, 344-45, 83 S. Ct. 792, 796-97 (1963). *See also*, Constitution of Minnesota, Article I, Section

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<sup>2</sup> According to the Minnesota Judicial Council, state-appointed public defenders represent 80% of all criminal and juvenile defendants in Minnesota. *In re Temporary Funding of Core Functions of the Judicial Branch of the State of Minnesota*, filed June 17, 2011, Second Judicial District, Affidavit of Sue Dosal at ¶ 24.

6 (mandating that “[T]he accused shall enjoy the right . . . to have the assistance of counsel in his defense.”). Indigent persons accused of misdemeanors have this same right. *Argersinger v. Hamlin*, 407 U.S. 25, 37-38, 92 S. Ct. 2006, 2012-13 (1972). Juveniles in delinquency proceedings are also entitled to counsel at public expense. *In re Gault*, 387 U.S. 1, 41, 87 S. Ct. 1428, 1451 (1967). The Board ensures the performance of all those rights in every courtroom in Minnesota.

The constitutional right to the effective assistance of counsel, which the Board helps to guarantee, is also the means to protect *other* constitutional rights of Minnesotans. For example, both the Minnesota and U.S. Constitutions provide for a right to speedy trial. Minn. Const. art. I, § 6; U.S. Const. amend. VI. Similarly, both constitutions protect against unreasonable searches and seizures. Minn. Const. art. I, § 10; U.S. Const. amend. IV. Without the right to counsel, those rights would be beyond the reach of the indigent criminal defendants. Accused juveniles would be likewise affected, since they enjoy a statutory right to effective assistance of counsel at public expense. *See* Minn. Stat. § 260B.163.

Courts have rejected the defense that lack of funds excuses the government from carrying out duties mandated by state or federal constitutions. As the U.S. Supreme Court has observed, “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.” *Watson v. City of West Memphis*, 373 U.S. 526, 537, 83 S. Ct. 1314, 1321 (1963). In the area of public defense, a particularly instructive example is the matter of *Harris v. Champion*, 15 F.3d 1538 (10th Cir. 1994). In *Harris*, the court considered the

consolidated *habeas* relief of convicted felons whose state appeals were delayed. *Id.* at 1546. The state's primary defense was that lack of funds excused (or at least sufficiently explained) the delay. *Id.* The court rejected that defense outright, citing with approval the notions that "[t]he cost of protecting a constitutional right cannot justify its total denial" and that "[i]nadequate resources no longer can excuse the denial of constitutional rights." *Id.* at 62-63 (citing *Bounds v. Smith*, 430 U.S. 817, 825, 97 S. Ct. 1491, 1496 (1977); *Todaro v. Ward*, 565 F.2d 48, 54 n. 8 (2d Cir. 1977)).

As a practical matter, the continued operation of the Board is required because without it, the flow of cases through the court system would stop. Police, sheriffs, city prosecutors, and county attorneys are all funded by local government. They would operate whether or not state government is shut down. Their operations inevitably start the clock running toward trial. Without public defenders available to represent indigent accused persons, tens of thousands of criminal cases would not be resolved within the speedy trial requirements. As a result, courts would likely dismiss these cases - or vacate resulting convictions on appeal. *See, e.g., State v. Griffin*, 760 N.W. 2<sup>nd</sup> 336 (Minn. App. 2009) (vacating conviction because of lack of speedy trial). And lack of resources, even due to a government shutdown, would be no excuse for disregarding the constitutional rights that the Board protects. Accordingly, the Court should declare the Board to be "essential," "core," or "critical" to the ongoing operation of state government in the event of a shutdown.

**2. The Court Has Already Used Its Power to Order the Continuation of the Essential and Constitutionally Protected Functions of the Board.**

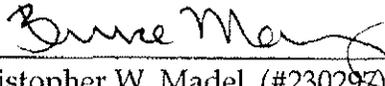
This Court has dealt with actual and impending government shutdowns before. In fact, the Court has specifically addressed the importance of the Board's activities in that context. When a partial shutdown of state government seemed imminent in 2001, the Court issued an order deeming the Board's public defense responsibilities as among those "core functions" mandated by the Minnesota and U.S. Constitutions. The Court thereby mandated the continuing operation of those responsibilities in spite of the expected shutdown. *See, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, Ramsey County District Court File No. C9-01-5725, June 29, 2001, pp. 3, 8. (attached as part of the Attorney General's Petition in this case.)* The inherent risk of constitutional violations and the likely detriment to public safety require a similar result in this instance.

**Conclusion**

If the Court decides to grant relief in the nature of an order continuing certain "core" or "critical" or "essential" state functions, the Board respectfully requests inclusion on the list of such functions.

Dated: June 21, 2011.

**ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.**

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COUNTY OF RAMSEY )

Judicial District: Second  
Court File Number: 62-CV-11-5203  
Case Type: Civil

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

**AFFIDAVIT OF SERVICE  
BY HAND DELIVERY**

STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

Jeff Wright, being first duly sworn on oath, deposes and says, that  
on the 21st day of June 2011, he/she made service of the Response of the Minnesota  
State Board of Public Defense to the Petition of the Attorney General by hand delivering  
a true and correct copy thereof to:

Lori Swanson  
Attorney General  
State of Minnesota  
102 Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1609

by leaving the above mentioned items with Sharon Owen, Legal Secretary

Jeff Wright

Subscribed and sworn to before  
me this 21st day of June, 2011.

Spencer

Notary Public



STATE OF MINNESOTA )  
 ) ss  
COUNTY OF RAMSEY )

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**AFFIDAVIT OF SERVICE  
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STATE OF MINNESOTA )  
 ) ss  
COUNTY OF HENNEPIN )

James O HASTINGS being first duly sworn on oath, deposes and says, that on the 21st day of June 2011, he/she made service of the Response of the Minnesota State Board of Public Defense to the Petition of the Attorney General by hand delivering a true and correct copy thereof to:

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by leaving the above mentioned items with Laura WIESSINGER  
(receptionist)

James O Hastings

Subscribed and sworn to before  
me this 21st day of June, 2011.

[Signature]  
Notary Public

