

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

Court File No. 62-CV-17-3601

Plaintiffs,

v.

**AFFIDAVIT OF JAMES R.
NOBLES**

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.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

James R. Nobles, being first duly sworn, deposes and states:

1. I am the Legislative Auditor and have served as the Legislative Auditor for 34 years. As a result of my position and experience, I am familiar with the legal obligations and the actual operation of the Legislative Auditor's Office.

2. I make this affidavit based on personal knowledge of the facts stated herein and offer this affidavit in support of the Legislature's response to the Governor's motion to stay enforcement of this Court's judgment which was entered on July 20, 2017.

3. The Legislative Auditor's authorized budget for fiscal years 2018 and 2019 is \$13,308,000. Minn. Laws 2017, First Special Session, ch. 4, art. 1, § 2, subd. 4.

4. I am making this affidavit because I am gravely concerned by the Governor's counsel's November 1, 2017 submissions to the district court. Those submissions said the Minnesota House of Representatives and Minnesota Senate could fund their operations by taking money appropriated to various joint legislative offices, including the nonpartisan Legislative Auditor's Office. This assertion is misleading because it fails to inform the Court of the harm that will result from such action.

5. The Governor's counsel also failed to accurately describe the law that authorizes the transfer of appropriations from joint legislative offices, including the Legislative Auditor's Office. The Governor's counsel failed to inform the Court that the law is conditional; it only authorizes the transfer of "unobligated balances."

6. As Legislative Auditor, I have obligated the money appropriated to the Office of the Legislative Auditor for fiscal years 2018 and 2019 to the personnel and other resources needed to fulfill the Legislative Auditor's legal responsibilities.

7. The legal responsibilities of the Legislative Auditor are tied directly to a core legislative function—oversight of how public money and other public resources are being used. The law that created the Legislative Auditor's Office says, "Continuous legislative review of the spending of public funds and financing at all levels of government is required in the public interest to enable the enactment of appropriate legislation." Minn. Stat. § 3.97, subd. 1.

8. I know from experience the reality of this statement. I know that the Legislature relies frequently on the work of the Legislative Auditor's Office to enact legislation.

9. I know from experience that the Legislature relies on the Legislative Auditor's audits, evaluations, and investigations to ensure that state agencies, metropolitan organizations, courts, and nonprofit agencies use public money and other public resources in compliance with

the laws the Legislature enacts.

10. I know from experience that public officials and members of the general public rely on the Legislative Auditor's Office to independently and thoroughly investigate alleged misuse of public money and other public resources, as well as alleged conflicts of interest by public officials and employees.

11. I make this affidavit under a condition of great uncertainty. I do not know if money appropriated to the Legislative Auditor's Office for fiscal years 2018 and 2019 will be transferred or not. In addition, if money is going to be transferred, I do not know how much will be transferred or when.

12. I do know, however, that the Governor's counsel has told the Court that the solution to the Governor's veto of the funding for the Minnesota House of Representatives and Minnesota Senate is for the Legislature to take money from the Legislature's joint offices, including the Office of the Legislative Auditor.

13. Given this assertion by the Governor's counsel, I feel compelled to inform the Court of the harm that will occur if the Legislative Auditor's Office loses its funding starting December 1, 2017. I select that date because it is my understanding that the Minnesota Senate will run out of money to fund its operations on that date as a result of the Governor's veto of the Senate's fiscal years 2018 and 2019 appropriation.

14. Given the above scenario, on December 1, 2017, I may be forced to lay off 60 professionals (auditors, evaluators, and support staff). In addition to the harm that will cause these public employees, shutting down the Legislative Auditor's Office will also cause serious harm to the State of Minnesota and public trust in government.

15. Without funding for the remaining 19 months in fiscal years 2018 and 2019, the

Office of the Legislative Auditor will not be able to complete the following audits, evaluations, and investigations that are currently in process:

- a. Audits of the Board of Water and Soil Resources; Department of Corrections; Department of Veterans Affairs Health Care Division; Health Insurance Premium Subsidy Program, MNLARS, Twin Cities Metropolitan Transit Operations; and Expenditures from General Obligation Bond Revenues.
- b. Evaluations of the state's Early Childhood Programs; Guardians Ad Litem Program; Minnesota Investment Fund; Office of Health Facility Complaints; Board of Animal Health; Voter Registration; Sexual Harassment Policies and Practices at the University of Minnesota, and the Minnesota State Office of Historic Preservation.
- c. Investigations of Alleged Overbilling for Law Enforcement Vehicles; and Alleged Misconduct at the Minnesota Department of Commerce.

16. Without funding (starting December 1, 2017) for the remaining 19 months in fiscal years 2018 and 2019, the Legislative Auditor's Office will not be able to audit the state's annual financial statements for fiscal years 2017 and 2018 as required by law. Minn. Stat. § 3.971, subd. 6. Just the perception that the state's finances are uncertain can rattle bond rating companies as evidenced this past June when Standard & Poor's issued a notice putting Minnesota's AA+ general obligation debt rating on a negative watch. If the state cannot produce an independently audited financial statement, the State of Minnesota's credit rating will drop. It is also possible that the State of Minnesota will not be able to sell bonds to fund capital projects without an independent audit of its annual financial statements.

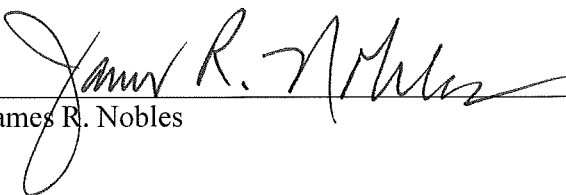
17. Without funding for the remaining 19 months in fiscal years 2018 and 2019, the Legislative Auditor's Office will not be able to audit the state's use of federal grants for fiscal years 2017 and 2018 as required by federal law. Single Audit Act of 1984, Pub. L. 98-502, 98 Stat. 2327 (1984). This would likely jeopardize future funding to the state from the federal government.

In fact, Minnesota Management and Budget Commissioner Frans warned the Legislative Auditor's Office in early 2016 that failing to meet the federal government's strict deadline would endanger the state's receipt of federal funds.

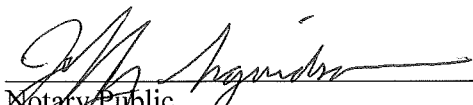
18. Without funding for the remaining 19 months in fiscal years 2018 and 2019, the Office of the Legislative Auditor will not be able to audit the departments, agencies, and other organizations it is required by law to audit. This will undermine the public's trust that public officials are using tax dollars in compliance with state law.

19. Without funding for the remaining 19 months in fiscal years 2018 and 2019, the Legislative Auditor's Office will not be able to provide the Legislature with independent evaluations of state-funded programs. This will diminish the Legislature's ability to know how state-funded programs are being managed and what action it needs to take to improve their performance.

20. Without funding for the remaining 19 months in fiscal years 2018 and 2019, the Legislative Auditor's Office will not be able to investigate alleged misuse of public funds and other public resources, nor will the office be able to investigate alleged conflicts of interest by public officials and employees. This will further undermine the public's trust in government.


James R. Nobles

Subscribed and sworn to before me
This 8th day of November, 2017


Notary Public
My commission expires: January 31, 2020

