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STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF RAMSEY	SECOND JUDICIAL DISTRICT
	CASE TYPE: OTHER CIVIL

Feeding Our Future,	Case No. 62-CV-20-5492
Plaintiff,	Honorable John H. Guthmann
v.	MOTION HEARING
Minnesota Department of	OFFICIAL COURT TRANSCRIPT
Education,	
Defendant.	

The above-entitled matter came on before the
Honorable John H. Guthmann, District Court Judge, Ramsey
County District Court, Second Judicial District, State of
Minnesota, by Zoom during the COVID-19 Pandemic on
Wednesday, April 21, 2021.

REPORTED BY: Lori Morrow, RDR, RMR, RPR, CRR, CRC

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A P P E A R A N C E S:

On Behalf of the Plaintiff:

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ALSO PRESENT: Aimee Bock, Feeding Our Future
Emily Honer, Minnesota Dept. of Education
Monica Herrera, Minnesota Dept. of
Education

1 (The following proceedings were had and made of
2 record commencing at approximately 2:07 p.m.):

3 THE COURT: All right. Good afternoon. My
4 name is John Guthmann. I'll be the presiding judge in
5 this particular case. Let's officially call the case.

6 THE CLERK: Calling page one, line two, Feeding
7 Our Future v. Minnesota Department of Education.

8 THE COURT: Appearances by counsel starting
9 with the Plaintiff.

10 MR. WATKINS: Good afternoon, your Honor.
11 We've got Rhyddid Watkins on behalf of Feeding Our
12 Future. And with me is my client, the executive
13 director, Ms. Aimee Bock.

14 THE COURT: All right. Thank you.

15 For the defense.

16 MS. NOGOSEK: Good afternoon, your Honor.
17 Kristine Nogosek from the Minnesota Attorney General's
18 Office. Also with me is Assistant Attorney General Marty
19 Casserly, as well as Emily Honer, last name is H-o-n-e-r,
20 who is a supervisor with the Minnesota Department of
21 Education. Also in Ms. Honer's room is Monica Herrera.
22 Last name is H-e-r-r-e-r-a. And Ms. Herrera is a
23 director at MDE.

24 THE COURT: All right. Thank you.

25 Before we begin talking about the merits, the

1 last time we were together things got worked out. Are we
2 in a position to work things out, or are we going to take
3 off the gloves and start swinging?

4 MR. WATKINS: Gloves are off, your Honor. We
5 would love to work things out, but we don't see how
6 that's possible. It's extremely unfortunate given that
7 we're trying to feed needy children, but given the
8 developments of the last month or so, last couple of
9 weeks, it's really difficult to see how we work this out.
10 We're amenable to hearing options, of course, we're here
11 to hear options, but we have yet to see any so far.

12 THE COURT: Ms. Nogosek.

13 MS. NOGOSEK: Your Honor, I think that there is
14 an opportunity to work things out. And as has been laid
15 out in the Department of Education's memorandum of law,
16 there is a process that is in place for Feeding Our
17 Future to provide the proper documentation for the claims
18 and to give the Department of Education time to look at
19 those and pay valid claims. I'm told that Feeding Our
20 Future is in the process of doing that. There is
21 currently upwards of 155 documents that have been
22 provided to MDE, which is about 50 claims, because each
23 claim needs three documents, and MDE has assembled a team
24 of people to start reviewing this documentation. So I
25 think what is in place is not only workable, but, as you

1 know from reading the Department of Education's
2 memorandum of law and looking at the statutes or federal
3 regulations, that is what is called for during this
4 deficiency process that Feeding Our Future is in. That,
5 I think, is a workable and doable resolution.

6 THE COURT: The characterization of Feeding Our
7 Future is that this action doesn't involve any
8 allegations of any shortcomings with any particular
9 claim, that the concerns that have been raised are
10 umbrella concerns about the overall management of the
11 organization apart from any particular claim. Do you
12 agree or disagree with that?

13 MS. NOGOSEK: I disagree with that, your Honor.

14 THE COURT: I don't see anything in your brief
15 supporting your disagreement. You didn't say a thing in
16 your brief about any deficiency with respect to any
17 particular claim. All the deficiencies you listed
18 related to the way they run the organization overall.
19 What am I missing? Point me to the page in your brief.

20 MS. NOGOSEK: Your Honor, it's not in the
21 Department of Education's brief, but it is definitely in
22 Ms. Herrera's affidavit -- I'm sorry, declaration. And
23 it's on page 2 -- I'm sorry, page 5 at the very top,
24 subparagraph e, which is part of the deficiency letter
25 dated March 31, 2012 [sic] that went out to Feeding Our

1 Future and specifically lists three different instances
2 where MDE has received information from site operators
3 that indicate that claims are being submitted and meals
4 are either not being provided by that site operator or
5 that the operator is not sure that it is operating
6 correctly under the CACFP program.

7 THE COURT: Right. But those are
8 unsubstantiated allegations. I guess, do they -- they
9 are complaints, so you're taking the position that if you
10 receive a complaint, you can unilaterally stop making
11 payment pending investigation of that complaint?

12 MS. NOGOSEK: Um, no, your Honor. I think
13 it -- I think we're -- number one, we're getting a little
14 bit into the substantive claims, but I'm going there with
15 the Court because I feel like that's where you want me to
16 go. With that said, what MDE is doing is simply putting
17 an administrative stop pay, which is different than the
18 suspension of payments or the stop pay that you see in
19 some of the USDA guidance where no payment is made during
20 the serious deficiency, none, until the deficiency is
21 either corrected or until the termination of the
22 agreement is completed.

23 In MDE's situation, what it is doing is putting
24 a stop pay, so Feeding Our Future is able to go into
25 CLiCS and enter the information to submit its claim. The

1 stop pay on that system simply stops the payment from
2 going out to Minnesota Management and Budget for payment.
3 And verifying the validity of the claim is exactly what
4 the federal regulations tell MDE it is supposed to do
5 under these circumstances. And this is what USDA told
6 MDE it should be doing in the situation of the
7 deficiencies that Feeding Our Future have found
8 themselves in. So not only does MDE believe that it is
9 in line with what is required of MDE during these
10 deficiency proceedings but has been told that by USDA.

11 THE COURT: And that's also in the declaration?

12 MS. NOGOSEK: It is, your Honor.

13 THE COURT: All right. With that, Mr. Watkins,
14 why don't you state your case. I've read the briefs. I
15 have not read all the regulations in chapter and in
16 verse. That is a specialty, and it's not --

17 MR. WATKINS: That's --

18 THE COURT: It's not casually done.

19 MR. WATKINS: That's certainly true,
20 your Honor. I've been doing this for five, seven years
21 on these specific regulations for this food program and
22 would agree with you they're not immediately pickupable
23 on the first reading for the first time.

24 I would like to start by just apologizing to
25 the Court and Ms. Neuman as well. I filed a reply brief

1 late this morning about 11:00. I don't know that it was
2 officially accepted. I assume the Court and Ms. Neuman
3 have not had the opportunity to read that. I did --

4 THE COURT: I did read it.

5 MR. WATKINS: I'm sorry?

6 THE COURT: I did read it.

7 MR. WATKINS: Oh, still my apologies for the
8 lateness of that. But thank you, your Honor, for taking
9 the time on that. I do appreciate it.

10 If I could, I would like to start with sort of
11 a background of what happened, because this may be
12 striking the Court in the same way that it's striking me.

13 I was just in trial for just over two weeks on
14 a long, complicated case here in Colorado. And when I
15 got out of trial, I was introduced and I immediately
16 connected with Ms. Bock, and all of a sudden this case
17 had just exploded. Everything had changed. We have been
18 operating for a number of years as Feeding Our Future.
19 We've done tens of millions of dollars throughout the
20 years to feed the most -- you know, the most disparately
21 impacted minority community in the state. And then all
22 of a sudden in the span of two weeks while I was in
23 trial, Feeding Our Future had been terminated from
24 participation in the food program; Ms. Bock had
25 personally been terminated from participation in the food

1 program; she had been put on a national disqualified
2 list, meaning she could never participate again within
3 the next seven years; and the president of the board of
4 directors had been put on the national disqualified list
5 and terminated from participating in the program. In
6 addition to that, there was a second letter sent making
7 the same allegations as in the termination and then
8 adding as well that not only have they all been
9 terminated but that MDE was simply keeping all of the
10 money it's been receiving from the Federal Government
11 that's supposed to be paid to the community partners that
12 feed and operate the federal food program under
13 contractual promises and regulatory promises by MDE and
14 the USDA.

15 So this was kind of hitting me in the same way
16 I'm sure it hit the Court. This isn't the case that I
17 left it when I went to trial. We're in a very different
18 ballgame. So that's where I tell the Court, to mix
19 metaphors, the gloves are off. We are in a dire
20 situation.

21 What has happened since, your Honor, is really
22 important to understand. Several sites have not had
23 their money paid. To date, as of today, it's about 17
24 and a half million dollars, as we pointed out in our
25 briefing. As of tomorrow, that becomes \$20.5 million of

1 federal funds that USDA is simply keeping. The people
2 who operate these programs, your Honor, are non-profits.
3 They are non-profits that specifically dedicate
4 themselves to serving the minority, disproportionately,
5 socially, economically disadvantaged community. Those
6 centers, those sites have now gone without federal funds
7 for several weeks. They cannot afford to operate. As a
8 result of that, we have had at least three sites
9 terminate their participation. Their caterers have fired
10 them saying, I'm sorry, I cannot provide you food without
11 payment, I cannot continue to provide you food. And as
12 of today, as of about a week ago and today as well, there
13 are at least 5,000 children per day that are no longer
14 being served because of MDE's stop payment. So we've had
15 three sites close their doors. For about a week now they
16 have been closed. Collectively, those three sites were
17 serving about 5,000 children per day, and each one of
18 those 5,000 children per day are now going without food.
19 So we've been getting phone calls, we've been getting
20 questions, we've been getting "how are we supposed to
21 feed the community." We're getting outreach from
22 congressmen, from legislatures trying to figure out
23 what's going on, why these sites are closing, why we're
24 not able to continue operation.

25 Now, in addition to that, we've got ten to --

1 about, sorry -- about twenty sites now that are about to
2 close their doors, and they collectively serve roughly
3 30,000 children per day. Those ten [sic] sites, some of
4 them are participating in this call and listening in. As
5 I pointed out to Ms. Neuman before the start of the call,
6 we assume this to be public, so let us know if that's not
7 the case. They are waiting to hear a determination from
8 the Court.

9 In the absence of an injunction requiring
10 release of the federal funds, most, if not all, of those
11 sites will terminate, and 45 [sic] additional children
12 will go without funds. These are non-profits that cannot
13 afford to pay for the federal food program.

14 So that's where we are, your Honor. And again,
15 I apologize. I know you've read the briefing, but let me
16 back up and explain a little bit about how we got here
17 and what sort of happened.

18 So initially, as part of this lawsuit, there
19 was an allegation that Feeding Our Future failed to file
20 its 501(c)(3) tax status with the Federal Government.
21 That was a misunderstanding on MDE's part. Feeding Our
22 Future had an extension. It timely filed its taxes.
23 There was no problem. So that allegation disappeared.

24 The next allegation was, "well, you didn't
25 conduct an independent audit." Well, we did that, too.

1 So what we did is we hired an independent auditing
2 company to come in, audit all of our financials, and
3 confirm where every dollar has gone. We did that. We
4 had the audit. We submitted it to MDE. We provided it,
5 though it is true there was one mistake. The accountant,
6 the CPA that conducted the audit, did not file the audit
7 with what's called the Federal Audit Clearinghouse, which
8 is a federal website in which, if you're receiving grant
9 money from the federal government under complex
10 regulations, you're supposed to file that there so the
11 federal government can see the audit. The audit was
12 done, the audit was complete, the audit was accurate, the
13 audit was given to MDE, but the audit was not filed on
14 the website. So Feeding Our Future when that was called
15 to our attention, we tried to correct that. We tried to
16 reach out to the CPA. But unfortunately, because of
17 COVID, he's been out of the country and unreachable, so
18 Feeding Our Future hired an entirely new auditing firm,
19 one with impeccable credentials, another CPA who is
20 formerly an investigator for the IRS, to conduct a second
21 independent audit and file that with the FAC.

22 That, your Honor, is the sum total of all
23 alleged violations of federal regulations, period.

24 THE COURT: Has that been done? Has the audit
25 been finished, or is that still ongoing?

1 MR. WATKINS: The second audit is in the
2 process of being done. The initial audit, of course, was
3 completed. The second one is ongoing. I understand it's
4 close to completion and will then be filed to the FAC as
5 soon as it's completed.

6 THE COURT: So I'm looking at the deficiencies
7 on paragraph 5 of the declaration. You believe you've
8 satisfied a and b and that you're, as you characterize,
9 it's basically a technicality of uploading the first
10 audit on the SharePoint site, but you're doing a second
11 audit just to be sure?

12 MR. WATKINS: Well, yes. But just to clarify,
13 SharePoint -- we did provide the first audit. The
14 SharePoint is an internal website that MDE houses that we
15 have access to --

16 THE COURT: The FAC.

17 MR. WATKINS: Exactly, correct, your Honor.
18 Now, that can -- we understand that the FAC can only be
19 done by a CPA, so we have the CPA signed, sealed audit.
20 But as a non-CPA, I understand we don't have the ability
21 to file that on the FAC's website, and no auditor --

22 THE COURT: And the CPA who is out of the
23 country doesn't have any CPA associates? He's a sole
24 practitioner?

25 MR. WATKINS: He was a sole practitioner, so,

1 your Honor, the federal regulations require that Feeding
2 Our Future do its best to work with smaller, minority
3 businesses, so when spending the federal dollars, that's
4 one of the requirements. So in compliance with that, we
5 opted for a smaller shop to do the initial audit, and
6 that's where we were. So to remedy that, we sort of
7 hired a second auditing company to come in and perform a
8 second independent audit. Now, we're talking the fiscal
9 year of 2019 keep in mind, your Honor, which had
10 substantially smaller operating expenses and budget.
11 That was about 2.5 to \$3 million in total spend for
12 fiscal year 2019 because, you know, the organization was
13 younger, newer, and smaller in participation. So that's
14 the extent of the allegations. And again, that's --
15 everything within Feeding Our Future's power to remedy
16 that has been done -- is in the process of being done and
17 will be finalized as soon as capable. So that's that.

18 Now, as the Court knows, there was a second
19 letter called -- and again, I'll tell the Court that
20 issue is being appealed. We have submitted our notice of
21 appeal. We are challenging that through the
22 administrative process. And we think that the evidence
23 is going to show MDE has had far more egregious
24 violations in its history that have not risen to the
25 level of a termination of an organization. But that's

1 what the evidence will show as part of that appeal, and
2 it need not concern the Court at this time. And we'll
3 come back. But for now, it's gone. It's part of the
4 administrative process and, in my mind, the relevance of
5 this motion.

6 The second and only relevant letter is this
7 March 31, 2020 [sic] serious deficiency letter attached
8 as our Exhibit 1. And in that is what we've been talking
9 about. There were a total of five allegations. The
10 first allegation was the same one we just talked about
11 that led to the termination of Feeding Our Future. So
12 they have made it again for some reason in the new
13 serious deficiency letter.

14 The other four allegations, as the Court
15 acknowledged or noted, had nothing whatsoever to do with
16 any particular claim. There is no allegation of
17 suspicion, there is no allegation of fact, there is not a
18 single site, there is not a single claim, there is not a
19 single dollar identified that MDE has any reason to even
20 be suspicious of, nothing. They have not identified
21 anything to us, nothing, period. Those four complaints,
22 not three that counsel was referencing, are vague,
23 general, unclear to us, and apparently, according to MDE,
24 have been lodged since January 1 of 2021. So they have
25 been pending for several months. We have never seen

1 those complaints. We don't know what they are. We
2 certainly don't know what factual support, if any, there
3 may be, and we doubt very much there is any factual
4 support for any of them. For example, one of them says
5 that they have been told they cannot operate the Summer
6 Food Program and instead have to do CACFP. Yeah. That's
7 because MDE limited our summer participation. As a
8 result, people have to participate in CACFP. It's not a
9 complaint against us. That's a complaint against MDE
10 arbitrarily limiting the number of people we can feed
11 during the time of the pandemic.

12 Another one of them concerns multiple property
13 owners expressing concerns. Now, what's happening here,
14 your Honor, is you've got several buildings that may
15 house different non-profit organizations. So you can
16 imagine it as what if there's a church where the church
17 owns the building, and then you've also got the Boy
18 Scouts or the Girl Scouts that may come rent the building
19 and then have their after-school programs or their
20 programs there. If that happens, both people are using
21 the same address to serve meals. There's nothing wrong
22 with that in the federal regulations. There's nothing
23 inappropriate about that at all. It happens all the
24 time. In fact, MDE has approved dozens and dozens and
25 dozens of places to operate out of the same address. For

1 some reason, they don't like it when our community does
2 it. But there's nothing inappropriate about it. There's
3 nothing in violation of the regulations about it. It's
4 neither here nor there.

5 So I don't know what those allegations are.
6 They have been apparently made for the last five months.
7 I haven't seen them. I don't know what supports them. I
8 don't know what investigation MDE has done, but it hasn't
9 asked us anything, at least not much. So that's part of
10 it.

11 The other thing that they complained about was
12 we haven't updated our budget worksheet. So your Honor
13 should be clear about this. A budget worksheet is
14 effectively our expected budget over the proposed fiscal
15 year. So we have a budget listing out, explaining our
16 expected expenses through a number of categories as
17 mandated by policy handbooks and so on. We conduct an
18 exhaustive review of that. That's typically reviewed by
19 our bookkeepers and CPAs. MDE's complaint is that we
20 didn't update that. Well, you're only required to update
21 it when you cross an MDE threshold that they are supposed
22 to say if you grow a certain percent or add a certain
23 number of sites, then you've crossed a threshold that
24 requires you to update your budget. To my knowledge,
25 they have never told us to update our budget. They have

1 not told us we've crossed a threshold. We don't know
2 what the threshold is. But they're now saying we're
3 seriously deficient because we didn't proactively update
4 our budgets. Now, maybe it would be a better practice if
5 we had updated our budget, but it's certainly not a
6 violation of any federal regulation that I can see. They
7 didn't site any federal regulations being in violation of
8 the allegation.

9 The third complaint was typos, the allegation
10 being that in our new application there were too many
11 mistakes, that they were unable to process the
12 application or something. I'm not really sure what the
13 allegation was. Again, no support for it, no specificity
14 for it, no clarity behind it. I'll note we have
15 submitted discovery requests that are pending for over
16 five and a half months in which we've asked these
17 questions. And despite pending discovery requests, I
18 have not received a single document related to this at
19 all. So imagine my surprise that MDE is suddenly now
20 terminating our people and withholding our money based on
21 allegations that there are typos that they hadn't
22 disclosed as part of the discovery process. We're still
23 waiting on those documents.

24 The next allegation is that we failed to hire
25 an outside bookkeeper or an accountant, again, perhaps

1 best practices, too. Feeding Our Future is in the
2 process of doing that. We've interviewed a number of
3 independent firms, and again, we've talked to a number of
4 CPAs. We've interviewed them. We've met with them with
5 the board of directors and are in the process of hiring a
6 CPA who would be an outside consultant employed by us
7 responsible for pursuing our -- you know, ensuring our
8 books are properly kept. Again, though, nothing about
9 that has a violation of any federal regulation, USDA
10 policy, or MDE policy. And again, the first time they
11 made that was when we submitted our annual management
12 budget. They said, you should consider hiring an
13 accountant. We said, we will. They then approved it.
14 They approved our operations with the staff we had. Now
15 all of a sudden we're being terminated, and our money is
16 being withheld because we didn't hire an accountant. If
17 they had wanted us to hire an accountant, they could have
18 asked; we could have talked about it. Same with the
19 bookkeeping, if you want us to update that, we could have
20 talked about that. You didn't.

21 So those are the allegations, your Honor. And
22 as the Court pointed out, not a single one pertains to a
23 single site. This is not Feeding Our Future's
24 \$20.5 million that's being withheld. It's our sites. It
25 belongs to the communities. It belongs to the people

1 that have out-fronted the money, have put forth the
2 millions of dollars to feed the tens of thousands of
3 children. It's their money. It is not our money. It is
4 theirs. And MDE is now withholding that without any
5 allegation that in any way correlates to those dollars.

6 And again, the Court should understand a really
7 important thing here. We have been operating at the same
8 levels we have now for six, nine, twelve months, for a
9 long time. All of a sudden, MDE for the first time in
10 its decades-long history -- now, the federal food program
11 was enacted in 1968. I don't know how long MDE has been
12 operating it, but it's decades. MDE all of a sudden for
13 the first time created a validation process. This is
14 new. They have never -- to our knowledge, never in the
15 history of MDE's program has it ever refused to issue
16 payment until it goes through a painstaking process to
17 validate a claim. And by validate a claim, they don't
18 mean was the food served. They don't mean was the food
19 appropriately served or was it served to needy, deserving
20 recipients. What they mean is can you provide all of the
21 documentation necessary that's required. This is the
22 first time they have ever said we are going to condition
23 a release of the funds on you validating, proving, and
24 confirming not that you're serving the meals but that we
25 have all the I's dotted, the T's crossed, and all the

1 documents in order. Never has that been done until now.
2 So this whole policy, this whole practice, this whole
3 procedure is brand new, never been done. No allegation
4 to explain why it's being done, what specific sites
5 they're concerned about, what dollars they're concerned
6 about. That's not happened. It's a blanket, universal,
7 100 percent of your money is frozen until you can
8 validate through an entirely new process. Now, I submit
9 to the Court that violates not only past practices but
10 federal regulations. The way it's supposed to operate
11 and the way it has operated across the country since 1968
12 is that MDE does periodic spot checks. So it has annual
13 reviews where it goes into Feeding Our Future's offices;
14 it takes a random sampling of ten percent of our sites;
15 it goes through those ten percent of our sites and
16 confirms we have the menus, we have attendance records,
17 we have what we call meal counts where we tick off and
18 count the number of meals being served; and we have
19 enrichment activities when they are required for some of
20 the after school programs, and we're showing the
21 documentation to support all the claims and that we have
22 all of the receipts and that everything shows, everything
23 matches up. We do that. MDE does that to us annually.
24 We comply, and we come out just fine every time without
25 complaint, without concern, without deficiency. Never

1 been an issue.

2 So now MDE has switched the process. They have
3 created this entirely new process without any
4 explanation, without any notice, without any rulemaking,
5 without any public comment of any kind. And it is
6 suddenly telling us that it will not release any of our
7 funds until we validate our process. I am strongly
8 suspicious that this has happened to two sponsors, us and
9 another one called Partners in Nutrition. Collectively,
10 Feeding Our Future and Partners in Nutrition are the only
11 two sponsors that cater exclusively to the minority
12 population. Those are the only two sponsors that have
13 been asked, to my knowledge, to validate their claims.
14 Discovery will show that. And maybe we'll hear evidence
15 today that will allow us to figure that out. That's my
16 suspicion, and I would love to hear more about it. But
17 again, no allegations to connect the two, no federal law
18 that allows it, no regulation that allows a validation
19 process before paying the claims.

20 So again, where we sit now is, because that
21 money has been frozen, we are talking about thousands and
22 thousands of children this morning and this evening that
23 will not get fed. And if the Court denies our motion and
24 MDE is allowed to withhold our money without even so much
25 as an allegation, 45,000 children every day starting next

1 week will go without food. Feeding Our Future and all of
2 its community participants that are non-profit
3 organizations, they will go bankrupt. They owe
4 collectively about \$20 million to food vendors. Without
5 that money that the federal government promised, they
6 cannot support their communities. They cannot pay their
7 providers. They cannot pay their employees. They cannot
8 continue to operate.

9 So with the Court's permission, I would like to
10 talk just a little about bit about the law because I do
11 think it's incredibly important. So again, first of all
12 is the history, how this has always worked. And again,
13 what happens is we submit our claims; we get paid for our
14 claims. That's what happened in January, in February and
15 in March and in April -- I'm sorry, in January and
16 February. Then all of a sudden March 31 we're given a
17 notice that says we've changed everything; we are not
18 going to pay your claims; we're going to create a new
19 process for you guys before we'll allow your claims to be
20 paid, no rulemaking, no comment, no notice. The first
21 time we got notice, your Honor, was April 15, two days
22 after we filed our motion, two weeks after we got the
23 suspension notice. Two weeks was the first time MDE said
24 we've been holding your money for two weeks now. Now
25 we're going to tell you -- because you filed a motion to

1 hold us in contempt of court and for a restraining order,
2 now we're going to tell you how you can come off it; now
3 we're going to tell you some process that we think is a
4 reasonable, workable process. First time, two days after
5 we filed our motion, two weeks after the letter, that's
6 when they told us here are the documents we would like
7 you to provide. And as counsel noted, it's 155
8 documents, which consist in some cases of hundreds of
9 pages. It's thousands and thousands of documents where
10 it has a menu and dozens and dozens of receipts and
11 children's attendance records and enrichment activities.
12 And I can only imagine how much time it's going to take
13 MDE to go through, cross-reference, and determine what it
14 considers a valid claim and what it considers a claim
15 which may have some paperwork missing or some paperwork
16 deficiency within the tens of thousands of pages we're
17 producing. And the reason I can only imagine it is
18 because, despite our repeated requests, they have
19 remained absolutely silent on what they're doing with
20 that information, how long it's going to take, and when
21 we may get this money.

22 Now, that's been the historic practice. As
23 you've seen, there's a USDA 2002 policy memo that makes
24 very plain how this works. And if the Court has had the
25 opportunity to review that, it does say the only time in

1 which a state agency can withhold funds is on an
2 allegation of knowingly submitting a fraudulent claim, a
3 hearing on that, and a determination by a fair hearing
4 officer by a preponderance of the evidence that there was
5 in fact a knowing submission of a fraudulent or wrongful
6 claim. Those are the only times MDE is allowed to
7 withhold funds, period. That's it. That's USDA policy.
8 MDE has again not made those allegations, they certainly
9 have not given us a chance to respond, they certainly
10 have not gone forward with a fair hearing, and there most
11 certainly is not a preponderance of the evidence that any
12 of our claims are even mistaken, much less knowingly
13 fraudulent.

14 So that's the USDA policy.

15 In response to that, MDE says, yeah, we know
16 we're violating the policy, but it's just a policy, so
17 we're cool to violate it. Instead, they're looking in a
18 footnote. They say, let's look at 2 CFR § 200.339.
19 That's the regulation that they cite. That's a general
20 regulation applicable to how federal grants are to be
21 distributed and what the requirements are.

22 Several points to note about that. That
23 regulation says absolutely nothing about the ability to
24 withhold federal grants based on an unexpressed
25 suspicion. That regulation does not allow MDE to

1 withhold \$20.5 million because it wants to create an
2 entirely new validation process that violates 50 years of
3 history, violates federal regulation, violates MDE
4 policy. It doesn't allow that. What it says is, if
5 there are violations of federal rules, the agency can
6 impose additional conditions to payment. They're
7 entitled to impose additional conditions. Those
8 additional conditions are spelled out in the regulations.
9 MDE has not done that. MDE has not availed itself of any
10 right they may have to impose additional conditions.

11 Now, the regulation also says that if any --

12 THE COURT: Cite the regulation number again.

13 MR. WATKINS: 2 CFR § 200.339.

14 THE COURT: Okay.

15 MR. WATKINS: There's a typo or two in MDE's
16 brief where they call it 399, but it's 339. And again,
17 that's quoted in our reply brief as well, your Honor.
18 You'll see the block quote. The only part we've omitted
19 from our block quote is options B, C, D, and so on. We
20 felt the only applicable one was option A, so the
21 explicit text is in our reply brief.

22 In any event, your Honor, that, again, makes
23 very clear that the only time MDE can withhold money is
24 when they make a determination that there is
25 noncompliance with the federal regulations that cannot be

1 remedied by the imposition of additional conditions. So
2 there has to be the case that, look, it's not a
3 remediable issue. Nothing we can do in terms of these
4 conditions can remedy the violation; therefore, you can
5 withhold money if it's not possible to correct any issue,
6 but again, it has to be under the regulation, the
7 condition that the noncompliance cannot be remedied. And
8 that's the explicit language of the reg. It says that
9 MDE must, quote, determine that noncompliance cannot be
10 remedied by imposing additional conditions. That's the
11 pre-condition to withholding any federal funds of any
12 kind.

13 So in this case what are the violations and how
14 is it that MDE could possibly say they cannot be remedied
15 by additional conditions? If you read MDE's serious
16 deficiency letter and if you read MDE's brief, they are
17 explicitly telling the Court and telling us, as
18 Ms. Nogosek just said, these can be remedied. We can
19 release the funds. She just said we have a viable
20 procedure, which is to allow us to validate the claims,
21 and then they're happy to at some point in the late
22 future conceive of, possibly produce and release the
23 money.

24 THE COURT: So your position is then that, to
25 the extent MDE's position is valid, they have not yet

1 reached the point at which the regulations would allow
2 them to withhold funds?

3 MR. WATKINS: I would have said it more
4 harshly, but that's a generous way of phrasing it.
5 Correct, your Honor. And then --

6 THE COURT: There's a distinction between our
7 two roles of processing.

8 MR. WATKINS: I think you're better for it,
9 your Honor. I'm not in the mindset today where I can be
10 charitable in my language as I should be and ordinarily
11 would be. But you're exactly right, your Honor. And I
12 think the other part that needs to be considered here is
13 that they cannot get there. It's not just that they
14 haven't gotten there. It's that the nature of the
15 allegations make it impossible to get there. So the
16 allegation isn't we think there's some noncompliance that
17 you are not going to remedy. The allegation is we're
18 suspicious for reasons we have not articulated about an
19 issue that we have not specified. That is not a
20 violation. So because they're withholding the money, the
21 idea is we're holding money because you haven't
22 sufficiently demonstrated the validity of the claims.
23 You've complied with every federal regulation that's
24 applicable to the demonstration of their validity, but
25 we're still not satisfied. And I'll query why they're

1 not satisfied with our claims but they are with everybody
2 else's, but that's for another day.

3 Today the position from MDE is simple. We
4 would like more information. We are suspicious for
5 reasons we are not going to articulate about claims we
6 will not identify, so provide an entire -- for all of
7 your claims, provide every sheet of paper that the U.S.
8 Government requires you to keep. So they cannot get to
9 the point at which they would say additional conditions
10 preclude or make it impossible to correct the issue
11 because they haven't identified the issue. They haven't
12 given us the opportunity to even demonstrate the validity
13 of our claims yet. So if they wanted to do this, what
14 they should have done is gone through the rulemaking
15 process and said, you know what, here's how we're going
16 to run the food program in Minnesota. We're not going to
17 release funds until you go through a claim validation
18 process. They should have provided comment, they should
19 have given us the opportunity to respond, and then they
20 should have uniformly applied that to all sponsors, not
21 just those who serve a certain community. It should have
22 been for everybody. The same rules should apply to
23 absolutely everybody.

24 But anyway, our point, your Honor, is the law
25 is very clear. You have a very specific USDA policy memo

1 that says no, no, no, no, no, you cannot withhold funds
2 in this circumstance. You then have a generally
3 applicable federal regulation that's not about the food
4 program. It's about all federal grants and all federal
5 funding. I can see, your Honor, that it applies to
6 Feeding Our Future. It does apply to the food program.
7 But it is not a food program specific regulation. So
8 USDA, who is responsible for administering the program,
9 is aware of that regulation obviously, and it has adopted
10 its policy position notwithstanding that regulation. So
11 our view is the more specific policy statement governs
12 regardless. But second of all, the plain language of
13 200 -- I'm sorry, of 2 CFR § 200.339, the plain language
14 of that regulation says only when there's a determination
15 that noncompliance cannot be rendered. How could you
16 possibly have that when allegations haven't been made,
17 the opportunity to show compliance has not been offered,
18 and counsel starts this hearing by saying we've got a
19 workable situation that allows for this to be rendered?
20 It's completely inconsistent.

21 THE COURT: I would like you -- because we've
22 been going for some time, one of the primary thrusts of
23 the department's position is that I don't have any
24 jurisdiction.

25 MR. WATKINS: Yeah.

1 THE COURT: They rightfully point out that the
2 underlying lawsuit, which is the only source of
3 jurisdiction that I have, complains solely about the
4 application process, the processing of applications, the
5 selectiveness in the processing of applications so as to
6 discriminate against minorities in violation of the
7 Minnesota Human Rights Act. Each cause of action in the
8 complaint is couched in terms of the application process.
9 So even if I assume that everything you're saying is
10 correct, at this stage today, what right do I have to do
11 anything unless I find that they are impeding the ability
12 of your client to submit applications? And it looks like
13 you are alleging that, too. They have shut you out of
14 that. And to be honest, Ms. Nogosek, to the extent you
15 are doing that, you're violating my order, and I would
16 find you in contempt. But I'll give you a chance to
17 address that. You have no right to stop them or prevent
18 them from applying from anything because there's an order
19 that says you can't do that. And if you wanted to do
20 that, your only choice would have been to come to me, and
21 you didn't do that.

22 But in terms of releasing money, that's outside
23 the application process.

24 So, Mr. Watkins, address that, but then I want
25 to turn it over to Ms. Nogosek because we have time

1 issues.

2 MR. WATKINS: I apologize, your Honor. I was
3 going on a bit.

4 So with respect to that particular issue, to
5 me, the Minnesota Supreme Court has been very clear we're
6 talking about notice pleadings, period. The question for
7 injunctions is whether or not you can preserve the status
8 quo of the parties such that the litigation can proceed.
9 It doesn't have to be a specific cause of action
10 identified in the complaint. We will be amending the
11 complaint. We will be moving to amend the complaint to
12 add additional claims, and we are in the process of doing
13 that, and we expect to have something filed this week.

14 But setting that aside, with the complaint as
15 it stands now, the allegations were not limited to the
16 application process. The specific claims were -- the
17 general claim was, has always been, the gravamen of the
18 complaint is you treat us differently because of who we
19 serve. That should have become abundantly clear through
20 that proceeding because we go through and list, explain
21 who we are, who we serve, why we serve them, how we serve
22 them and so on. The allegation was always you treat us
23 differently. That's why we filed the access to human
24 rights claim. That's why we brought all of our claims,
25 tortious interference of business. They are all driven

1 in that context of discrimination against this particular
2 segment of the community.

3 Now, I don't read the case law the way that MDE
4 does. I don't think there's anything that requires that
5 specific of an allegation. And again, the concern that
6 I've got is you're elevating four modes of service. To
7 require us to first file a second complaint to allege the
8 new conduct, that really is just a change in tactic.
9 First, you're not letting us apply. When the court says,
10 no, you have to let us apply, then they approve us
11 because they have to approve us. Then all of a sudden
12 they say, well, you know what, we're not going to pay,
13 how is that? That's exactly the same conduct by a
14 different name, and it's absolutely the gravamen of what
15 we've complained. And without the injunction -- and I've
16 got Ms. Bock here to testify -- Feeding Our Future will
17 go bankrupt. Its employees will lose their jobs. If
18 their sites will close, their children will starve,
19 period. We cannot progress this litigation. Our
20 interest in this lawsuit cannot be protected without an
21 injunction that allows us to continue serving the
22 children that we've been serving and allows us to get the
23 money that we've had. So I don't read anything in the
24 state or federal law that is requiring so narrow an
25 interpretation of the complaint or of such a direct

1 mapping of the complaint to the issues in the injunction.
2 Nothing they've cited says you have to move to amend your
3 complaint before you bring a TRO, nothing close to that.
4 It just says it has to preserve the issues so that the
5 liti- -- it has to be germane to the litigation so the
6 interests of the parties can be protected. The point of
7 the injunction is to protect our interests, and without
8 it our interests can't be protected. That's the point.

9 And I don't know if the Court is interested,
10 but just very quickly, there was an allegation we failed
11 to exhaust administrative remedies. I would like to add
12 to our reply brief that there is in fact also a federal
13 regulation, as is pointed out to me by Ms. Bock, that
14 makes very clear that -- it's 7 CFR 226.6(k)(3)(ii). So
15 that's 226.6(k)(3)(ii). That specific regulation, as we
16 pointed out -- well, we point it out in our reply brief
17 as we're not entitled to appeal a serious deficiency.
18 That regulation confirms that, as does USDA's handbook as
19 well.

20 So with that, your Honor, if that answers your
21 question, I will yield time.

22 THE COURT: Well, if you're not entitled to an
23 administrative appeal, does that necessarily mean that
24 you are entitled to go to court?

25 MR. WATKINS: Yes. It means that the

1 exhaustion of administrative remedy --

2 THE COURT: It's an impediment. I got that.

3 Okay.

4 Ms. Nogosek. You're muted. You've got Zoom
5 fever.

6 MS. NOGOSEK: There we go. Your Honor, about
7 how much time do I have so that I can use my time wisely?

8 THE COURT: What do you want?

9 MS. NOGOSEK: Oh, I'm sorry. I was just
10 thinking maybe you had another hearing at 3:00.

11 THE COURT: I don't.

12 MS. NOGOSEK: Okay.

13 THE COURT: But I usually carefully guard my
14 schedule for reasons apparent in your question.

15 MS. NOGOSEK: Well, your Honor --

16 THE COURT: Maybe I should never let
17 Mr. Watkins go first.

18 MS. NOGOSEK: I ask because there are several
19 things that I do have to take your time and correct that
20 Mr. Watkins has provided the Court. And some have to do
21 with the law, and some have to do with the facts. So I'm
22 going to start with the facts because I think that's
23 where Mr. Watkins started. And so I'm going to walk
24 through his recitation of the facts and MDE's recitation
25 of the facts.

1 So this did not just start happening two weeks
2 ago. It is important to understand that MDE sent the
3 first deficiency letter to Feeding Our Future back on
4 January 15. Feeding Our Future has been in serious
5 deficiency status for over three months. The first two
6 items were relatively, you know, not as -- not as
7 important as the performance standards, but it had to do
8 with important management and financial aspects of
9 running a USDA program. One is that federal regulations
10 require that Feeding Our Future be a tax exempt status.
11 It's right there in the federal regulations. And MDE
12 learned that, based on the information on the IRS's
13 website, that Feeding Our Future lost its status back in
14 February of 2020. That is extremely important because it
15 wasn't until May of 2020 that Feeding Our Future
16 submitted an application to be a sponsor under the Summer
17 Food Program and certified it was tax exempt, and not
18 only certified it was tax exempt but provided the
19 Department of Education the tax exempt letter from the
20 IRS. So irrespective of whether this was some error on
21 behalf of the IRS that wasn't corrected until December 1
22 of 2020, Feeding Our Future should have told MDE that its
23 status had lapsed for either the reason that it failed to
24 file the Form 900 series for three years in a row or
25 someone at IRS hit the wrong -- hit the wrong button.

1 That's not what Feeding Our Future did. It submitted a
2 false application to MDE.

3 That's number one.

4 Number two is this audit. And it's important,
5 and Mr. Watkins admitted, that the federal regulations
6 required that the audit be completed by a CPA. MDE
7 because of the form of the audit that was provided by
8 Feeding Our Future, because it didn't indicate that
9 either the account -- the company was registered or
10 licensed by the Minnesota Board of Accountancy or that
11 the actual individual that signed was a CPA, went to the
12 website for the Minnesota Board of Accountancy. It's
13 really easy to see who is licensed in Minnesota as an
14 accountant. Neither the company nor the individual that
15 signed that audit is a licensed accountant -- or a
16 licensed accounting firm in the State of Minnesota. And
17 that is one of the reasons why the serious deficiency
18 went out. Feeding Our Future had an opportunity to
19 correct its serious deficiency. So after the letter went
20 out, there was some back and forth with MDE and Feeding
21 Our Future to try to correct the serious deficiencies
22 that were set forth in the January 15 letter because MDE
23 wants Feeding Our Future to continue to be able to
24 provide the services that it does in these communities.
25 But Feeding Our Future has to do it in a way that

1 complies with the federal regulations. There's no way
2 around that. And Feeding Our Future first said here's my
3 letter from the IRS dated December 1, 2020 that says,
4 hey, you've been reinstated; your tax exempt status has
5 been reinstated. Okay? So we've taken care of that.
6 Then, because MDE wasn't able to make sure that the
7 individual or the accountant -- company that did the
8 audit was licensed in Minnesota, there could be a
9 possibility that the company is licensed in some other
10 state. Well, all MDE asked was provide us with
11 information, give us the number for that company, and
12 we'll just call, and we can straighten it out, or you
13 provide us that information. And what happens is Feeding
14 Our Future doesn't help itself so that MDE can help it.
15 It simply shut down, which ended up, because the serious
16 deficiency wasn't corrected, there's now termination
17 proceedings.

18 And so after the serious deficiency wasn't
19 completed or wasn't corrected by the date in the letter,
20 MDE by federal regulations is required to propose
21 termination. That process has started. Termination is
22 not done. It is a complete misstatement of the facts to
23 say that Feeding Our Future has had its sponsorship
24 agreement terminated or that either Ms. Bock or the chair
25 of Feeding Our Future's board of directors, I believe his

1 last name is Stayberg, has been put on some national
2 disqualification list. That is not true. There is a
3 process. There has been a proposal to terminate because
4 of the two issues raised in the January 15 letter.

5 THE COURT: Hold on.

6 MS. NOGOSEK: Feeding Our Future --

7 THE COURT: Hold on. Before you go further,
8 you've indicated that issue number one in the January 15
9 letter is now resolved and done with. The second issue
10 involves the audit. Were you aware before today what
11 Mr. Watkins said about --

12 MS. NOGOSEK: No.

13 THE COURT: -- the auditor? So you didn't know
14 that the person was a CPA and was unavailable to complete
15 this filing and they had to start from scratch? No
16 one -- had they told you that?

17 MS. NOGOSEK: No, your Honor. No. And we
18 still don't -- if the auditor is licensed as a CPA in
19 some state, we don't know what state that is because we
20 haven't been told, nor were we told before today's
21 hearing that, for whatever reason, Feeding Our Future has
22 enlisted another CPA to complete the audit.

23 THE COURT: And I would guess that's because a
24 new CPA probably wouldn't agree to sign off on somebody
25 else's work without redoing the work.

1 My deceased father was a CPA and was the
2 president of the Minnesota Society of CPAs, and I can
3 tell you that he wouldn't have done such a thing, so
4 they --

5 MS. NOGOSEK: Right.

6 THE COURT: So if your CPA leaves the country
7 for whatever reason and can't be reached to provide his
8 qualifications and to submit his audit in the proper
9 electronic format, they have no choice but to start from
10 scratch. But, obviously, it would be incumbent upon
11 Feeding Our Future to tell you that to determine --

12 And, Mr. Watkins, you claim that you did.

13 MR. WATKINS: I was about to, your Honor, yes.
14 And so for one minute --

15 THE COURT: Really fast because this is
16 Ms. Nogosek's time.

17 MR. WATKINS: I appreciate it, your Honor.

18 Just really quickly, we did not hear any
19 concerns from MDE about any potential CPA licensing of
20 that individual. This is the first I've ever heard of
21 it. I've seen no documents about it. What happened is
22 we --

23 THE COURT: Well, she said it's in the
24 January 15 letter.

25 MR. WATKINS: It certainly doesn't say they're

1 concerned that he may not be a CPA, to my knowledge. We
2 can look at it, but it's neither here nor there because
3 that issue was resolved in part of the termination
4 proceeding.

5 But I did just want to inform the Court that
6 what Feeding Our Future did is we did tell MDE. We sent
7 them a letter, and we provided all this information in
8 the letter. They responded by saying they never got the
9 letter. And then we provided a second supplement, I
10 think it was recently, explaining all this again. But
11 that's neither here nor there, but that's the record,
12 your Honor.

13 THE COURT: Okay.

14 Go ahead, Ms. Nogošek.

15 MS. NOGOSEK: And, your Honor, it's important
16 to understand that once Feeding Our Future got into a
17 serious deficiency status on these two issues, it's not
18 enough under the federal regulations just for Feeding Our
19 Future to say, here, as of January 1, 2020, our tax
20 exempt status has been reinstated, or here, we've now
21 provided this new audit by a new CPA firm. What's
22 required is that there is a corrective action plan that
23 is provided to MDE that shows that Feeding Our Future has
24 put into place procedures to make sure that a deficiency
25 of this nature doesn't happen in the future. So you

1 can't just --

2 THE COURT: So your plan might be a document
3 that says "Employee Jane Doe will be responsible for
4 checking our tax exempt status every December"?

5 MS. NOGOSEK: Exactly.

6 THE COURT: Okay.

7 MS. NOGOSEK: Something like that. So that is
8 dealing with the January 15 deficiencies.

9 Like I said, that is in an administrative
10 appeal process. There is an appeal of the proposal to
11 terminate that Feeding Our Future has filed. There will
12 be a hearing in front of a, I believe, a three-person
13 appeal panel. And either the appeal panel will uphold
14 and have the agreement terminated or will say, no,
15 whatever Feeding Our Future has done is sufficient and
16 there's going to be no termination. It's not until there
17 is a termination that is appealed to the Court of Appeals
18 and is affirmed where the issues of the serious
19 deficiency letter become final and the terminations
20 become final.

21 THE COURT: So I guess --

22 MS. NOGOSEK: So there is --

23 THE COURT: I guess the real issue is, as they
24 have posed it, is what right do you have to stop these
25 reimbursements while the appeal process is ongoing?

1 MS. NOGOSEK: Right. Well, your Honor, let --
2 I'll get to that.

3 So we've got a second deficiency letter. Has
4 nothing to do with the first deficiency letter, although
5 some of the issues raised in that deficiency letter show
6 that Feeding Our Future is not meeting the performance
7 standard. Performance standard, one of the components is
8 financial management and viability. Okay? A company
9 that is not watching its tax exempt status and is not
10 filing timely an audit done by a CPA or providing enough
11 information to show that the auditor is a CPA isn't
12 meeting that number one performance standard.

13 The performance standards one, two, and three,
14 they are set out in the March 31 letter. The ones that
15 are really important and what is important to understand
16 is those performance standards form the basis of the
17 sponsorship agreement. So in its sponsorship agreement
18 in every application that Feeding Our Future files with
19 MDE, it is certifying that it is in compliance with the
20 performance standards. The performance standards are
21 part of the regulations. The citation to the CFR is in
22 the department's brief. But they are the bare minimum of
23 what a sponsor must do to operate a USDA food program
24 under CACFP or Summer Food Program.

25 What is at issue here is the federal

1 regulations that apply to a serious deficiency. Now,
2 when there is a false or fraudulent claim or there is
3 imminent harm to a child, those are the two instances
4 where, under the federal regulation, the state agency, so
5 in this -- you know, MDE can suspend payment. And what
6 that means, and you look at the 2002 letter for how USDA
7 defines suspension of payment. And in those two
8 instances, what happens is no claims are processed or
9 paid while the sponsor is in deficiency status. In this
10 case, there are not those two instances that has led MDE
11 to do this stop pay. Instead -- and this is also
12 supported by the federal regulations but also by that
13 2002 letter, because what that letter says is that while
14 the state agency cannot suspend payment, and it has to
15 continue to pay valid claims, so there is a pro --
16 there's a mandatory direction to MDE to pay valid claims
17 and a specific prohibition from paying invalid claims.
18 So what MDE has --

19 Were you going to ask a question, your Honor?

20 THE COURT: I just opened my mouth. I didn't
21 even say anything. That's pretty good.

22 I didn't see anything in either deficiency
23 letter indicating that there was an invalid claim.

24 MS. NOGOSEK: Okay. So going back again,
25 your Honor, to what I pointed out before is -- well, and

1 before I go to the facts, your Honor, I want to address
2 what I think is a mischaracterization of the law, because
3 if the -- the right of MDE, or it's not even a right,
4 your Honor. It's really an obligation of MDE as the --
5 as kind of the regulator -- regulatory agency for this
6 program once a company is in deficiency status to make
7 sure it does not pay invalid claims. And the only way
8 MDE can know whether a claim is valid or invalid is to
9 have the sponsor provide the validation documentation.

10 THE COURT: Right. But the regulation doesn't
11 allow you to withhold payment while you're seeking that
12 information because 2 CFR § 200.339 doesn't list that as
13 a basis not to pay. So what am I missing?

14 MS. NOGOSEK: Your Honor, I think what you're
15 missing -- and I need to pull up this statute, the
16 regulation -- is the 200.339 allows withholding of
17 payment if there's not other conditions that could be
18 implemented. And those other conditions are set forth in
19 2 CFR § 200.208. That regulation is specifically
20 referenced in 200.339. And one of those additional
21 specific conditions is establishing additional prior
22 approvals. So by having Feeding Our Future provide just,
23 you know, three documents for each claim, that is the
24 additional prior approval that MDE can go through to make
25 sure it is paying valid claims and not paying invalid

1 claims.

2 THE COURT: Right. But that reference doesn't
3 allow you to stop paying while those additional
4 conditions are being imposed and complied with. Yes, you
5 can establish additional conditions, but you can only
6 stop paying if those additional conditions cannot -- if
7 the deficiencies cannot be remedied by imposing those
8 additional conditions. You can't impose the additional
9 conditions and stop paying before you determine that
10 those additional conditions won't work. You've put the
11 cart before the horse.

12 MS. NOGOSEK: Your Honor, absent the validation
13 documentation, which is by the regulations, and the
14 citation is set forth in the brief -- I think I wrote
15 it -- jotted it down here. It's 7 CFR § 226.10. That
16 says that in submitting a claim, the institution, so
17 Feeding Our Future, certifies the claim is correct and
18 that, quote, records are available to support that claim.

19 THE COURT: Absolutely. And the criticism that
20 you got during Mr. Watkins' time was that you've imposed
21 a new system for conducting a validation that didn't
22 previously exist. It's clear to me that you are
23 supporting the imposition of that by citing
24 2 CFR § 200.208, which allows you to establish these
25 additional conditions and establish them only as to the

1 agency that you feel has the violation. So that would
2 address the discriminatory claim that's been made that
3 you only are imposing additional conditions against the
4 agency that isn't following the rules, so you impose
5 those additional conditions. But again, what you're
6 saying doesn't address what the Code of Federal
7 Regulations says, is that you can't stop payment while
8 those additional conditions are being complied with. You
9 can only stop payment if you determine that the
10 additional conditions are insufficient to address the
11 issue, which you can't do until they have been given a
12 chance to comply because you don't know the answer yet.
13 And I'm reading -- I got the regulation right in front of
14 me.

15 MS. NOGOSEK: Your Honor, I want to while I
16 have it on my mind here correct another misstatement by
17 Feeding Our Future. Feeding Our Future is not the first,
18 it's not the only right now, and it's probably not the
19 last sponsor who has the stop pay put on their claims and
20 CLiCS to allow the validation process to go forward.

21 THE COURT: Well, that --

22 MS. NOGOSEK: There's --

23 THE COURT: That doesn't help me because, you
24 know, they're not before me. And just because you've
25 done something doesn't make it right. I can only

1 consider a case that's in front of me based on what I
2 see. And I mean, do you dispute my reading of the
3 regulation? Right after the citation of 200.208, the
4 very next sentence says you can't stop payment unless
5 this determination gets made. And you haven't made it.
6 You stopped payment first and then asked your questions.

7 MS. NOGOSEK: Well, your Honor, then this
8 brings me to another couple very important points in the
9 federal regulations. Okay? And one of them is that at
10 7 CFR § 226.7(k), it specifically says valid claims are
11 to be paid within 45 days of receipt. There are
12 currently no claims pending at MDE that are 45 days from
13 the date that Feeding Our Future uploaded them into
14 CLiCS. So if the Court is concerned that MDE cannot stop
15 payment, then as part of the valid claim, the 45-day
16 processing, Feeding Our Future should continue to upload
17 the documentation, and valid claims will be paid within
18 45 days.

19 Now, the other thing I do want to address,
20 your Honor, is that --

21 THE COURT: This is all so simple.

22 MS. NOGOSEK: And, you know, I -- it's kind of
23 funny, because Mr. Watkins has such a severe reaction,
24 and I am saying to the Court this is very simple. There
25 are a set of regulations that Feeding Our Future and MDE

1 must comply with. They are not easy, and they are not
2 simple, but you must comply with them. You must make
3 sure you're a tax exempt status -- tax exempt
4 organization. You have to upload your annual audit.
5 That audit has to be done by a CPA. When you submit a
6 claim, you have to make sure that you have the underlying
7 documentation. When MDE says, hey, you're in serious
8 deficiency, we're concerned about this, instead of
9 fighting with MDE -- because this isn't where MDE wants
10 to be. Feeding Our Future doesn't want to cooperate and
11 provide what needs to be provided. And if -- honestly,
12 if Feeding Our Future -- and keep in mind, your Honor, I
13 keep pointing back, and I put the Court back in the part
14 of the declaration where MDE has gone to the USDA and has
15 gotten the advice of the USDA to do exactly what MDE is
16 doing. Now, if MDE doesn't do what the USDA says MDE
17 should be doing according to the regulations and
18 according to the regulations that apply to MDE, MDE --
19 I'm sorry, USDA may not give the money to MDE to pay
20 these funds out --

21 THE COURT: Well --

22 MS. NOGOSEK: -- to Feeding Our Future.

23 THE COURT: -- you don't have to worry about
24 that, because if, hypothetically, I were to issue an
25 order, then I would be happy to provide you with cover.

1 MS. NOGOSEK: Well --

2 THE COURT: I've got to be good for something.

3 MS. NOGOSEK: -- you know, keep in mind,
4 your Honor, the allegation that MDE is sitting on
5 \$20.5 million that it's refusing to let out of its bank
6 accounts isn't accurate either, because what happens is
7 MDE pays the money up front and then seeks reimbursement
8 from USDA. That's -- ultimately, all of these funds are
9 going to be paid by the Federal Government, and that
10 regulation system they apply -- there's oversight by USDA
11 on MDE, and then MDE has oversight over Feeding Our
12 Future, and then, ultimately, Feeding Our Future has
13 oversight on the site's operators.

14 THE COURT: With regard to that 45 days, does
15 the MDE typically pay sooner than 45 days? So
16 Mr. Watkins appears to have an expectation that this
17 would have been paid already, and you're saying, well, we
18 haven't even taken the time that we can get. So do you
19 typically reimburse sooner than 45 days, which is why we
20 have a gap?

21 MS. NOGOSEK: Yes, your Honor. I think it
22 would be accurate to say that MDE typically pays before
23 the 45 days. But it's also important for the Court to
24 understand that part of the performance standards, the
25 first one, the financial viability is that if there is a

1 delay in having your claims paid by the state agency,
2 that the sponsor can continue to function. This is part
3 of MDE's concerns with Feeding Our Future is that there
4 is this lack of financial viability, that it has really
5 overextended itself and is in violation of a lot of
6 different regulations that governs its operations. This
7 is just one of them, this financial viability, financial
8 management. There's other issues.

9 And it's very concerning, your Honor, when MDE
10 receives calls from three site operators, three
11 organizations that MDE says it's trying -- or that
12 Feeding Our Future says it's trying to protect here
13 today. Those operators are saying to MDE that we haven't
14 provided any meals, but then MDE looks, and Feeding Our
15 Future has been paid for meals that were allegedly
16 provided at that site, that organizations have been
17 trained under the Summer Food Program, but Feeding Our
18 Future is submitting claims for reimbursement under
19 CACFP. Those two programs do not have the same
20 regulatory framework, and there's different conditions
21 that have to be met in order to be paid.

22 THE COURT: Right.

23 MS. NOGOSEK: These --

24 THE COURT: But assuming the truth of all that,
25 you still can't stop paying unless 2 CFR § 200.339 has

1 been met. Is that true, or is there a different
2 regulation that allows you to cut them off while this
3 investigation of those complaints takes place?

4 MS. NOGOSEK: Your Honor, there's nothing in
5 the regulations that prohibit the state agency from
6 asking for the documents that are supposed to already be
7 available to support a claim before it pays a claim.

8 THE COURT: Well, doesn't --

9 MS. NOGOSEK: There's no --

10 THE COURT: This regulation seems to prohibit
11 you from doing that. It says when you can, and if it
12 doesn't say -- if it doesn't qualify under that, then you
13 can't.

14 MS. NOGOSEK: Your Honor, are you referring to
15 .339 and not .208?

16 THE COURT: .208 allows you to impose
17 additional conditions.

18 MS. NOGOSEK: Yes.

19 THE COURT: Are you claiming that .208 --
20 within the four corners of .208 has a separate
21 authorization to withhold payments?

22 MS. NOGOSEK: No. And, your Honor, again, the
23 Department of Education is not refusing to pay valid
24 claims. It has simply, as allowed under 200.308 [sic]
25 for the noncompliance, impose the -- and I've lost my

1 place here, your Honor.

2 THE COURT: Well, you said .308. It's .208.

3 MS. NOGOSEK: Yeah.

4 THE COURT: And you imposed additional
5 conditions. Okay. Fine and good. But that regulation
6 doesn't allow you to temporarily withhold payments while
7 you're processing those additional conditions. You
8 haven't argued that today. You haven't claimed that in
9 your briefs. And the regulation doesn't say that you can
10 do that. In fact, it only --

11 MS. NOGOSEK: Your Honor --

12 THE COURT: You can only do that if a
13 determination is made that these additional conditions
14 cannot remedy the problem, which you don't know yet
15 because they're in the process of complying with those
16 conditions. What am I missing?

17 MS. NOGOSEK: Your Honor, I think -- well, how
18 I view this is -- so maybe I'm missing something. I
19 don't want to say the Court is missing anything,
20 your Honor, but --

21 THE COURT: I've invited it.

22 MS. NOGOSEK: If the federal regulations
23 prohibits -- and it specifically says, your Honor,
24 prohibits MDE from paying invalid claims, how can MDE not
25 be able to require additional conditions in the claim

1 processing to determine whether or not it's paying valid
2 or invalid claims?

3 THE COURT: Because the regulations say you
4 can't. So if the claims are valid based on the currently
5 existing conditions but you have reason to believe that
6 there are problems with compliance, then the regulations
7 allow you to impose additional conditions. And only if
8 those additional conditions don't remedy the problem you
9 suspect exists can you temporarily stop or permanently
10 stop the payments under the regulation that everyone
11 agrees applies.

12 MS. NOGOSEK: Your Honor, and I guess -- well,
13 two things. Number one, the letter dated 2002, that USDA
14 guidance specifically says it does not have the force and
15 effect of law. We are --

16 THE COURT: I know that, but --

17 MS. NOGOSEK: Okay.

18 THE COURT: I'm just reading the regulation.
19 The letter appears consistent with the regulation. And
20 it's obvious from the letter where they got that idea.
21 It's in the regulation. But the regulation isn't vague.
22 I didn't -- you know, and people ask questions of the
23 USDA all the time "does this really mean what it seems to
24 say it means?" And the USDA said, yeah, it means what it
25 says. So I just read it. It seems to mean what it says.

1 You haven't claimed that it doesn't mean what it says.

2 MS. NOGOSEK: Your Honor, I guess I am claiming
3 that it doesn't -- or that I don't interpret .339 to say
4 the same thing that the Court believes it says.

5 THE COURT: Well, where does it --

6 MS. NOGOSEK: When I look at --

7 THE COURT: Where does it say you can
8 temporarily withhold payments even if the agency hasn't
9 yet been given a chance to comply with the additional
10 conditions? Where does --

11 MS. NOGOSEK: Feeding Our Future --

12 THE COURT: -- it say that?

13 MS. NOGOSEK: Sure. Feeding Our Future is
14 being given the opportunity to comply with the additional
15 condition of providing the documents that it has
16 certified it has.

17 THE COURT: Okay.

18 MS. NOGOSEK: That's the additional condition.

19 Now, MDE can impose that additional condition simply
20 because Feeding Our Future is in deficiency status.

21 It --

22 THE COURT: Right.

23 MS. NOGOSEK: -- doesn't require -- okay.

24 So --

25 THE COURT: Right. And I'm not -- I haven't

1 questioned the MDE's ability to do that. What I'm
2 questioning is your ability to stop paying in the
3 meantime because you don't -- you haven't cited me any
4 authority to do that. And the only authority in front of
5 me says you can't, and that's why I said show me how I'm
6 wrong because you're more of an expert on this than me.
7 But I'm assuming that if you could, it would be in a
8 brief somewhere or you would have already cited it to me
9 since I keep saying the same thing.

10 MS. NOGOSEK: Well, and, your Honor, I think
11 when -- when I read 200.339, it specifically allows when
12 there is noncompliance with the federal regulation for
13 the state agency, for MDE, to temporarily withhold cash
14 payments pending correction. That says that --

15 THE COURT: Yes.

16 MS. NOGOSEK: -- there will be no payments.
17 And then -- but there are additional conditions that MDE
18 has imposed --

19 THE COURT: Right.

20 MS. NOGOSEK: -- which is across the validation
21 documentation.

22 THE COURT: Right.

23 MS. NOGOSEK: You're required to have it
24 anyways. Okay?

25 THE COURT: But, you know --

1 MS. NOGOSEK: That --

2 THE COURT: -- with all due respect, you're
3 talking in circles. Yes, you have imposed additional
4 conditions. Yes, the regulation allows you to do that.
5 But the next sentence says you can't withhold payments
6 while that's happening. You can only withhold payments
7 if you determine that the noncompliance cannot be
8 remedied by imposing additional conditions. The
9 regulation says only if that finding has been made can
10 you take this additional action of withholding payments
11 or more severe enforcement action. That's also on the
12 table if they can't be remedied.

13 MS. NOGOSEK: And, your Honor, I think I
14 finally understand what you're saying, but we need to
15 look closer at 200.339(a), because what that says is that
16 MDE could withhold cash payments pending correction of
17 the deficiency. That would mean that until the
18 deficiency has been corrected, during that whole time,
19 MDE could withhold payment.

20 THE COURT: That's not --

21 MS. NOGOSEK: That's not what MDE is doing.

22 THE COURT: Paragraph (a) comes after a colon.
23 The sentence before the colon creates the condition
24 precedent for the action under (a). And you can't
25 satisfy that condition precedent. You don't argue that

1 you can, and you haven't claimed that you can here today.
2 The sentence before the colon is the condition precedent.
3 You can't do (a) without doing the -- satisfying that
4 condition.

5 MS. NOGOSEK: So let me put it to you this --
6 let me say it a different way, your Honor. And
7 hopefully, this will relay what MDE's argument is.

8 MDE's argument is that by imposing the
9 additional conditions, that the deficiency can be
10 remedied so that MDE does not have to suspend payments
11 during the whole corrective action, serious deficiency
12 process. So this is a less severe consequence that is
13 sufficient to address the concerns raised in the
14 noncompliance of the federal regulations.

15 THE COURT: Well, suspending payment is not a
16 condition. It's an action. So it just is inconsistent
17 with the plain language of the regulation. And in the
18 absence of a different regulation that you're relying on,
19 you've got a big problem. Mr. Watkins has a big problem,
20 too. You can characterize the complaint any way you
21 want, but that complaint doesn't even hint at a problem
22 outside the scope of the application process. And
23 Ms. Nogosek in her briefing is correct. The specific
24 problem that you are complaining of here today, other
25 than the application issue, which I'm about to have

1 Ms. Nogosek address, you either have to amend the
2 existing lawsuit or file a new lawsuit with a new TRO.
3 You know, and I assume they'll assign the case to me
4 because they will probably run me out of the courthouse
5 if some other judge had to take it over. But, you know,
6 I would be happy to accept the briefing -- briefing on a
7 new claim, or if you want to amend the claim and have a
8 new TRO in front of me. Yes, it's form over substance,
9 but I can't ignore form. It exists for a reason. Your
10 lawsuit is an application lawsuit. All your causes of
11 action, including the Minnesota Human Rights Act, talk
12 about applications. My order only talks about
13 applications. The reason my order only talks about
14 applications is because the remedy that you stipulated to
15 addressed your only complaint in the lawsuit. So
16 Ms. Nogosek's briefing is right on the money.

17 So let me ask Ms. Nogosek: That being true,
18 how could you refuse to allow them to process new
19 applications without violating my order?

20 MS. NOGOSEK: Your Honor, my understanding is
21 that MDE is not prohibiting new applications from being
22 submitted. But the problem is that as part of that
23 application submission, Feeding Our Future has to certify
24 that it is in conformance with the performance standards.
25 That's not a MDE regulation. That is a federal

1 regulation. So any application that Feeding Our Future
2 would submit, number one, they're not going to be able to
3 certify they're in compliance with the performance
4 standards. But even if they did submit it otherwise and
5 they checked the box that it conforms -- that they're
6 conforming, it's not a correct and complete application
7 that MDE will have to, you know, process within a
8 reasonable time. What MDE is doing is allowing Feeding
9 Our Future the opportunity to cure the deficiencies, to
10 go through -- or don't cure the deficiencies and go
11 through the termination proceedings, go through the
12 administrative appeal in front of the appeal panel, go up
13 to the Court of Appeals. But during this whole time,
14 applications can't be approved because none of them are
15 correct and complete.

16 The other --

17 THE COURT: So basically, what should happen
18 then is that they submit them and then you reject them by
19 providing the specific reasons for rejection, which would
20 trigger an administrative appeal ability.

21 So yes or no, Mr. Watkins, has your client been
22 locked out of the ability to even apply?

23 MR. WATKINS: Yes.

24 THE COURT: Yes or no.

25 MR. WATKINS: Yes. Effectively, yes, your

1 Honor.

2 THE COURT: Well, effectively is waffling. I
3 mean --

4 MR. WATKINS: Well --

5 THE COURT: -- can it physically be done?

6 MR. WATKINS: -- no, because part of the
7 application process requires a site ID, and MDE's letter
8 explicitly says it will not issue any site IDs.

9 THE COURT: Okay.

10 MR. WATKINS: By not issuing any site IDs, we
11 cannot physically submit applications --

12 THE COURT: Okay. Ms. Nogosek, you cannot
13 prevent them from submitting an application even if
14 you're convinced it will be denied later. Okay?

15 MS. NOGOSEK: Understood, your Honor.

16 THE COURT: All right. I do have another
17 matter. But basically, the bottom line is this: You
18 can't prevent them from submitting an application. And
19 if you tell me you're going to instruct your client to
20 permit these applications to be submitted and you're
21 going to issue the IDs so they can do it, I won't issue
22 another order. If you need an order, I'll issue an
23 order. You tell me, Ms. Nogosek.

24 MS. NOGOSEK: Your Honor, the MDE will allow --
25 and MDE believes that Feeding Our Future can go ahead and

1 make the submissions. They can ask --

2 THE COURT: That means your client --

3 MS. NOGOSEK: -- for -- no.

4 THE COURT: They have to issue the ID, or they
5 can't do it.

6 MS. NOGOSEK: Or they have to deny it. When
7 the request comes in, it's a denial because it's not
8 correct and complete, and that will send Feeding Our
9 Future into the administrative appeal process.

10 THE COURT: Right. I think what the --

11 MS. NOGOSEK: Right.

12 THE COURT: The problem here is that they're in
13 administrative purgatory if they can't file the
14 application to get it denied.

15 MS. NOGOSEK: Right.

16 THE COURT: So, Mr. Watkins, if you have a
17 problem, I'll issue an order.

18 And if I have to issue an order, I'm going to
19 assess attorneys' fees because you can't violate my
20 orders. And it's obvious that you have up until now. If
21 you're not issuing IDs so they can file an application,
22 you're violating my order. My order says you can't
23 prevent them from filing applications. You have to allow
24 that, and you have to process it. If you deny it, you
25 deny it, but you can't prevent them from filing an

1 application in the first place. That violates my order.

2 MS. NOGOSEK: And, your Honor, just so I can
3 put it on the record, I do not believe that the facts are
4 that Feeding Our Future is shut out of the ability to
5 send MDE through the normal channels a request for a site
6 ID with the right documentation. It's not as though
7 Feeding Our Future is not able to do that. They have not
8 been locked out. Their emails from MDE have not been
9 blocked. Their access to CLiCS has not been blocked,
10 either.

11 THE COURT: Well, you know, they claim that
12 they have been blocked, and none of your submissions
13 denied that. In fact, you were sort of proud to back
14 what you were doing.

15 So, Mr. Watkins, if you're unable to submit an
16 application, I want to know about it. You can submit a
17 proposed order but with an affidavit of attorneys' fees.

18 Because you can't do that. And hopefully,
19 we're not talking about semantics, but if they're unable
20 to submit an application to get it denied, which my order
21 allows you to do, if it's not -- if they don't meet
22 program conditions, you can deny it, and then they can
23 appeal, and those appeals can stack up, and you can hire
24 a bunch more lawyers.

25 But on the other hand, Mr. Watkins, I don't

1 have jurisdiction over the issue of the withholding of
2 pay. You're either going to have to file a motion to
3 amend with a contemporaneous TRO motion or a new lawsuit
4 with a contemporaneous TRO, which is how we all came
5 together in the first place.

6 But at the same time, Ms. Nogosek, I think you
7 got real problems under 2 CFR § 200.339 if they take
8 these steps. Based upon the positions you've taken on
9 behalf of the department, the law that's been given to
10 me, you've got a real problem not reimbursing at this
11 stage of the game. You may ultimately have every right
12 to implement the suspension of payments under this
13 regulation based upon whatever it is they're supposed to
14 give you, but the standard that has to be met to entitle
15 the department to stop paying is crystal clear in this
16 regulation. If the federal awarding agency or
17 pass-through entity determines that noncompliance cannot
18 be remedied by imposing additional conditions, the
19 federal awarding agency or pass-through entity may take
20 one or more of the following actions: Based upon the
21 record in front of me today, that state of affairs
22 doesn't exist. No such determination has been made. So
23 unless I have missed something, which you'll have an
24 opportunity to develop because I'm not going to be
25 issuing any rulings today on this issue, I think you've

1 got a problem. And I think the two of you ought to talk
2 about it and work it through. If you didn't know that
3 they had a new accountant, for example, that's a
4 communication problem, and there have been other
5 communication problems in your history.

6 Mr. Watkins, your client appears to have some
7 management issues being able to marshal compliance with
8 relatively rudimentary requirements. And it may be
9 frustrating to see what you view as punitive actions
10 being taken for what you view as simple things or typos,
11 but the agency does have an obligation to demonstrate
12 compliance with the law, or they're going to get whacked
13 behind the woodshed by the USDA. And they're exposed,
14 too, because they have got to front the money, and they
15 have to go with their hand open to the Feds, and they
16 could be in a similar position to you, Mr. Watkins, and
17 your client if the Feds don't want to pay them because
18 they haven't asked for enough from you. So it is a
19 vicious circle. But that's going to be my ruling today.

20 Any questions?

21 Yes, Mr. Watkins.

22 MR. WATKINS: Just quickly for point of
23 clarity, your Honor. I mean, first of all, if I could
24 respond to that comment, I don't know there's been any
25 management issues of any kind. The documents are all --

1 THE COURT: Not having your non-profit status
2 up to date --

3 MR. WATKINS: Yeah, we did.

4 THE COURT: -- and not having your audit
5 strictly comply with the requirements of the federal
6 regulations is a problem. And whether it's the CPA's
7 fault or whether it's management's fault or not for
8 allowing the CPA to disappear before this got done, this
9 is a complicated system, and there needs to be somebody
10 who the buck stops with within the agency.

11 MR. WATKINS: Your Honor, and I agree with
12 that. I'll just note for the record without belaboring
13 the point, our 501(c)(3) status was never revoked, was
14 never an issue. We were given an extension to file our
15 tax return. We filed it within time. It was never
16 revoked. That's neither here nor there, but just so the
17 record is clear on that.

18 THE COURT: All right. Well, if --

19 MR. WATKINS: With respect --

20 THE COURT: -- that's the case, then it would
21 have been very easy to demonstrate within days of that
22 January 31 letter, and --

23 MR. WATKINS: And we did. And that --

24 THE COURT: Or January 15 letter. And when you
25 send letters to the department addressing their concerns,

1 put in your letter that we would like an email or a phone
2 call within five days of today's date indicating receipt.
3 And if you don't get it, call them up and say why didn't
4 you get my letter. I mean, to say that you sent a letter
5 and then not know it ever got received demonstrates to me
6 a certain lack of follow-up.

7 MR. WATKINS: But we did get that receipt
8 received, your Honor, and MDE did respond by saying that
9 it had accepted our filings and submissions on that
10 issue. It's kind of beside the point, your Honor, but
11 that's the record. They said we can send you back your
12 501(c)(3). We provided the documents. They said, okay,
13 we're no longer concerned about that. And as you pointed
14 out, that's the issue that was resolved. But it's
15 neither here nor there, your Honor. Your concerns are
16 well-taken; your point is well made.

17 And the question I want to raise with the Court
18 is simply a procedural one. I want to make sure I'm not
19 creating more work. So I understand the Court's position
20 today. I will be filing, with the Court's permission
21 before I leave today, a motion to amend my complaint. I
22 will be attaching to that an amended complaint. I will
23 be also separately filing the same briefing as the TRO as
24 part of today.

25 Is that procedurally acceptable to the Court?

1 I typically do not attach a proposed amended complaint
2 with a motion to amend. But given the circumstance,
3 requesting the Court's permission to include the amended
4 complaint and the request to file it.

5 THE COURT: Well, a motion to amend the
6 complaint, I think the rule requires you to include --

7 MR. WATKINS: Does it?

8 THE COURT: -- the proposed amended
9 complaint --

10 MR. WATKINS: I'll --

11 THE COURT: -- so you are certainly encouraged
12 to do that.

13 A scheduling order has not yet been issued in
14 this case. There is no trial date. There is no
15 discovery deadline. And in fact, I think the parties
16 probably secretly hoped that none of that would become
17 necessary. None of you have to answer that. But, you
18 know, so there is no deadline to file a motion to amend
19 that has passed yet. So, you know, typically, if the
20 proposed amended complaint could have stood on its own as
21 an original complaint with no prior litigation, the rules
22 of amended pleadings would probably allow it. There is
23 doctrine that if an amendment is futile, in other words,
24 would be subject to a motion to dismiss, then that could
25 potentially cause it to be denied on the merits. So the

1 only issue is timeliness. And, you know, in the context
2 of an accompanying TRO motion, I would simply be
3 considering what are the chances of you being able to
4 prevail on your motion to amend on the merits as part of
5 the overall prevailing on the merits.

6 Ms. Nogosek, what's your initial reaction?

7 MS. NOGOSEK: Your Honor, the department's
8 reaction is that any motion to amend the complaint is
9 going to be met with a motion to dismiss. The processing
10 of claims are within the purview of the administrative
11 review process and are outside of the scope of the
12 Court's jurisdiction.

13 THE COURT: Okay. Well, if I determine that
14 you discontinued funding in violation of federal
15 regulations, and there's no right to appeal that
16 decision, so there's no administrative remedies to
17 exhaust, where does that put you?

18 MS. NOGOSEK: Your Honor, I feel like I'm
19 drawing us back into the substance again, but the federal
20 regulations give MDE 45 days to pay valid claims. There
21 is no allegation in any of Feeding Our Future's papers
22 that they filed to say that any claim, any valid claim is
23 45 days past its submission. So, you know, if -- the
24 other thing -- and the department can look at this, and
25 there will be conversations after this. The possibility

1 of simply denying all of the claims that are currently
2 submitted, that denial of claims puts us into the
3 administrative review process because that is a agency
4 action where the agency has to provide the administrative
5 appeal. That's not where we want to go. I just want to
6 highlight that both for Feeding Our Future and the Court.
7 That's not -- that's not where we want to go is to deny
8 \$20.5 million. But the department is in a position where
9 the regulators have said you are prohibited under our
10 regulations from paying these claims, and you have to
11 validate them before you pay them. So I'm not -- like I
12 said, I'm not sure where the department is going to be at
13 after today's hearing. I'm hoping we can find a way, but
14 we do understand the Court's position, and we'll act
15 accordingly.

16 THE COURT: Yeah. And so you're not
17 procedurally barred from doing this, Mr. Watkins, but
18 depending upon the state of affairs that exists at the
19 time we're back on a TRO motion, you know, if -- I don't
20 know what your position is on the 45 days, for example,
21 Mr. Watkins, but if the 45 days hasn't run, you know,
22 there's a variety of scenarios that would influence the
23 merits of your TRO motion. But if you want to bring a
24 motion to amend, I'm not going to stop you, and
25 Ms. Nogosek is going to argue that such a motion is

1 futile, and she would oppose the merits of the motion.

2 MS. NOGOSEK: Yeah. I heard a threat that she
3 was going to deny all of our claims without any
4 allegation that any of them are invalid. I heard that,
5 and we will be responding to that, your Honor. I mean,
6 again, gloves are off at this point, your Honor.

7 THE COURT: All right.

8 MR. WATKINS: I'm shocked that there would be a
9 threat to just unilaterally stop and deny all funds
10 without a single allegation of a specific claim being
11 valid or a single factual basis to believe it. But I --
12 again, your Honor, my people are going bankrupt. The
13 kids are going without food. I don't have a choice in
14 this matter. You will be getting a motion to amend from
15 me before I leave my office today.

16 THE COURT: All right. And as always, we look
17 forward to seeing you all again. And with regard to what
18 I did act on today, if there is a new claim processing
19 problem, then I expect I'll hear about it if it's
20 necessary to issue an order. But, Ms. Nogosek, I'm
21 comfortable at this point that that won't become
22 necessary.

23 All right.

24 MR. WATKINS: All right. Thank you very much,
25 your Honor. We do appreciate you and your staff. And to

1 Ms. Morrow, I apologize for my speed in particular today.

2 I do appreciate that I did that, and I apologize for it.

3 But thank you all.

4 THE COURT: All right.

5 MR. WATKINS: We appreciate it, your Honor.

6 THE COURT: Thank you. Keep talking.

7 MS. NOGOSEK: Thank you.

8 (The hearing was concluded at 4:55 p.m.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF MINNESOTA)
4) ss.
5 COUNTY OF RAMSEY)

6 The foregoing proceedings were held ONLINE BY
7 ZOOM during the COVID-19 pandemic. Due to potential
8 technology glitches for online proceedings, there may be
9 word(s) that were misheard by the court reporter or not
10 heard at all, a speaker talking while muted, background
11 noise, the parties speaking at the same time and only one
12 being heard, or other issues. With the above caveat, I,
13 Lori Morrow, Official Court Reporter to the Honorable
14 John H. Guthmann, in and for the County of Ramsey, Second
15 Judicial District, State of Minnesota, do certify that
16 the foregoing constitutes a true and accurate record of
17 the proceedings had in the above-entitled matter heard
18 and stenographically recorded by me.

19 Dated: April 30, 2021.

20
21 

22 _____
23 Lori Morrow, RDR, RMR, RPR, CRR, CBC, CLR
24 Official Court Reporter
25 Ramsey County Courthouse, Chambers 1470
15 West Kellogg Boulevard
St. Paul, Minnesota 55102
(651) 266-8281

RAMSEY COUNTY DISTRICT COURT
SECOND JUDICIAL DISTRICT