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STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUN 20 2011

By jf Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

In re Temporary Funding of Core)
Functions of the Judicial Branch)
Of the State of Minnesota)

Case Type: Civil

Court File No. 62-CV-11-5361

**RESPONSE OF THE GOVERNOR TO THE
PETITION OF THE MINNESOTA JUDICIAL COUNCIL
AND THE ATTORNEY GENERAL**

Having accepted service of the Petition filed on June 17, 2011, by Petitioners Minnesota Judicial Council and the Attorney General, Governor Mark Dayton (“the Governor”) responds to the Petition as follows:

1. The Governor believes, as the Minnesota Constitution declares, that Minnesota’s government was “instituted for the security, benefit and protection of the people,” Article I, § 1. A government shutdown would threaten the lives and safety of the people of Minnesota.

2. In the proceeding captioned *In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Court File No. 62-cv-11-5203 (“*Executive Branch Proceeding*”), arising out of the same circumstances and venued in this Court, the Governor has requested that the Court appoint a mediator to oversee and facilitate negotiations between the legislative majority, on the one hand, and the legislative minority and the Governor, on the other. Such a mediation would seek

agreement on a state budget for the next biennium, including an appropriation for the judicial department.

3. In the event that an agreement were not reached and the judicial department could not operate for lack of an appropriation by law, the lives and safety of the people of Minnesota would be threatened. *See Executive Branch Proceeding, Response of the Governor to the Attorney General's Petition, Exhibit B (June 15, 2011).*

4. All three departments of state government are bound by Article XI, § 1 of the Minnesota Constitution, which states: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." However, the Governor submits that this command should not be read to undermine the very rule of law to which Article XI, § 1 refers.

5. Fundamental to the rule of law is the existence and operation of the judicial department, established by Article III and Article VI, in which the judicial power of the state is vested.

6. Under Article III, § 1, "[t]he three departments of state government . . . are independent of each other. Neither department can control, coerce, or restrain the action or nonaction of either of the others in the exercise of any official power or duty conferred by the Constitution" *State ex rel. Birkeland v. Christianson*, 229 N.W. 313, 314 (Minn. 1930).

7. The Minnesota Constitution and the Supremacy Clause of the United States Constitution impose on each of the three departments the obligation to support the United States Constitution and the rights protected thereby. This includes not depriving

any person of “life, liberty, or property without due process of law,” or denying any person “the equal protection of the laws.” *See* U.S. Const., amend. XIV.

6. The rule of law would not exist if the judicial department could not operate for lack of an appropriation by law. Accordingly, notwithstanding the command of Article XI, § 1, of the Minnesota Constitution, the Governor recognizes that the judicial department has inherent power to protect itself and must continue to operate. *See In re Clerk of Lyon Cnty. Courts' Comp.*, 241 N.W.2d 781, 784-87 (Minn. 1976).

7. In *Executive Proceeding*, the Governor declared that he will proceed carefully in invoking the inherent powers of his office. The Governor understands that no department should invoke its inherent power unless and until it is certain that the appropriations process established by the Minnesota Constitution, Article IV, has failed.

8. If and when the judicial department determines that the appropriations process established by the Minnesota Constitution has failed, compelling the judicial department to invoke its inherent power, the Governor expects that the executive department, including the Department of Management and Budget, will comply with the orders of the judicial department.

Dated: June 20, 2011

Respectfully submitted,



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¹ On June 10, 2011, the Governor retained Special Counsel solely on the matter of the potential government shutdown. Special Counsel represents only the Office of the Governor, and does not represent the State of Minnesota generally, the Attorney General, or the State's other constitutional officers, departments, entities, or subdivisions, whether executive, regulatory, legislative, or judicial.