STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

Case Type: Other Civil

The Ninetieth Minnesota State Senate and the Ninetieth Minnesota State House of Representatives,

Plaintiffs,

v.

Mark B. Dayton, in his official capacity as Governor of the State of Minnesota, and Myron Frans, in his official capacity as Commissioner of the Minnesota Department of Management and Budget,

Defendants.

Court File No. 62-CV-17-3601

AFFIDAVIT OF CAL LUDEMAN

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Cal Ludeman, being first duly sworn, deposes and states:

1. I am the Secretary of the Minnesota State Senate. I was elected to this office by the 90th Minnesota Senate on January 3, 2017. My duties as Secretary of the Senate include serving as the chief parliamentarian of the Senate and the supervision and control of Senate employees, including the oversight of fiscal services, information technology, human resources, public information and other functions of the Senate. The Secretary of the Senate is authorized under Senate Rule 51.3 to serve as the agent of the Senate for the purchase of supplies and services. As a result of my position, I am familiar with the constitutional function and the operation and budget of the Minnesota State Senate.

2. I make this affidavit based on personal knowledge of the facts stated herein and offer this affidavit in support of our motion for a declaration that Governor Mark Dayton's May 30, 2017 line-item vetoes of the Minnesota Legislature's funding for fiscal years 2018 and 2019 violated the Separation of Powers Clause of the Minnesota Constitution, and an order compelling the Commissioner of the Department of Management and Budget to allot such funds to the Legislature. I believe our requested relief is necessary to prevent great and irreparable harm to the Legislature and the People of the State of Minnesota.

3. The Senate is one of the two constitutional bodies of the legislative branch of the State of Minnesota (the other is the House of Representatives). There are 67 elected Senators. The voters of a district elect each of the members of the Senate for a term of four years in years that end in "2" and "6" and for a term of two years in years ending in "0". The Senate, in conjunction with the House of Representatives is constitutionally responsible for the passage of all legislation, including legislation to provide funding for the operation of state government. All Senators take an oath of office on the first day of their term that obligates them to support the Constitution of the United States and the Constitution of the State of Minnesota, to the best of their judgment and ability.

4. Senators are elected to represent the constituents in their districts. At the time of the last redistricting in 2012, the largest Senate district population was 79,811 people, and the smallest district population was 78,683 people. A core portion of the duties for every elected Senator includes constituent communication. The constituents in each Senate district frequently contact their Senator to ask questions about pending legislation, to propose future legislation, and to alert their Senator to issues and concerns about the operation of enacted laws and the operation

of state government. Without continuous constituent communication, a Senator cannot properly represent the will of the people in the district the Senator represents. Each Senator has at least one staff person, employed by the Senate, to handle constituent communication regarding issues of concern, to convey those concerns to the Senator and to answer and respond to constituent questions and concerns. During the interim between regular legislative sessions in each year, most Senators are employed outside the Senate. The assistance of legislative staff provides vital support to make Senators accessible to their constituents during the legislative session and the interim. As the elected representatives of their constituents, Senators must be accessible to their constituents in order to represent their interests and address their concerns as they occur.

5. Another core duty of a State Senator is to craft legislation for consideration for passage by the legislature. By its very nature, legislation is complex. Preparing draft legislation for introduction is often a time-consuming task that depends heavily on assistance from partisan and nonpartisan Senate staff, including attorneys, research analysts, and fiscal analysts. For example, a bill may propose a change in one statute that will affect the operation of another statute, which will have to be amended accordingly. Legislation must be examined to determine whether it would add to the cost of government operations, and if so, to what extent. If the same legislation does require the appropriation of additional funds, the legislation may require a funding mechanism. The words of the legislation must be clear and must meet technical and stylistic drafting protocols. The proposed legislation must be explained and supported throughout the legislative hearing process. At the same time, individual Senators must monitor legislation introduced by other members of the Senate and the House to determine if the legislation is acceptable, or if it needs to be amended to reflect the interests of the Senator's constituents. If

amendments are needed, Senate staff also assist with that function. No State Senator can accomplish all of these tasks on a comprehensive basis without assistance. Partisan and nonpartisan Senate staff assist Senators with a comprehensive array of services necessary to prepare legislation for introduction, to review and track the fiscal implications of bills that have been introduced, monitoring amendments, and to draft legislation.

6. Legislative activity occurs throughout the calendar year. In addition to the operation of the Senate during the regular legislative session each year, there are important legislative functions that occur during the interim. Senate committees are empowered to meet during the interim to review legislation and conduct oversight of executive branch activity. To support this function, Senate staff provide the services described in paragraph 4. Furthermore, Senate committees conducting the oversight function are empowered to issue legislative subpoenas at any time. In addition, Senate committees tour various locations within the state that are relevant to their subject matter jurisdiction. For example, the Capital Investment Committee travels the state to review proposed capital investment projects. In addition, time in the interim must be dedicated to the preparation of bills for consideration when the legislature is in session. This includes committee hearings to gather evidence on issues of interest for possible legislation. Senate nonpartisan staff are also required to review, and prepare the Senate Journal for publication, which is a constitutional obligation under Article IV, section 15 of the Minnesota Constitution. In a typical biennium, the Senate Journal can exceed 10,000 pages in length, plus indexes.

7. A special legislative session can be called by the Governor at any time, and may last for an indefinite period of time. Since 1993, there have been 19 special sessions, including 6

special sessions to provide assistance to areas within the state affected by various natural disasters. In addition to the time the Senate spends meeting during a special session, Senators, Senate committees, and Senate staff spend considerable time preparing for each special session, including the preparation and review of legislation.

8. In order to ensure the proper function of each regular legislative session, staff and Senators spend considerable time in advance of each session ensuring that administrative tasks such as recruiting, hiring, and training staff are completed. After a regular session has begun, there is very little time available for any work outside the legislative process itself.

9. On May 22, 2017, as required by Article IV, section 12 of the Minnesota Constitution, the Minnesota Legislature concluded the 2017 regular session by adjourning to February 20, 2018. The Governor then called a special session that began at 12:01 a.m. on May 23, 2017. By May 26, 2017, the Legislature passed a comprehensive and balanced budget for the 2018-2019 fiscal biennium. The budget included nine appropriation bills and a tax bill. The Legislature adjourned the special session *sine die*, and the budget bills and tax bill were presented to the Governor. On May 30, 2017, the Governor signed all nine budget bills and the tax bill into law. The Legislature is not scheduled to meet in session again until the 2018 regular session begins on February 20, 2018.

10. The Governor's line-item veto of the appropriation for the Senate contained in Laws 2017, First Special Session, Chapter 4, Article 1, Section 2, Subdivision 2, eliminated the entire general fund appropriation for the operating budget for the Senate for the fiscal biennium commencing on July 1, 2017. This appropriation includes money for the salaries and benefits for approximately 205 permanent full-time Senate staff, 67 Senators, and 35 session-only full-time

Senate staff. These staff positions must be funded to ensure that Senators can serve their constituents consistent with their constitutional obligations.

11. Consistent with their continuing duty to serve in office, Senators are paid their salary throughout the calendar year. I am required by Minnesota Statutes, section 3.099, subdivision 1, to ensure that Senators are paid on the first of each month. Beginning July 1 of this year, the salary that must be paid to Senators is the amount prescribed by the Legislative Salary Council under Article IV, section 9 of the Minnesota Constitution.

12. Senators traveling to and from St. Paul for Senate business or within their district for the purposes of meeting with constituents are authorized to claim mileage for that purpose. This expense payment is made from funds appropriated to the Senate.

13. A portion of the general fund appropriation for the Senate is for lease payments for the Minnesota Senate Building that the Senate is required to pay each month under the terms of its sublease with the Department of Administration. On June 30, 2017, under the terms of the lease, the Senate will be required to make a payment of $683,000 to the Department of Administration. $589,000 of this amount is due under the lease for the Minnesota Senate building, and $94,000 will be for costs of the Senate parking garage. Under the terms of the lease-purchase agreement for the Minnesota Senate Building entered into by the Department of Administration with the Department of Management and Budget, a semi-annual rent payment of approximately $1,911,000 will be due from the Department of Administration on November 14, 2017, and another payment of approximately $4,131,000 will be due on May 14, 2018. The Department of Management and Budget must use the payments from the Department of

Administration to pay the debt service on the Certificates of Participation that were used to finance the construction of the Senate Building.

14. If the Senate is not able to make its sublease payments to the Department of Administration, the Department of Administration has the authority to terminate the senate's sublease. If the Department of Administration fails to make payments under the lease to the Department of Management and Budget, the Department of Management and Budget is authorized to remove persons and property from the Senate Building.

15. In the absence of a general fund appropriation to the Senate for the fiscal biennium commencing July 1, 2017, the only funds appropriated to the Senate will be the unexpended balance of funds available during the current fiscal biennium carried forward under Minnesota Statutes, section 16A.281. At the present time, this amount is approximately $3,300,000, and will be adjusted at the end of the fiscal year on June 30 to include any savings in the Senate budget from the current fiscal year. The average monthly operating expenses for the Senate during the current fiscal year to date are approximately $2,558,000. This figure for average operating expenses does not include the amounts necessary for the payment of obligations to employees that would accrue in the event of layoffs or terminations.

16. In the absence of a general fund appropriation to the Senate for the fiscal biennium commencing on July 1, 2017, the only funds appropriated to the Senate will be the unexpended balance of previous appropriations to the Senate carried forward for use in the 2018-2019 biennium under the authority provided in Minnesota Statutes, section 16A.281. These funds, commonly known as the carryforward, are estimated to be approximately $3,900,000 as of July 1, 2017.

17. In the absence of an operating budget for the Senate, all Senate operations will cease at the close of business on July 27, 2017. The Senate will use the carryforward amounts to pay salaries and benefits for staff through July 27, 2017, and salaries and benefits for Senators through July 31. Payment of July salaries and benefits will require the use of approximately $1,604,000 from the carryforward. Beginning July 28, 2017, the Senate will furlough 202 of 205 Senate staff. The planned furlough will allow staff to claim unemployment insurance and to receive the employer portion of health insurance costs through the end of the calendar year. This will require the Senate to reserve a portion of the remainder of the carryforward amount to pay: (1) $1,137,000 of the employer portion of health insurance costs for 202 furloughed Senate staff through December 31, 2017; (2) $695,000 for unemployment insurance costs for furloughed Senate staff; and (3) $60,000 for payroll costs for three Senate employees to implement these payments through November 30, 2017.

18. The following amounts will also be reserved from the carryforward account: (1) $211,000 of the cost of the employer portion of health insurance for Senators through December 31, 2017; and (2) $270,000 for housing allowances for Senators through January 1, 2018. The housing allowance payments are provided to Senators pursuant to an authorization made by the Senate Committee on Rules and Administration before the beginning of the current Senate term. Provision of the housing allowance payments will prevent personal liability for Senators who have entered into leases in reliance on the Senate housing allowance.

19. The state's credit rating is at risk if the legislature's appropriation is not restored soon. On June 15, 2017, Standard & Poor's Global Ratings placed the State of Minnesota's "AA+" credit rating on "CreditWatch with negative implications" as a result of Governor

Dayton's May 30, 2017 line-item vetoes. (Ex. 1, S&P Global Ratings, *Minnesota 'AA+' General Obligation Debt Rating On Watch Negative On Nonappropriation Of Certificates of Participation*, June 15, 2017.) The S&P report warns that without resolution of the legislature's appropriation soon, S&P could lower the state's credit rating "several notches":

> If the state works out an agreement and meets its contractual obligations over the next 90 days we would remove the ratings from CreditWatch, but would likely revise the outlook to stable rather than back to positive because this situation has illustrated a departure from what has been a very strong budget management and is not commensurate with higher rated credits. However, if the stalemate continues and increases, in our view, the likelihood of nonpayment or the nonappropriation leads to a termination of the lease and an extraordinary mandatory redemption of the bonds, then we could lower our ratings on the state as well as associated ratings by **several notches**.

(*Id.* (emphasis added).) Because a state's credit rating is an indicator to investors of the state's ability to fulfill its financial commitments, a reduction in the rating will likely increase the interest that lenders will demand to loan money to the state. In 2017, Minnesota enacted its first bonding bill since 2015, authorizing general obligation bonds and appropriation bonds to pay for construction projects across the state (Laws 2017, 1st Special Session, Chapter 8). The state's ability to go to market with these bonds is affected by the governor's line-item veto of the legislature's appropriation. It may not be possible or prudent to sell these bonds until the legislature's appropriation is resolved, thereby delaying the sale of bonds and preventing the funded projects from moving forward. Further, damage to the state's credit rating will make it more expensive to sell the bonds when the state does offer its bonds for sale. It is likely the Governor's line-item vetoes have already harmed the State's creditworthiness. The probability and extent of harm to the State's creditworthiness will continue to increase as time passes without a legislative appropriation.

Cal Ludeman

Cal Ludeman

Subscribed and sworn to before me
this 22nd day of June, 2017

John Trombley

Notary Public
My commission expires: Jan 31, 2021

JOHN ROBERT TROMBLEY
Notary Public-Minnesota
My Commission Expires Jan 31, 2021

S&P Global
Market Intelligence

Global Credit Portal®
RatingsDirect

Minnesota 'AA+' General Obligation Debt Rating On Watch Negative On Nonappropriation Of Certificates Of Participation

15-Jun-2017

NEW YORK (S&P Global Ratings) June 15, 2017--S&P Global Ratings has placed its 'AA+' rating on the State of **Minnesota**'s general obligation debt on CreditWatch with negative implications. The CreditWatch placement also applies to our ratings on the state's standing appropriation debt, moral obligation backed debt, and school program guaranteed debt.

"The CreditWatch placement reflects our view of the governor's use of his line-item veto authority, during approval of Minnesota's $46 billion 2018-2019 biennial budget, to reject appropriations to the Legislature that defunded the Legislature's budgets," said S&P Global Ratings credit analyst Eden Perry.

This has caused a nonappropriation on the state's $80.1 million certificates of participation series 2014 (Legislative Office Facility Project) and there is a lack of clarity about how the rental payments and debt service will be paid. In our view, the governor and legislative leaders have politicized the appropriation in their dispute over the budget. In that sense, the lack of agreement over the lease appropriation reflects unfavorably on the state's willingness to fund all of its debt service payments despite its ability to pay remaining very strong.

This has not triggered an extraordinary mandatory redemption of the lease because we understand there is no automatic termination or acceleration of the lease and that termination is at the option of the Department of Administration (the lessee under the lease purchase agreement and the sublessor under the sublease); however, it is unclear if the governor and the Legislature will reach an agreement in the near term such that either the Senate will cover the lease rental payments or the Department of Administration will appropriate for the lease, which is also allowed under the terms of the documents according to the state.

Currently, there is time for the state to resolve this matter because the lease rental payment is due on Nov. 14 and debt service is not due until Dec. 1, at which time we understand that there is just an interest only payment of $1.9 million. According to the state, the Senate could have up to $10 million on hand; however, in the press the Senate Majority Leader was quoted as saying that he would prioritize paying salaries over debt service for the building, which is a credit concern. Furthermore, even though the Department of Administration could pay rental payments from other legally available funds appropriated to the department under the terms of the lease it has not yet done so.

If the state works out an agreement and meets its contractual obligation over the next 90 days we would remove the ratings from CreditWatch, but would likely revise the outlook to stable rather than back to positive because this situation has illustrated a departure from what has been very strong budget management and is not commensurate with higher rated credits. However, if the stalemate continues and increases, in our view, the likelihood of nonpayment or the nonappropriation leads to a termination of the lease and an extraordinary mandatory redemption of the bonds, then we could lower our ratings on the state as well as associated ratings by several notches.

EXHIBIT 1

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. All ratings affected by this rating action can be found on the S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

Primary Credit Analyst: Eden P Perry, New York (1) 212-438-0613; **eden.perry@spglobal.com**

Secondary Contact: Oladunni M Ososami, Dallas 972-367-3338; **oladunni.ososami@spglobal.com**