

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT  
CASE TYPE: OTHER CIVIL

<p>Destiny Dusosky,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Michelle Fischbach,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">Court File No.: 62-CV-18-254 Judge: John H. Guthmann</p> <p style="text-align: center;"><b>AFFIDAVIT OF BRETT D. KELLEY</b></p>
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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

Brett D. Kelley, being first duly sworn, deposes and states:

1. I am one of the attorneys representing Defendant in the above-captioned action. I make this affidavit based on personal knowledge of the facts stated herein and offer this affidavit in support of Defendant's memorandum opposing Plaintiff's motion for a temporary injunction and consolidation with a trial on the merits of this case.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a document prepared by the Minnesota Legislative Reference Library entitled "Minnesota Lieutenant Governors, 1858-present." This document was referenced by Plaintiff in the Complaint at paragraph 28 and is available at: <https://www.leg.state.mn.us/lrl/mngov/lrgov>. Relevant to this case, this document provides historical background on the ten presiding officers of the senate, including Senator Fischbach, who became lieutenant governor by reason of a vacancy in that office. Senator Fischbach is the eighth senator to simultaneously serve as a senator and lieutenant governor.

3. Attached hereto as **Exhibit 2** is a true and correct copy of a document prepared by the Minnesota Legislative Reference Library entitled “Presiding Officers of the Senate who became Lieutenant Governor.” This document compliments Exhibit 1 by providing more detail on the circumstances of the nine previous presiding officers of the senate who became lieutenant governor. Exhibit 2 is available at: [https://www.leg.state.mn.us/lrl/history/sen\\_presiding](https://www.leg.state.mn.us/lrl/history/sen_presiding).

4. Attached hereto as **Exhibit 3** is a true and correct copy of a 1939 opinion from the Minnesota Attorney General’s Office, stating that the president *pro tempore* of the senate does not cease to be a senator after becoming lieutenant governor by reason of a vacancy in that office. Minn. Op. Atty. Gen. 280h (June 24, 1939).

5. Attached hereto as **Exhibit 4** is a true and correct copy of a 1943 opinion from the Minnesota Attorney General’s Office, also stating that the president *pro tempore* of the senate does not cease to be a senator after becoming lieutenant governor by reason of a vacancy in that office. Minn. Op. Atty. Gen. 280k (May 3, 1943).

6. Attached hereto as **Exhibit 5** are true and correct copies of Minnesota Session Laws granting the lieutenant governor statutory duties between 1857 and 1972. Each of these laws is discussed and/or cited in Defendant’s memorandum opposing Plaintiff’s motion for a temporary injunction and consolidation with a trial on the merits. These copies have been attached for Court’s convenience.

Ex. 5a 1858 MINN. LAWS 178 (making the lieutenant governor, governor, and supreme court justices “*ex officio* visitors” of the institution for the Education of the Deaf and Dumb).

Ex. 5b 1875 MINN. LAWS 133 (making the lieutenant governor, governor, secretary of state, auditor, and treasurer members of the executive council of the Historical Society).

- Ex. 5c 1876 MINN. LAWS 19–20 (granting the lieutenant governor the power to appoint district court judges to the supreme court if a majority of the supreme court justices were disqualified from a case and the governor had an interest in the case).
- Ex. 5d 1905 MINN. REVISED LAWS, ch. 3, § 13 (making the lieutenant governor responsible for calling the senate, secretary of state, and house of representatives to order when the legislature convenes).
- Ex. 5e 1913 MINN. LAWS 511–12 (lieutenant governor, governor, and speaker of the house appoint a commission to selection a school location in northern Minnesota).
- Ex. 5f 1913 MINN. LAWS 916, Joint Resolution 12 (lieutenant governor appoints two senators to a commission on fire prevention and insurance).
- Ex. 5g 1917 MINN. LAWS 763 (lieutenant governor appoints a senator to a commission to revise and codify game laws. The governor, speaker of the house, and attorney general also appoint members to this commission.).
- Ex. 5h 1917 MINN. LAWS 874, Resolution 1 (lieutenant governor appoints five senators to a commission to revise and codify child welfare laws).
- Ex. 5i 1921 MINN. LAWS 1013–14, Resolution 14 (lieutenant governor appoints two senators to the judicial redistricting committee).
- Ex. 5j 1927 MINN. LAWS 620 (lieutenant governor again appoints a senator to a commission to revise and codify game laws).
- Ex. 5k 1933 MINN. LAWS 59 (legislature ratified a bank holiday proclaimed by the lieutenant governor in the governor’s absence).
- Ex. 5l 1951 MINN. LAWS 1194 (lieutenant governor appointed to the Civil Defense Advisory Council along with the president *pro tempore*, speaker of the house, secretary of state, auditor, treasurer, attorney general, adjutant general, state director, and mayors of first-class cities).
- Ex. 5m 1951 MINN. LAWS 45 (expanding the power of the executive council of the Historical Society which still included the lieutenant governor).

7. Senator Fischbach was first elected to the Minnesota Senate in 1996. She represents the people of Senate District 13, which includes Benton and Stearns Counties. In 2016, Senate District 13 had 80,639 residents. On January 3, 2017, Senator Fischbach was elected to an eighth consecutive term of office. Her current term of office expires in January 2021. The senate elected Senator Fischbach to serve as its current president.

8. The annual salary of a Minnesota State Senator is \$45,000.

9. On December 15, 2017, Minnesota State Senator Dan Schoen resigned from office. A special election to fill that vacancy will be held on February 12, 2018.

10. On January 2, 2018, United States Senator Al Franken resigned from office. A special election to fill that vacancy will be held on November 6, 2018.

11. On January 2, 2018, Lieutenant Governor Tina Smith resigned from office. On January 3, 2018, Governor Mark Dayton appointed former Lieutenant Governor Smith to temporarily fill the vacancy created by Al Franken's resignation. She was sworn into the United States Senate the same day.

12. On January 3, 2018, Senator Fischbach became acting lieutenant governor as a result of former Lieutenant Governor Tina Smith's resignation. Senator Fischbach currently serves as both senator and acting lieutenant governor. Senator Fischbach has not yet taken the oath of office of lieutenant governor.

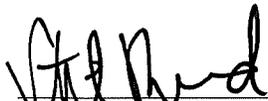
13. Senate Republicans currently hold a 34 to 32 majority in the senate.

14. The 2018 yearly session of the Minnesota Legislature begins on February 20, 2018.

  
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Brett D. Kelley

Subscribed and sworn to before me  
this 30<sup>th</sup> day of January, 2018

  
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Notary Public

My commission expires: 1/31/2020

