STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

November 23, 2009

The Honorable Kathleen Gearin
Chief Judge
1210 Ramsey County Courthouse
15 Kellogg Boulevard West
Saint Paul, MN 55102

Re: Brayton et al. v. Pawlenty et al.
Court File No. 62-CV-09-11693

Dear Judge Gearin:

The purpose of this letter is to briefly respond to the 34-page *amicus* brief filed with the Court under the direction of the DFL caucus of the House of Representatives. The brief largely reiterates arguments previously submitted by Plaintiffs, but contains some inaccurate characterizations that bear correcting for the public record. In addition, I am writing on behalf of Defendants in response to the matters raised in Mr. Robinson's letter of November 20 regarding the scope of Defendants' motion to dismiss.

<u>Amicus Brief</u>

The House brief suggests that the Minnesota Management and Budget Commissioner's determination in his June 4 letter that the conditions for unallotment existed relied solely on revenue forecasts known at the time of the enactment of the appropriation bills (the November 2008 and February 2009 forecasts). In fact, the Commissioner's June 4 letter not only documented the ongoing decline in anticipated probable receipts for the FY 2010-2011 biennium—thereby meeting the plain language of Minn. Stat. § 16A.152—but also documented that this deteriorating outlook appeared to be ongoing, given the worsening economy since the February 2009 forecast. Hindsight has, in fact,

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confirmed that determination, with monthly revenue numbers repeatedly falling short of forecast.

The House *amicus* brief also argues that the Commissioner's determination regarding the conditions for unallotment cannot occur until the biennium began. This argument again rests on an "implie[d]" element beyond the plain language of the statute. As noted above, the Commissioner of MMB properly concluded, pursuant to the statute, that upon commencement of the biennium, amounts available for the remainder would be less than needed. Moreover, the *amicus* position unreasonably leads to a result where, in spite of the same indicators of continuing economic weakness existing in the new biennium, a determination that the conditions for unallotment would exist would be impermissible on June 30 but permissible the next day once the biennium had begun.[1]

In any event, the House's concession that 16A.152 "does not explicitly define or state how to determine 'anticipated receipts' . . . or say who did the anticipating or when it was done" undercuts its own argument that Defendants do "not follow the literal or plain language of the law." (House Br. at 14.) The administration has met the plain language requirements of the unallotment statute. To the extent the House is asking the Court to undo these necessary actions five months into the biennium based on an effort to read implied conditions into the statute contrary to the reasoned determinations made by the executive branch, that request should be rejected.

The House also suggests that the executive branch did not reduce unallotments **enough** when it used the level of anticipated revenues from the February 2009 forecast in determining the amount of unallotments and administrative actions to be adopted in its actions taken this summer. The ongoing decline in revenues demonstrated that actions would be required and the administration took actions to conform the budget to the last state economic forecast. As discussed at the November 16, 2009, hearing, this action, in the light of an unprecedented economic environment, is an ongoing process; unallotments were structured where possible to backload the spending reductions; and additional measures may be required after updated economic data is available when the November forecast is released on December 2.

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[1] The MSA Special Diet program funding was unallotted effective November 1, 2009.

Motion to Dismiss

Defendants agree that an Order for Dismissal based on the arguments currently pending before the Court would only involve Counts 1, 2, and 5 of the Complaint. Accordingly, a dismissal of these Counts would constitute a partial dismissal. Defendants would have no objection, if the Court dismisses Counts 1, 2, and 5 of Plaintiffs' Complaint, to the Court making an express determination that there is no just reason for delay and expressly directing judgment upon them pursuant to Minn. R. Civ. P. 54.02 and Minn. R. Civ. App. P. 103.03(a).

Thank you for your consideration of this important matter.

Sincerely,

Patrick D. Robben
General Counsel to the Governor

cc: Alan Gilbert, Esq. (via email)
Galen Robinson, Esq. (via email)
Joel Michael, Esq. (via email)