



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.

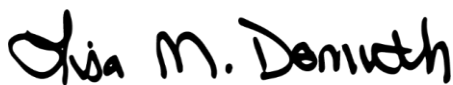
While it is proper for a presiding officer to make an initial determination of quorum, any such determination can be appealed to the body just like *every* decision by *every* presiding officer of *every* legislative body. *Mason's Legislative Manual* § 504 (6). If you seek to overstep your authority, 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