

3. As a result of my position, I am familiar with the steps involved with issuing certificates of election during the 2024 election cycle and the information presented to the Secretary as he prepared to preside over the House of Representatives on January 14, 2025.

4. Under Minnesota law, county canvassing boards certify the election results for offices that are voted upon exclusively within that county. Minn. Stat. § 204C.33, subd. 1. The state canvassing board reviews the results of all 87 counties and certifies the election results of all statewide races and elections that are voted on in more than one county. *Id.*, subd. 2.

5. Unless a race is subject to a recount Minnesota law requires the Secretary to prepare a certificate of election for each individual certified as a state representative-elect and to deliver those certificates to the chief clerk of the House. Minn. Stat. § 204C.40, subs. 1–2. The chief clerk is required to give a copy of the certificate to the representative-elect. *Id.*

6. On December 3, 2024, the Secretary delivered 133 certificates of election for state representative to the chief clerk. Included in this delivery was the certificate of election for the representative-elect for House District 40B. The Secretary did not deliver the certificate of election for the representative-elect for House District 48B because a partial recount had been scheduled for that race. Attached as Exhibit 1 is a receipt from the chief clerk's office acknowledging delivery of those certificates.

7. On December 9, 2024 the Secretary delivered the certificate of election for state representative for House District 48B and, due to a spelling error on the original certificate, a reissued certificate of election for state representative for House District 43A.

Attached as Exhibit 2 is a receipt from the chief clerk's office acknowledging delivery of those two certificates. Following delivery of these two certificates, certificates of election had been delivered for all 134 representatives-elect.

8. On January 7, 2025, Secretary Simon, Deputy Secretary of State Julie Strother, and I met with House Chief Clerk Patrick Murphy to discuss logistics for the January 14, 2025 convening of the House. Mr. Murphy showed the Secretary a template script that was based on the events of previous opening sessions and indicated that he would prepare a similar script for the Secretary this year. Mr. Murphy acknowledged, however, that most of the script might not be relevant this time because it was possible that the Secretary would find there was no quorum on opening day, making it impossible for a Speaker to be nominated and elected and any other subsequent business to be conducted.

9. Secretary Simon also asked Mr. Murphy his views on a quorum and what, if any, business could be conducted absent a quorum. Mr. Murphy stated that the historical practice had been that 68 members were required for a quorum in the House. Attached as Exhibit 3 is an excerpt from Mason's Legislative Manual that Mr. Murphy shared along with notes on Minnesota's historical practice with regard to quorum. Mr. Murphy further indicated that no motions or business of any kind could be conducted until the House organized itself, including an appeal on the presiding officer's determination on quorum.

10. Aware that a quorum issue may arise, the Secretary and his staff also independently studied the issue and met with leadership of both caucuses to ensure he understood all positions on the issue. The Secretary ultimately concluded that the quorum requirement was 68. He then wrote to the leadership of both political caucuses on

January 10 to notify them of his position and the process he intended to follow on January 14. He received a response from Representatives Lisa Demuth and Harry Niska on January 13. They acknowledged that the Secretary could make a quorum determination, cited authority that they believed supported a lower quorum, and generally cast political aspersions. The Secretary reviewed the legal authorities they cited and responded on the same day, reaffirming his understanding of the quorum requirement. Attached as Exhibit 4 are copies of the January 10 and 13, 2025 letters between the Secretary, Representative Demuth, Representative Niska, and Representative Hortman.

11. Mr. Murphy sent the 2025 script to Secretary Simon at approximately 8:50 a.m. on January 14, 2025. Attached as Exhibit 5 is a copy of that script. Page 3 of the script indicated that Secretary Simon would announce the number of certificates of election on file following roll call. The precise number of certificates of election to be announced was left blank on the script. *Id.*

12. A few hours later, shortly before open session began on January 14, Secretary Simon, Deputy Secretary of State Strother, and I met with Mr. Murphy in his office to finalize the script for opening session. Mr. Murphy indicated that Secretary Simon should announce that 133 certificates of election were on file. Mr. Murphy did not explain why there were not 134 certificates of election on file.

13. I was present in the House chamber when the clerk pro tem took a roll call of all representatives-elect. During this roll call, which occurred before the members present took their oath, the clerk pro tem announced that the office for state representative for District 40B was vacant.

14. The Secretary and I assumed that the office of state representative for District 40B was announced as vacant and only 133 certificates of election had been filed because the representative-elect for House District 40B announced on December 27, 2024 that he would not take office. To my knowledge, there was no court order revoking any certificate of election for state representative. Neither I nor anybody else in the Secretary's Office knows why the certificate of election for House District 40B was not filed after it was delivered.

15. On January 15, 2025, the Secretary, believing that he remained presiding officer over the House because there no quorum during opening session, contacted House staff and asked whether he would be permitted to enter the House chamber and reconvene the body at 3:30 p.m., consistent with House rules and custom. Partisan staff informed the Secretary that the House Republican Caucus had instructed them to deny the Secretary access to the House chamber. Because it would have been futile to attempt to access the House chamber, the Secretary declined to attempt to convene the House on January 15 or any day after that.

I declare under penalty of perjury that everything I have stated in this declaration is true and correct.

Dated: January 22, 2025

s/ Justin R. Erickson
JUSTIN R. ERICKSON



STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Steve Simon

Acknowledgement of Receipt of Certificates of Election

I, Jorge Mendoza, representing The Chief Clerk of the Minnesota House of Representatives, acknowledge receipt of the Certificates of Election for State Representatives elected at the November 5, 2024 State General Election in the State of Minnesota, from the Office of the Minnesota Secretary of State*.

**The Certificate of Election for House District 48B is withheld due to a partial recount in that District scheduled for December 5. That Certificate of Election will be delivered following the conclusion of that recount.*

Signature: J. Mendoza Date: 12/3/24



STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Steve Simon

Acknowledgement of Receipt of Certificates of Election

I, Jorge Mendoza, representing The Chief Clerk of the Minnesota House of Representatives, acknowledge receipt of the Certificates of Election for State Representative Districts 43A and 48B elected at the November 5, 2024 State General Election in the State of Minnesota, from the Office of the Minnesota Secretary of State*.

**The Certificate of Election for House District 48B was initially withheld due to a partial recount in that District completed on December 5. The Certificate of Election for 43A is being reissued due to a spelling error on the initial certificate.*

Signature: J. Mendoza Date: 12/9/24

2. A quorum of any legislative body must be present in order to transact business and to make its acts valid.

Sec. 501. Computing a Quorum

1. The total membership of a legislative body is to be taken as the basis for computing a quorum. The majority of legislative bodies follow the quorum rule stated by Cushing: "... the number of which such assembly may consist and not the number of which it does in fact consist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly." The minority rule is, when there is a vacancy, a quorum will consist of the majority of the members remaining qualified.

Sec. 500, Par. 2: Cushing's Legislative Assemblies, Sec. 247, 261; Cushing, Sec. 17; Hughes, Sec. 644; Reed, Sec. 9; Tilson, p. 27; Brown v. District of Columbia (U.S., 1888); U.S. v. Reinecke (D.C. Cir., 1975); Daniels v. Bayless Stores (Ariz., 1935); Shaughnessy v. Metro. Dade County (Fla., 1970); Indiana v. Porter (Ind., 1888); Davidson v. Indiana (Ind., 1966); In re Gunn (Kan., 1893); Heiskell v. City Council of Baltimore (Md., 1886); Kay Jewelry Co. v. Bd. of Registration in Optometry (Mass., 1940); Dingwall v. Common Council of Detroit (Mich., 1890); Doughty v. Scull (N.J., 1915); Houser v. School Dist. of South Sioux City in Dakota County (Neb., 1972); Ohio ex rel. Cline v. Wilkesville Township (Ohio, 1870); Commonwealth ex rel. Price v. Garvey (Pa., 1907); Commonwealth ex rel. Fox v. Chace (Pa., 1961); Bray v. Barry (R.I., 1960).

Sec. 501, Par. 1: Cushing's Legislative Assemblies, Secs. 246-253, 261; McCracken v. San Francisco (Calif., 1860); People ex rel. Funk v. Wright (Colo., 1902); In re Opinion of Justices (Fla., 1868); Evanston v. O'Leary (Ill., 1897); Iowa v. Dickie (Iowa, 1878); Barry v. New Haven (Ky., 1915); Louisiana ex rel. Garland v. Guillory (La., 1935); Warnock v. Lafayette (La., 1849); Marionneaux v. Hines (La., 2005); Pollasky v. Schmid (Mich., 1901); City of North Platte v. North Platte Water Works (Neb., 1898); Pollard v. Gregg (N.H., 1914); Ohio ex rel. Attorney General v. Orr (Ohio, 1899); Zemprelli v. Daniels (Pa., 1981); South Carolina v. Delisselina (S.C., 1821); West Virginia ex rel. Hatfield v. Farrar (W.Va., 1921). See also Opinion of the Justices (Del., 1969).

our standard & practice has always been... nothing in some state have rules constitution on case law to this effect we do NOT

2. The number of members necessary to constitute a quorum is provided by the constitution. The presence of a certain number or proportion of members is required. In each but four states, the number to constitute a quorum is stated as a majority of the house or a majority of the membership or a majority of the members elected or a majority of the members to which the body is entitled. The body itself does not have the authority to require the presence of more than a majority to enable it to act unless that authority was specifically granted to it.

3. Compliance with a constitutional provision that fixes a quorum at a stated number of members is mandatory.

4. Those state legislatures whose constitutions do not establish the quorum requirement are empowered to establish their quorum by rule.

Sec. 501, Par. 2: U.S. v. Ballin (U.S., 1892); Pinson v. Morrow (Ky., 1920); Seiler v. O'Maley (Ky., 1921); Heiskell v. City Council of Baltimore (Md., 1886); Jeter v. Bd. of Educ. of the School Dist. of Fremont County of Dodge (Neb., 1989); Barnett v. City of Paterson (N.J., 1886); Borough of Florham Park v. Depart. of Health of New Jersey (N.J., 1929); Cleveland Cotton Mills v. Cleveland County Comm'rs (N.C., 1891); Hill v. Ponder (N.C., 1942).

Indiana, Oregon, Tennessee and Texas constitutions state that two-thirds of the house is required for a quorum. Michigan's constitution provides the quorum is a majority of the members elected and serving. New Hampshire's constitution states that a majority of the House is a quorum but in the Senate the quorum is not less than thirteen senators.

Sec. 501, Par. 3: Opinion of the Justices (N.H., 1959); Bezio v. Neville (N.H., 1973); Bd. of Trustees of School Dist. of Fairfield County v. State (S.C., 2011).

Sec. 501, Par. 4: Cushing's Legislative Assemblies, Sec. 252.

Exhibit 3



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

The Honorable Lisa Demuth
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

The Honorable Melissa Hortman
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

January 10, 2025

Dear Representatives Demuth and Hortman:

Thank you for meeting with me to discuss the convening of the Minnesota House of Representatives on January 14, 2025. As I said to both of you, I am committed to an orderly start to the legislative session and being transparent about how I will preside until a speaker is elected. While presiding officers of the House do not typically explain their rationale for rulings, we are faced with unique circumstances. I will be presiding over the House during a time in which the caucuses disagree significantly as to how the House may organize itself. I will be presiding not as a member of the House, but as a representative of the executive branch. Out of respect for the institution, I think it is important that both of you know my thinking on these matters so that we can be prepared as much as possible for Tuesday.

Minnesota law requires that I preside over the House until a speaker is elected. Minn. Stat. § 5.05. On Tuesday, I will call the House to order; appoint a clerk pro tem; ask the chaplain to offer a prayer; lead the pledge of allegiance; and ask the clerk pro tem to call the roll. Once the roll call is completed, I will ask Chief Justice Natalie Hudson to administer the oath of office. I will then take the roll to determine whether there is a quorum.

A quorum is necessary for the legislature to conduct business, and I know that the caucuses dispute the number of members that must be present for a quorum. As I informed you in our respective meetings, I have reached a legal conclusion about the quorum requirement. My conclusion is based only on the Minnesota Constitution and laws, and was reached after consultation with various non-partisan experts. I conclude Minnesota law requires that 68 members of the House be present for a quorum. The Minnesota Constitution states that a quorum is a “majority” of the “house.” Minn. Const. Art. IV, sec. 13. The word “majority” means a number equaling more than half the total. [Majority Definition & Meaning - Merriam-Webster](#).

The Constitution further provides that the number of members who compose the House of Representatives “shall be prescribed by law.” Minn. Const., Art. IV, sec. 2. Under Minnesota law, the House of Representatives is composed of 134 members. Minn. Stat. § 2.021. This means that 68 members compose a majority of the house, because that is the lowest number that is more than half the total of number of total representatives prescribed by law.

I understand that some have suggested that the vacancy in House District 40B means that only 67 members are necessary for a quorum. I do not agree with this conclusion for several reasons.

First, the plain language of Article IV, section 13 refers to the House as a constitutional entity. It does not refer to individual legislative members the way that other provisions of the Constitution do. *See, e.g.*, Minn. Const., Art. IV, sec 22 (referring to all the members elected of each house); Art. VIII, sec. 1 (prohibiting conviction without the concurrence of two-thirds of the senators present).¹ Because the law says the House is composed of 134 total members, that is the number that must be used in calculating whether there is a quorum.

Second, this interpretation of Article IV, Section 13 is consistent with other provisions of the Constitution that require a certain proportion of the “house” to take action. For example, Article IV, Section 19 of the Minnesota Constitution requires “two-thirds of the house” to waive the requirement that bills be reported on three different days. The Minnesota Supreme Court has held that this language requires approval from “two-thirds of the whole membership of the house.” *State v. Wagner*, 130 Minn. 424, 427, 153 N.W. 749, 750

¹ I understand that the Minnesota Supreme Court previously noted that, in the context of municipal councils, where an ordinance requires a majority of votes of the council, the ordinance was satisfied by a majority vote of the members of the council currently in existence, rather than total membership. *States ex rel. Peterson v. Hoppe*, 194 Minn. 186, 189, 260 N.W. 215, 217 (1935). The text at issue was different and had a different purpose. Further, the Court’s discussion of that issue was largely dicta and limited to a citation to secondary sources discussing caselaw from other jurisdictions on municipal councils, rather than state constitutions. *Id.* Additionally, that language was not actually before the court; instead, the Court was interpreting an ordinance that required “the affirmative vote of *all members* of the City Council.” Finally, approximately 40 years after the *Peterson* case was decided, the Court was presented with the opportunity to interpret a statute that required a “two-thirds vote of all of its members.” *Ram Development Co. v. Shaw*, 244 N.W.2d 110, 115 (Minn. 1976). The Court expressly declined to address in that case whether a vacancy should be figured into calculating the total membership of a body. *Id.*, at 115.

(1915). Likewise, the Minnesota Constitution also permits the legislature to override a Governor’s veto only if approved by two-thirds of each “house.” See Minn. Const. Art. IV, sec. 23. This provision requires a two-thirds vote of the total membership of each house, regardless of whether there are any vacancies. See *State ex rel. Eastland v. Gould*, 31 Minn. 189, 191, 17 N.W. 276, 277 (1883) (explaining that a constitutional provision requiring the “legislature” to provide a “two-thirds vote” meant such a vote from “all of the members thereof” and not the “vote of two-thirds of the members present.”); see also [Making Laws: Review by the Governor](#) (explaining that two-thirds of the house means two-thirds of the total membership of the house).

Indeed, the drafters of the Constitution made clear they knew how to draft language that required a proportion of less than the total membership in order for official action be taken. See Minn. Const. Art. VIII, sec. 1 (“No person shall be convicted without the concurrence of two-thirds of the senators *present*.”) (emphasis added). The drafters could have provided a similar qualification to the quorum requirement if they intended it to be calculated on a number less than the total membership of the House.

Similar to Sections 19 and 23, the quorum requirement of Article IV, Section 13 requires action from a certain proportion (in this case, a majority) of the “house.” It is a well-established legal principle that similar words and phrases should be interpreted the same way. See *Clark v. Pawlenty*, 755 N.W.2d 293, 306 (Minn. 2008) (declining to interpret the word “successor” differently in different sections of the Minnesota Constitution). Because historical practice and case law make clear that constitutional provisions referring to a proportion of the “house” mean the total membership of the house (regardless of any vacancies), the quorum requirement of Article IV, Section 13 must be interpreted the same way.

Finally, I note that Mason’s Legislative Manual, a leading treatise on legislative policy and procedure upon which the House regularly relies, states that my interpretation is consistent with the majority of jurisdictions that have considered the issue. *Mason’s Legislative Manual*, § 501 (recognizing that “the number of which such assembly may consist and not the number of which it does in fact exist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly”). For all of these reasons, I will find a quorum on Tuesday only if 68 or more members are present.

If there is a quorum, I will entertain nominations for the election of a speaker. If no quorum exists, then Minnesota law is clear that all the members present can do at that point is to adjourn. See *State ex rel. Palmer v. Perpich*, 289 Minn. 149, 151, 182 N.W.2d 182, 183 (1971). Accordingly, if there is no quorum, I will adjourn the House and reconvene it at 3:30 p.m. the following day, consistent with House custom, its most recent rules, and Mason’s Legislative Manual (which provides that in the absence of rules, the House is governed by usage and custom, which are best shown by its most recent rules). I would

continue to convene the House at 3:30 p.m. each subsequent day until a quorum is present and a speaker elected, unless the members present move to adjourn to a date certain. In addition, because the House cannot transact business and the presiding officer's authority is limited until a quorum is present, House rules and customs prohibit all motions and incidental motions other than a motion to adjourn to a date certain.

I will update you both if there is any change to my plans before next Tuesday. I remain happy to discuss this matter further and to hear any additional feedback from you – including contrary legal analysis. As always, thanks to both of you for your service to Minnesota.

Respectfully,

A handwritten signature in black ink that reads "Steve Simon". The signature is written in a cursive, flowing style.

Steve Simon

Secretary of State



Minnesota House Republican Caucus

January 13, 2025

Steve Simon
Office of the Secretary of State
First National Bank Building
332 Minnesota Street, Suite N201
St. Paul, MN 55101

Via electronic delivery

Dear Secretary Simon,

Minnesota law requires the members of the Minnesota House of Representatives to meet at noon on Tuesday in the House chambers. As you are aware, the DFL caucus intends to violate the law for the express purpose of preventing the House from organizing and beginning its work.

We are writing in response to your communications with us (in a meeting on January 8 and by letter dated January 10) expressing your current plan to join your political allies in this attack on our democratic institutions.

We urge you to reconsider this deeply flawed and dangerous course of action.

As you are aware, the Secretary of State is not a member of the legislative branch, and has no constitutional authority over the House of Representatives. Indeed, as a member of another branch, you may not “exercise any of the powers properly belonging to” the legislative branch. Minn. Const. Art. III. As a matter of legislative grace, you have been invited to perform a limited ceremonial role on the first day of the legislative session. Minn. Stat. § 3.05; Minn. Stat. § 5.05. But the constitutional authority to “determine the rules of its proceedings” and “elect its presiding officer” rests solely with the House, not with you. Minn. Const. Art. IV §§ 7, 15.

This ceremonial role has traditionally included the Secretary noting the presence of a quorum. In your January 10 letter, you assert that this role grants you the power to obstruct the House from organizing if only 67 elected House members comply with the legal requirement to “meet in [the House] chamber.”

Both your interpretation of the quorum requirement and your asserted unilateral authority to control the House are mistaken.

A. On January 14, 67 members of the House will constitute a quorum.

At times when the House has fewer than 134 members, it is plainly incorrect that “Minnesota law requires that 68 members of the House be present for a quorum.” As you are aware, our Constitution provides that “[a] majority of [the House] constitutes a quorum to transact business.” Minn. Const. Art. IV § 13. Notably, this language differs from the requirement that a law must be “voted for by a majority of *all the members elected* to each house” in order to be passed. Minn. Const. Art. IV § 22 (emphasis added).

The framers of the Minnesota Constitution made this distinction intentionally, and it appears they did so in order to reject the view you now adopt of the quorum requirement. Indeed, on July 30, 1857, a delegate to the Minnesota Constitutional Convention offered an amendment to change the quorum requirement to require a “majority of all the members elected.” T.F. Andrews, rep., *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota* 208 (George W. Moore, printer, 1858). The amendment author made clear that he was offering this amendment to adopt the same view you now hold of the quorum requirement. *Id.* at 209. But that view of the quorum requirement was opposed by another delegate because “this amendment if adopted, will allow a minority” to subvert the democratic process “by remaining out of either House, and refusing to be sworn in.” *Id.* That counter argument prevailed, and the framers rejected your view.

This original understanding is consistent with the Minnesota Supreme Court’s interpretation of other similar constitutional language. In *State v. Wagner*, 130 Minn. 424, 427, 153 N.W. 749, 750 (1915), the Minnesota Supreme Court construed the urgency language (now found in Article IV, Section 19) referencing “two-thirds of the house” to mean “two-thirds of the *whole membership of the house*, and not two-thirds of a quorum of the house.” (emphasis added).¹

On January 14, 2024, the “whole membership of the House” will be at most 133 members, and possibly fewer. While the apportionment provisions establish the maximum number of House members at 134 (*see* Minn. Stat. § 2.021), several steps must be taken in order to fill each of those potential seats. First, a candidate must meet the minimum qualifications set out in Article IV, Section 6 of the Minnesota Constitution. Second, a candidate must be elected pursuant to the terms of Minnesota election law, culminating in a “certificate of election . . . duly executed by the secretary of state.” Minn. Stat. § 3.02. Third, a candidate must take the oath of office “before entering upon his [or her] duties.” Minn. Const. Art. IV § 8. The time and place for a member of the House to take that oath of office is clear: “[a]t noon of the day appointed for convening the legislature,” in the House chamber, “the persons claiming to be members . . . shall present their

¹ Although your January 10 letter suggested otherwise, neither *Wagner* nor *State ex rel Eastland v. Gould*, 31 Minn. 189, 17 N.W. 276 (1883), contain any analysis of the effect of vacancies on the relevant denominator. Instead, both focused their analysis on whether members of each house were present or absent.

certificates to be filed. All whose certificates are so presented shall then stand and be sworn.” Minn. Stat. § 3.05.

Because of the successful election contest in District 40B, the maximum number of possible members of the House on January 14 will be 133. As a result, the constitutional quorum requirement will be met if at least 67 members are present on January 14, as that number equals more than half of the maximum possible number of whole membership of the House on that date.²

This clear interpretation of Minnesota’s quorum provision would mirror the U.S. House of Representatives’ interpretation of the nearly identical provision in the U.S. Constitution in similar circumstances. The U.S. Constitution, like the Minnesota Constitution, provides that “a Majority of each [House] shall constitute a Quorum to do Business.” U.S. Const. Art. I § 5.

In eerily similar circumstances, after Democrats were defeated in the election of 1860 and several states purported to secede from the Union, Congress was forced to confront the point of order on whether a quorum was present as a result of certain states refusing to send members to Congress. On July 19, 1861, the Speaker decided that a majority of members “chosen” constituted a quorum. *Hinds’ Precedents of the House of Representatives of the United States*, § 2885 (Hinds, A.C.), published by the authority of Congress, Washington, G.P.O., 1907-1908. The unbroken federal precedent since this shameful episode has been that “[a] quorum of the House is defined as a majority of those Members sworn and living, whose membership has not been terminated by House action.” Charles W. Johnson III, John V. Sullivan & Thomas J. Wickham, Jr., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, ch. 43, § 2.

This rule harmonizes with other Minnesota law concerning legislative quorum, particularly the provisions providing for continuity of the legislature. Minn. Stat. § 3.96 provides that “[i]n the event of an attack the quorum requirement for the legislature is a majority of the members of each house who convene for the session.” Under the interpretation of the constitutional quorum requirement you have articulated in your January 10 letter, this provision is impossible to square with the Constitution.

² If some of those possible members refuse to comply with the requirements laid out in Minn. Stat. § 3.05 to take the oath in the House chamber at noon on January 14, the “whole membership” of the House will be an even smaller number. See Minn. Stat. § 351.02 (6) (providing that a vacancy in any office shall arise in the event of “refusal or neglect to take the oath of office”). We have heard reports that the DFL caucus held a premature, lawless oath ceremony, apparently relying on more general provisions governing oaths for other offices. But consistent with established rules of statutory interpretation, the specific statutory provision prescribing the time, place, and manner for taking the oath of office at the time of organization of the legislature governs over those more general provisions. See *Connexus Energy v. Comm’r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (explaining that “the canon has particular applicability when, as here, the Legislature has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.”) (quotation omitted).

Indeed, the Constitution is not a suicide pact. It does not leave the Legislature powerless against violent attacks, nor should it does not leave the Legislature powerless against the House Democrats' threatened effort to disable it.

B. As the ceremonial presiding officer, you lack authority to make any final rulings or unilateral actions.

As noted above, your limited ceremonial role on the first day of the legislative session is subject to the constitutional authority of the House to "determine the rules of its proceedings" and "elect its presiding officer." Minn. Const. Art. IV §§ 7, 15. Regardless of your opinion of which quorum rule should be followed, you do not have the sweeping power to interfere with the House's operations that your January 10 letter appears to claim.

While it is proper for a presiding officer to make an initial determination of quorum, any such determination can be appealed to the body just like *every* decision by *every* presiding officer of *every* legislative body. *Mason's Legislative Manual* § 504 (6). If you seek to overstep your authority, you are subject to removal and replacement by the body. Minn. Const. Art. IV § 15; *Mason's Legislative Manual* § 581.

We are especially troubled by your assertion that, "if there is no quorum, *I will adjourn the House and reconvene it at 3:30 p.m. the following day.*" (emphasis added). A presiding officer has no authority to take any unilateral action without a motion from the body, including adjournment. *Mason's Legislative Manual* §§ 504 (2), 210.

It appears that other members of your political party will engage in lawless behavior to thwart the lawful organization of the Minnesota House. You need not make yourself an accomplice in their shameful effort.

Now is the time for you to set aside your political allegiance and put our democratic institutions and the rule of law above lawless, partisan games. We urge you to reconsider the irresponsible and unconstitutional path suggested in your January 10 letter.

Sincerely,



Lisa Demuth
Speaker Designate
Minnesota House of Representatives



Harry Niska
Majority Leader Designate
Minnesota House of Representatives



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

The Honorable Lisa Demuth
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

The Honorable Harry Niska
Minnesota House of Representatives
Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

January 13, 2025

Dear Representatives Demuth and Niska:

Thank you for your January 13, 2025 letter outlining your position regarding the organization and convening of the Minnesota House of Representatives. As I said previously, I am open to considering all legal authority on this matter so that we can resolve this dispute appropriately. I also want to reiterate that I am not acting on behalf of any “political ally” in this matter. Any ruling that I make while temporarily presiding over the House will be based solely on the Minnesota Constitution and Minnesota statutes.

I have carefully reviewed the arguments and legal authority that you cited in your letter. Like you, I agree that the Secretary of State has the authority to make a determination of quorum when the House convenes. I respectfully disagree, however, as to your conclusion that a quorum is based on the current membership of the House, rather than its total membership.

I understand your position to be that there is a distinction between the phrase “majority of [the House]” as used in the quorum provision of Article IV, section 13 and “majority of all the members elected to each house” as used in Article IV, section 22. You indicate the former means the current membership of the House and the latter phrase means the total potential membership of the House. As support for that position, you point to the debates and proceedings of the Republican delegates during the Minnesota Constitutional Convention.

Any interpretation of the Constitution must start with the text and structure of the Constitution, rather than the records of the Constitutional Convention. *Schroeder v. Simon*, 985 N.W.2d 529, 536 (Minn. 2023). Because of the complicated process that went into drafting the Constitution, courts have cautioned against relying on the convention debates

in assessing the drafters' intent. *See State v. Lessley*, 779 N.W.2d 825, 840 (Minn. 2010) (explaining that the debates “are of limited value”). For all the reasons I stated in my previous letter, the plain language of the Constitution makes clear a quorum is a majority of the total membership of the House.¹

I want to note that my conclusion on this topic is not without precedent. While this situation is unusual, it has happened before. The Minnesota House was last tied in 1979. The memoir of the Independent Republican leader, Rod Searle (who would lead the House that year pursuant to a power-sharing agreement) recounts the process that went into organizing the House during that time. *See* ROD SEARLE, MINNESOTA STANDOFF: THE POLITICS OF DEADLOCK (1990). Representative Searle stated the parties agreed that then-Secretary of State Joan Grove would preside over the House, would consider motions, and would hold the speaker's gavel until a speaker was elected. *Id.*, p. 62. Secretary Grove ultimately presided over the House for a few days; House records indicate that a quorum call was taken each of those days before any business was transacted.

In addition, during the 1979 session, a member of the Democratic-Farmer-Labor Party (DFL) became ill and was unable to attend session, giving the Independent Republicans a temporary 67-66 advantage. Representative Searle recounts that during this time, members of his caucus suggested that he push for an election of an Independent Republican Speaker without agreement by the temporarily outnumbered DFL members. *Id.*, p. 70. Representative Searle rejected this idea, noting that it might cause the DFL members to walk out and deprive the House of the 68 members necessary for a quorum. *Id.* Minnesota may be facing the situation that then-Representative Searle contemplated when advising his caucus in 1979.

Finally, in our meeting this morning, you asked whether I would entertain an appeal from the members present regarding my determination of a quorum. Minnesota law prohibits such an action. The Supreme Court has made clear that absent a quorum, all the members present can do is adjourn. *See State ex rel. Palmer v. Perpich*, 289 Minn. 149, 151, 182 N.W.2d 182, 183 (1971); *Mason's Legislative Manual*, § 500 (requiring a quorum to transact business of any kind). Furthermore, if appeals of quorum rulings were permitted,

¹ By way of example, Article IV, section 23 refers to both the authority of two-thirds of the “house” to override a veto of an act and “two-thirds of the members elected to each house” to override a line-item veto. It would be an unreasonable result for these phrases to be interpreted differently because they would result in different standards for overriding a veto (which has never been the historical practice). *See* [Making Laws: Review by the Governor \(explaining standard for a veto override\)](#). At least one other state high court has concluded these phrases are interchangeable. *See Opinion of the Justs.*, 251 A.2d 827, 827 (Del. 1969). Minnesota courts often look to the rulings of states' high courts to inform their decisions. *See, e.g., Alby v. BNSF Ry. Co.*, 934 N.W.2d 831, 835 n. 2 (Minn. 2019).

they would render that requirement meaningless. A small group of members could enter the House, overrule the presiding officer, and purport to conduct business when clearly prohibited under law.

The fact that the Constitution and state law prohibit an appeal in the House does not mean that you and your members are without recourse. The Supreme Court has jurisdiction to decide whether the House is constitutionally organized and determine whether the presiding officer of that body acted appropriately. *Perpich*, 182 N.W.2d at 184–85. I urge you to consider submitting this matter to the courts for resolution. A prompt judicial resolution would provide the most transparent outcome and reassure all Minnesotans that the House and any presiding officer is operating in accordance with the law.

Regardless of our disagreements, I remain committed to presiding over a dignified process tomorrow so that members can enjoy this proud moment with their family members and friends. I remain open to discussing this matter with you at any point before we convene at noon if you would like.

Respectfully,

A handwritten signature in black ink that reads "Steve Simon". The signature is written in a cursive, flowing style.

Steve Simon

Secretary of State



Script for Session
**MINNESOTA HOUSE OF
 REPRESENTATIVES**
 94th Legislative Session
Opening Day Script



12:00 Noon, Tuesday, January 14, 2025

1. CALL TO ORDER:

a. **(Sergeant at Arms announces arrival of Secretary of State and asks members to stand.**

Sergeant at Arms escorts the Secretary of State to front of Chamber.)

b. Secretary of State: **(Rap gavel 3 times.)** "The hour of 12 o'clock having arrived, and in obedience to the laws of the state of Minnesota, it becomes my duty as your Secretary of State to call the members of the Minnesota House of Representatives to order."

c. Secretary of State: "I will appoint as Clerk pro tem Representative-elect Peggy Scott from District 31B."

2. PRAYER AND PLEDGE:

a. Secretary of State: "I call on

Pastor Ben My-it to offer a prayer."

b. (Chaplain offers prayer.)

c. Secretary of State: "Our chaplain for today is

Youth, Worship and Life Group Pastor Ben My-it,
from Watermark Church in Stillwater, Minnesota.

Members and guests, please remain standing for the pledge
of allegiance to our flag."

d. (Members give pledge of allegiance.)

e. Secretary of State: "You may be seated."

3. DISTRICT ROLL CALL:

a. Secretary of State: "The Clerk pro tem will call the roll
by legislative district."

b. (Clerk pro tem calls roll by legislative district.)

4. OATH OF OFFICE:

a. Secretary of State: "There being _____

Certificates of Election on file, I call on the Honorable

Jennifer L. Frisch, Chief Judge

of the Minnesota Court of Appeals, to come forward

to administer the oath of office to the members-elect. Will

the members-elect please rise while

Chief Judge Frisch administers the oath of office."

b. (Chief Judge Frisch administers the oath of office to the members-elect.)

(Secretary of State congratulates new members.)

5. ROLL CALL TO DETERMINE A QUORUM:

a. Secretary of State: "The Clerk pro tem will take the roll to determine a quorum."

b. (Clerk pro tem takes the roll.)

c. Secretary of State: "The Clerk pro tem will close the roll."

d. Secretary of State: "A quorum is present."

(Rap gavel.)

6. ELECTION OF SPEAKER:

a. Secretary of State: "We will proceed to election of the Speaker. Nominations are in order."

b. Secretary of State: "I recognize Representative _____ from District _____ for the purpose of a nomination."

c. Secretary of State: "Are there any seconds to the nomination?"

I recognize Representative:

_____ of District _____;
_____ of District _____;
_____ of District _____;
_____ of District _____."

d. Secretary of State: "I recognize Representative _____ from District _____ for the purpose of a nomination."

e. Secretary of State: "Are there any seconds to the nomination?"

I recognize Representative:

_____ of District _____;
_____ of District _____;
_____ of District _____;
_____ of District _____."

f. Secretary of State: "Are there any further nominations? Are there any further nominations? Are there any further nominations? If not, I declare the nominations closed."

(Rap gavel.)

"The two nominated candidates for Speaker are:

Representative _____ and

Representative _____."

g. Secretary of State: "The Clerk pro tem will call the roll on the election of Speaker."

(Clerk pro tem calls roll on election of Speaker and gives vote results to Secretary of State.)

h. Secretary of State: "The results of the roll call on the election of Speaker are as follows:

Representative _____ has ____ votes

and

Representative _____ has ____ votes.

I therefore declare Representative _____
duly elected Speaker of the House of Representatives for
the 2025-2026 Session."

(Rap gavel.)

i. Secretary of State: "I appoint the following members
to a committee to escort the Speaker-elect to the rostrum:

_____,
_____,
_____,
_____,
_____."

j. **(Committee escorts Speaker-elect to rostrum.)**

k. Secretary of State: "I call on the Honorable

_____,

_____ to give the oath of office

to the Speaker-elect."

1. (_____ gives oath of office to the Speaker-elect.)

m. (The Secretary of State gives gavel to Speaker.)

Secretary of State: "It is my great honor and privilege to present the gavel to you, Mr./Madam Speaker."

n. (Speaker _____ takes the gavel and makes acceptance speech.)

7. ELECTION OF CHIEF CLERK:

a. Speaker: "The next order of business is the election of the Chief Clerk.

"I recognize Representative _____ from District ____ for the purpose of a nomination."

b. (Representative _____ nominates _____ for the office of Chief Clerk of the Minnesota House of Representatives.)

c. Speaker: "I recognize Representative _____ from District _____ to second the nomination."

d. (Representative _____ seconds the nomination of _____ for the office of Chief Clerk.)

e. Speaker: "Are there any further nominations? Are there any further nominations? Are there any further nominations? If not, I declare the nominations closed."

(Rap gavel.)

Speaker: "The Clerk pro tem will call the roll on the election of the Chief Clerk."

f. (Clerk pro tem calls the roll and gives the results of the vote to the Speaker.)

g. Speaker: "There being _____ ayes and _____ nays,
_____ has been elected Chief Clerk."

(Rap gavel.)

Speaker: "Will the Chief Clerk-elect please come forward and take the oath of office."

h. (Speaker gives the oath of office to Chief Clerk-elect.)

8. ELECTION OF OTHER OFFICERS:

a. Speaker: "Representative _____ offers the following resolution on election of the other officers. The Chief Clerk will read the resolution."

b. (Chief Clerk reads resolution.)

c. Speaker: "I recognize the member from _____, Representative _____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ...
If not, all those in favor say AYE ... Those opposed say
NAY ... The resolution is adopted."

(Rap gavel.)

e. Speaker: "I recognize the member from
_____, Representative _____,
who will make a series of nominations."

f. **(Representative _____ nominates the
following as elected officers:)**

OFFICE

CANDIDATE

First Assistant Chief Clerk: _____

Second Assistant Chief Clerk: _____

Assistant Sergeant at Arms: _____

Assistant Sergeant at Arms: _____

Index Clerk: _____

Chaplain: _____

g. Speaker: "Are there any further nominations? Are there any further nominations? Are there any further nominations? If not, I declare the nominations closed."

(Rap gavel.)

Speaker: "The Chief Clerk will call the roll on the election of the other officers. You may vote by saying 'slate' if you desire."

h. (Chief Clerk calls roll and gives results to Speaker.)

i. Speaker: "Having received a majority of the votes cast, I therefore declare those nominated by 'slate' have been duly elected."

(Rap gavel.)

Speaker: "Will you please come forward to take the oath of office."

j. (Speaker administers the oath of office to the newly elected officers.)

9. ELECTION OF CHIEF SERGEANT AT ARMS:

a. Speaker: "The next order of business is the election of the Chief Sergeant at Arms."

"I recognize Representative _____
from District _____ for the purpose of a nomination."

b. (Representative _____ nominates
_____ for the office of Chief
Sergeant at Arms of the Minnesota House of
Representatives.)

c. Speaker: "I recognize Representative
_____ from District _____ to
second the nomination."

d. (Representative _____ seconds the
nomination of _____ for the office
of Chief Sergeant at Arms.)

e. Speaker: "Are there any further nominations? Are there any further nominations? Are there any further nominations? If not, I declare the nominations closed."

(Rap gavel.)

Speaker: "The Clerk will call the roll on the election of the Chief Sergeant at Arms."

f. **(Clerk calls the roll and gives the results of vote to Speaker.)**

g. Speaker: "There being _____ ayes and _____ nays, _____ has been elected Chief Sergeant at Arms."

(Rap gavel.)

Speaker: "Will the Chief Sergeant at Arms please come forward and take the oath of office?"

h. **(Speaker gives the oath of office to the Chief Sergeant at Arms.)**

10. ADOPTION OF TEMPORARY RULES:

a. Speaker: "Representative _____
offers the following resolution relating to temporary rules.

The Chief Clerk will report the resolution."

b. **(Chief Clerk reports the resolution on temporary rules.)**

c. Speaker: "There are copies of the resolution on each of your desks."

"I recognize the member from _____,
Representative _____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ...
If not, the Chief Clerk will take the roll ... The Chief Clerk will close the roll."

"There being _____ ayes and _____ nays, the temporary rules are adopted."

(Rap gavel.)

11. RESOLUTION TO NOTIFY SENATE THAT HOUSE IS DULY ORGANIZED:

a. Speaker: "Representative _____ offers the following resolution."

b. **(Chief Clerk reads resolution.)**

c. Speaker: "I recognize the member from _____, Representative _____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ... If not, all those in favor say AYE ... Those opposed say NAY ... The resolution is adopted."

(Rap gavel.)

12. RESOLUTION TO NOTIFY GOVERNOR THAT HOUSE IS DULY ORGANIZED:

a. Speaker: "Representative _____ offers the following resolution."

b. (Chief Clerk reads resolution.)

c. Speaker: "I recognize the member from

_____, Representative

_____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ...

If not, all those in favor say AYE ... Those opposed say

NAY ... The resolution is adopted."

(Rap gavel.)

e. Speaker: "Announcement by the Speaker."

(Speaker gives announcement to the Chief Clerk.)

**f. (Chief Clerk reads announcement on appointment of
the committee to notify the Governor and instructions for
the committee.)**

13. APPOINTMENT OF EMPLOYEES:

a. Speaker: "Representative _____ offers the following resolution."

b. **(Chief Clerk reads resolution.)**

c. Speaker: "I recognize the member from _____, Representative _____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ... Since the resolution is an expenditure of money, pursuant to our rules, there will be a roll call."

"The Chief Clerk will take the roll."

e. **(Chief Clerk takes roll.)**

- f. Speaker: "The Chief Clerk will close the roll. There being _____ ayes and _____ nays, the resolution is adopted."

(Rap gavel.)

14. APPOINTMENT OF SPEAKERS PRO TEMPORE:

- a. Speaker: "Announcement by the Speaker."
- b. **(Chief Clerk reads announcement of appointment of Speakers pro tempore.)**

15. APPOINTMENT OF RULES COMMITTEE:

- a. Speaker: "Announcement by the Speaker."
- b. **(Chief Clerk reads announcement of members appointed to the Committee on Rules and Legislative Administration.)**

16. ANNOUNCEMENT BY THE SPEAKER:

a. Speaker: "Members, the appointment of other standing committee assignments and the new committee meeting schedule will be published in today's Journal."

17. SELECTION OF PERMANENT DESKS:

a. Speaker: "Representative _____ offers the following resolution."

b. **(Chief Clerk reads resolution.)**

c. Speaker: "I recognize the member from _____, Representative _____, to explain the resolution."

d. Speaker: "Is there any discussion on the resolution? ... If not, all those in favor say AYE ... Those opposed say NAY ... The resolution is adopted."

(Rap gavel.)

18. MESSAGES FROM THE SENATE:

a. Speaker: "Messages from the Senate."

b. **(Chief Clerk reads messages one at a time.)** (*We may not receive all of the following messages:*)

1) Organization of Senate

2) Committee to notify Governor

3) Adjournment for more than 3 days

4) Concurrent Resolution - Temporary Joint Rules

19. REPORT FROM COMMITTEE TO NOTIFY

GOVERNOR:

a. Speaker: "I call on Representative

_____ from the committee to notify the

Governor to give the report."

b. **(Representative _____ as**

committee chair gives the report.)

20. COMMUNICATIONS FROM THE GOVERNOR:

a. Speaker: "Communications from the Governor."

b. Speaker: "The Chief Clerk will report the communication."

(Chief Clerk reads letter from the Governor.)

c. Speaker: "I recognize the member from _____, Representative _____, to explain the motion."

d. Speaker: "There being no further discussion, all those in favor say 'AYE' ... Those opposed say 'NAY' ... The motion prevails."

21. ANNOUNCEMENTS:

a. Speaker: "Are there any announcements?"

(Representative _____ makes the

following announcement:

1) Reception immediately following session for members and your guests.)

22. ADJOURN:

Speaker: "Representative _____."

Caucus Leader: "I move that when the House adjourns today it adjourns until _____."

Speaker: "Representative _____ moves that when the House adjourns today, it adjourns until _____ . All those in favor say AYE ... Those opposed say NAY ... The motion prevails."

Speaker: "Representative _____."

Caucus Leader: "I move that the House do now adjourn."

Speaker: "Representative _____ moves that the

House do now adjourn. All those in favor say AYE ...

Those opposed say NAY ... The motion prevails and the

House stands adjourned until _____."

Note: This script for the Minnesota House of Representatives is "unofficial." It is prepared early each day by the Chief Clerk's staff and may not contain last minute changes.

JG 1/9/2025