

STATE OF MINNESOTA

IN SUPREME COURT

Deanna Brayton, et al.,

Respondents,

vs.

Tim Pawlenty, Governor of the State of Minnesota, et al.,

Appellants.

APPELLANTS' REPLY BRIEF

LORI SWANSON
Attorney General
State of Minnesota

ALAN I. GILBERT
Solicitor General
Atty. Reg. No. 0034678

JOHN S. GARRY
Assistant Attorney General
Atty. Reg. No. 0208899

JEFFREY J. HARRINGTON
Assistant Attorney General
Atty. Reg. No. 0327980

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1450

ATTORNEYS FOR APPELLANTS

PATRICK D. ROBBEN
General Counsel to Governor
Tim Pawlenty
Office of Governor
Atty. Reg. No. 0284166

130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
(651) 282-3705

ATTORNEY FOR APPELLANT
GOVERNOR TIM PAWLENTY

(Respondents' counsel listed on inside cover)

MID-MINNESOTA
LEGAL ASSISTANCE

GALEN ROBINSON
Atty. Reg. No. 165980
DAVID GASSOWAY
Atty. Reg. No. 389526

430 First Avenue North, Suite 300
Minneapolis, Minnesota 55401
(612) 332-1441

RALONDA J. MASON
Atty. Reg. No. 194487

830 W. St. Germain, Suite 300
P.O. Box 886
St. Cloud, Minnesota 56302
(320) 253-0121

ATTORNEYS FOR RESPONDENTS

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ARGUMENT

I. SECTION 16A.152 AUTHORIZES THE COMMISSIONER'S UNALLOTMENTS.

Respondents and amici¹ make several arguments claiming that section 16A.152 does not unambiguously allow the Commissioner to make the challenged unallotments or that the statute should be construed to preclude the Commissioner from making the unallotments. At their core, these arguments attempt to impose requirements — such as the statute only applies to small, unanticipated deficits arising late in the biennium — found nowhere in section 16A.152. Respondents and amici rely on purported conditions in the statute that simply do not exist. They also ask the Court to resolve a political dispute. Their contentions are not supported by the statutory language and are without merit.

A. The Plain Language Of Section 16A.152 Authorizes The Commissioner's Unallotments Even If The \$2.7 Billion Deficit Was Previously Known.

Respondents erroneously argue that the statute does not apply because the \$2.7 billion deficit for the 2010-2011 biennium was anticipated by both the Governor and Legislature. See, e.g., Respondents' Brief at 10 (stating unallotment statute applies only

¹ Appellants' Reply Brief responds to arguments made in Respondents' Brief. This Reply Brief also responds to arguments of amici that do not duplicate arguments of Respondents. The Briefs of amici are referred to herein as follows: the Brief of Amici League of Minnesota Cities, City of Minneapolis, City of St. Paul, Coalition of Greater Minnesota Cities, Metro Cities, and Minnesota Association of Small Cities, as "Cities' Br."; the Brief of Amici Common Cause Minnesota and League of Women Voters Minnesota as "Common Cause's Br."; and the Brief of Amicus Minnesota House of Representatives as "House's Br."

“if the shortfall is unanticipated”). The statute makes no reference to the Commissioner’s unallotment authority only applying to “unanticipated” budget deficits. Section 16A.152 requires the Commissioner to determine whether “*probable receipts* for the general fund will be less than anticipated.” (Emphasis added.) If the Commissioner determines that probable receipts will be less than anticipated and a budget deficit exists, then the Commissioner is authorized to take action to correct the entire budget deficit. *Id.*, subd. 4(a)-(b) (subdivision 4(a) providing that the Commissioner shall first use the budget reserve account “as needed to balance expenditures with revenue” and subdivision 4(b) providing that “[a]n additional deficit shall . . . be made up by reducing unexpended allotments of any prior appropriation or transfer”).

In this case, the February 2009 forecast projected a \$4.6 billion deficit for the 2010-2011 biennium. Appellants’ Appendix (“A”) at A51. The Legislature then enacted some adjustments to the State budget, reducing that deficit to \$2.7 billion. Appellants’ Addendum (“Add.”) at 5; A67. The Governor and Legislature unsuccessfully attempted to correct that \$2.7 billion deficit. *Id.* The Commissioner then determined in his June 4, 2009 letter to the Governor and Legislature that revenue for the 2010-2011 biennium would be less than anticipated in the February 2009 forecast,² resulting in a bigger budget

² Respondents mischaracterize the Commissioner’s letter. See Respondents’ Brief at 7-8, 22. After noting that there was a significant downward trend in State revenue from the November 2008 forecast to the February 2009 forecast, the Commissioner’s letter reasoned, in part, as follows:

I do not find sufficient evidence to suggest that our budget outlook for the upcoming biennium will improve with new information. *The national*
(Footnote Continued On Next Page)

deficit than the \$2.7 billion deficit that was the subject of deliberations between the Governor and Legislature. *Id.*³ Accordingly, due to the reduction in anticipated revenue, not whether a deficit was previously foreseen, the plain language of the statute authorizes the Commissioner to use his unallotment authority for the entire budget shortfall. Minn. Stat. § 16A.152, subs. 4(a)-(b); see Appellants' Brief at 12-16.

B. The Commissioner Has Discretion In Effecting The Unallotments And Was Not Required To Immediately Unallot For The Entire Deficit.

Similarly without merit is the contention of some amici that the Commissioner did not comply with section 16A.152 because he should have unallotted more money than he has thus far. See Cities' Brief at 4-5. As discussed in Appellants' Brief at 15, note 5,

(Footnote Continued From Previous Page)

economy has worsened since the February forecast and other forecasters generally concur with this outlook. Our national economic forecaster, Global Insights, suggests that Minnesota and the rest of the nation are in the midst of a lengthy economic downturn.

Our state's revenue collections reflect this weakened economy and are not matching expectations. Year to date receipts for FY 2009 are down \$70.3 million compared to the February forecast. Nearly all major revenue categories have collected less than anticipated.

Add. 5; A67 (emphasis added). Neither Respondents nor amici dispute that the February 2009 forecast is a proper benchmark of anticipated revenue or the accuracy of the Commissioner's determination that probable receipts for the 2010-2011 biennium would be less than anticipated in the February 2009 forecast. See Appellants' Brief at 13-14.

³ The \$2.7 billion deficit noted in the Commissioner's June 4, 2009 letter was based on the February 2009 forecast (as adjusted for legislative enactments). Add. 5; A67. The next forecast (November 2009) showed, in fact, that revenues had declined. The additional deficit resulting from the decrease in anticipated revenue from the February 2009 forecast was quantified in the Commissioner's November 2009 forecast at about \$1.2 billion. A142.

once the Commissioner determined the applicability of section 16A.152 under subdivision 4(a) of the law, he could then exercise his discretion to determine how best to effect the unallotments. Nothing in the statute requires that unallotments be implemented within a specific period of time. He chose to immediately unallot approximately \$2.5 billion (and take administrative action to save another \$200 million) with an emphasis on unallotments for the second year of the biennium. A67-A111. The Commissioner properly exercised his discretion to await further developments including his statutorily required November 2009 forecast and possible legislative action during the 2010 session before unalloting additional funds. *Id.*; A139-A140.⁴

C. The Term “Remainder” In Section 16A.152 Does Not Create An Ambiguity Or Require A Construction Precluding The Commissioner’s Use Of The Statute.

The Governor approved, and the Commissioner made, the unallotments during the current biennium. The specific unallotments at issue for the MSA-SD program, which is

⁴ Respondents and one amicus contend that the Commissioner improperly deferred or suspended a statutory obligation to effectuate a few of his unallotments. See Respondents’ Brief at 9, 27, 37, 40; House’s Br. at 5-9, 13-14, 19-20. Although that issue is not before the Court, section 16A.152, subdivision 4(b), states that “[n]otwithstanding any other law to the contrary, the commissioner is empowered to defer or suspend prior statutorily created obligations which would prevent effecting such reductions.” No issue is raised by Respondents regarding this statutory provision as it relates to the MSA-SD program. Whether the Commissioner properly deferred or suspended a statutory obligation to effect a certain unallotment must be decided on a case-by-case basis to the extent the issue is even raised in and justiciable by a court. This issue does not affect the propriety of the underlying unallotment, but rather how the reduced allotment will be distributed.

the subject of Respondents' motion and this appeal, eliminated funding for the program effective November 1, 2009. A95.

Respondents ignore this fact and erroneously argue that the use of the word "remainder" in the phrase "the amount available for the remainder of the biennium will be less than needed," Minn. Stat. § 16A.152, subdivision 4(a), indicates that the Commissioner cannot make any unallotments for the entire biennium. See Respondents' Brief at 19-20. The term "remainder" literally refers to whatever "remains or is left"⁵ of the designated period, which can be the entirety of the period. Accordingly, the plain language of the statute, including the reference to "remainder," allows the Commissioner to determine that the amount available for the entire biennium "will be less than needed" and therefore unallot to correct a deficit for all of the 2010-2011 biennium.

Respondents' interpretation of "remainder" would mean that unallotment for the biennium could be effective July 2, 2009, but not as of July 1. There is no substantive difference between the two time periods. See Minn. Stat. § 645.17(1) (2008) (stating it is presumed that the Legislature does not intend an unreasonable or absurd result).

None of the Commissioner's unallotments predated the beginning of the biennium, and many of his unallotments do not actually take effect until well into the biennium. A92-A98. This is particularly true with the MSA-SD program, in which the unallotment took effect four months into the biennium. A95. Therefore, the challenged unallotments

⁵See Merriam-Webster's Dictionary of Law (1996), available at <http://dictionary.lp.findlaw.com/dictionary.html> (defining "remainder" as "that which remains or is left").

