



The Office of
Minnesota Attorney General Keith Ellison
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April 4, 2022

Senator Mary Kiffmeyer, Chair
3103 Minnesota Senate Building
Saint Paul MN 55155

Senator Jeff Howe, Vice Chair
3231 Minnesota Senate Building
Saint Paul MN 55155

Senator Jim Carlson
2207 Minnesota Senate Building
Saint Paul MN 55155

Senator Gregory D. Clausen
2233 Minnesota Senate Building
Saint Paul MN 55155

Senator Omar Fateh
2325 Minnesota Senate Building
Saint Paul MN 55155

Senator Mark W. Koran
3101 Minnesota Senate Building
Saint Paul MN 55155

Senator David J. Osmeck
2107 Minnesota Senate Building
Saint Paul MN 55155

Senator Eric R. Pratt
3219 Minnesota Senate Building
Saint Paul MN 55155

Sent by email

Dear Chair Kiffmeyer, Vice Chair Howe, and members,

Thank you for the opportunity to testify on SF 3975, the Senate State Government Finance and Policy and Elections Committee Omnibus Bill. I write to urge you to fully fund the Office's Supplemental Budget request of \$4.156 million dollars and delete Article 2, Section 2 of the bill, performance of legal services.

\$4.156 million needed to fund public safety and invest in talent

At a time of a rise in violent crime and increasing concerns about public safety, I am disappointed that you have not included in your omnibus bill my request to add prosecutors to the criminal division of the Minnesota Attorney General's Office. I have asked you for this funding consistently since 2019, long before the recent spike in crime that has Minnesotans rightly concerned. The Minnesota County Attorneys Association strongly supports my request — as you know, because you have heard oral testimony to this effect and received several letters from prosecutors on the front lines of combatting crime that they need you to fund this request to help them keep Minnesotans safe. I am equally disappointed that you have not included funding to invest in and retain talent. It is essential to rebuild the staff strength of the Attorney General's Office so that we may protect Minnesotans. Our constituents are counting on you.



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Constitutional concerns of Article 2, Section 2 (SF 2818)

I am concerned that Article 2, Section 2 violates the separation-of-powers doctrine and places a potentially unconstitutional burden on the Attorney General.

The Attorney General is a constitutional officer and chief legal officer for the State of Minnesota. The Attorney General's Office represents the sovereign interests and the public in litigation involving the state. *State ex rel. Cassill v. Peterson*, 259 N.W. 696, 698 (Minn. 1935) ("The Attorney General represents the sovereign state and the people thereof."). The Attorney General has discretionary power over the conduct of this litigation, and another branch of government can "not control the discretionary power of the attorney general in conducting litigation for the state." *Slezak v. Ousdigian*, 110 N.W.2d 1, 5 (Minn. 1961). Otherwise, it would violate the constitutional separation of powers.

The language in Article 2, Section 2 threatens to infringe on the Attorney General's discretionary power over how to staff and conduct litigation on behalf of the state. Additionally, by significantly circumscribing the financial resources of the Office of the Minnesota Attorney General, the Legislature further violates separation of powers by interfering with the operation of executive function. *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986)

I've attached the letter I previously sent to the Committee in response to questions and assertions made during the February 9, 2022 hearing on SF 2818. I look forward to working with you in good faith for the best interests of our mutual constituents and the people of Minnesota.

Sincerely,

Keith Ellison
Minnesota Attorney General



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February 18, 2022

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3219 Minnesota Senate Building
Saint Paul MN 55155

Sent by email

Dear Chair Kiffmeyer, Vice Chair Howe, and members,

Thank you for giving my legislative director the opportunity to testify on SF 2818 at the February 9, 2022 hearing of the Senate's State Government Finance and Policy and Elections Committee. I write both to answer questions that members asked of the Attorney General's Office and to reply to claims made about the Office at the hearing.

No "Bloomberg-funded" attorneys in the AGO

Several people at the hearing referenced so-called "Bloomberg-funded" attorneys in the Attorney General's Office. Allow me to correct the record: there is no such thing "Bloomberg-funded" attorneys in the Minnesota Attorney General's Office.

There are two attorneys in the Attorney General's Office, out of approximately 135 in the Office, whose placement contracts — which are public documents that we have disclosed on numerous occasions — state clearly and unequivocally that they are "under the direction and control of, and owe a duty of loyalty to, the Office of the Minnesota Attorney General." I alone

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direct their work: as their placement contracts further state, “The Office of the Minnesota Attorney General retains sole discretion to determine whether to undertake any action,” and “No part of this agreement is intended to induce the Office of the Minnesota Attorney General to undertake or refrain from undertaking any action within the purview of the Office of the Minnesota Attorney General.”

The salaries of those two attorneys are paid directly by a program at New York University School of Law. That program’s website clearly states, “NYU pays the salaries of the law fellows, but the fellows’ sole duty of loyalty is to the attorney general in whose office they serve. All work performed by the fellows is entirely identified and managed by their respective AG offices.” It has been reported that this program at New York University School of Law is supported in part by a grant from Bloomberg Philanthropies. Bloomberg Philanthropies is a 501(c)(3) nonprofit that is subject to the same laws and duties of transparency and accountability as any nonprofit. You may know that among those serving on the 24-member board of directors of Bloomberg Philanthropies are such accomplished Americans as retired Admiral Mike Mullen, former Chairman of the Joint Chiefs of Staff; former U.S. Senator Sam Nunn; and Henry Paulson, Jr., former Chairman of Goldman Sachs and former Secretary of the Treasury under President George W. Bush.

New York University School of Law — which was founded in 1835, before Minnesota became a state — is consistently ranked a top-10 law school not just in the United States, but in the world. When I engaged New York University School of Law in a transparent, arm’s-length process about putting some of their resources to use in protecting Minnesotans and our environment from pollution, degradation, and other harms at no cost to Minnesota taxpayers, I did not once ask about their sources of funding. I did not then, nor have I since, spoken to any of their funders. The identity of their funders was then and is now irrelevant to my goal of expanding our Office’s ability to provide excellent legal service to State agencies and the people of Minnesota, be it in environmental protection or any other area.

I am pleased to report that excellent legal service is precisely what these attorneys, who act as employees of the Attorney General’s Office like any other, have provided. Meaningful examples of their outstanding work in protecting Minnesotans and our environment include, but are not limited to:

- *Departments of Health and Labor & Industry v. Water Gremlin*: Representing two state agencies in seeking an injunction to stop a manufacturer’s practices that allowed lead to migrate offsite, where it caused numerous cases of childhood lead poisoning. The case resulted in changes to the manufacturer’s operations and restitution to Ramsey County.
- *Minnesota Deer Farmers v. DNR*: Representing the Department of Natural Resources in defending its efforts to address outbreaks of chronic wasting disease, which threatens



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Minnesota wildlife and livelihoods associated with them. The case is currently being briefed to the Court of Appeals.

- *PFAS contamination*: Working with state agencies to identify, plan, and respond to PFAS contamination throughout the state, including representing the Pollution Control Agency in its adoption and implementation of the East Metro's Comprehensive Drinking Water Supply plan. That plan arose from 3M's PFAS contamination in the East Metro, which was the subject of the landmark \$850M settlement with the State that the Attorney General's Office reached in 2018.
- *Ensuring enforcement of federal laws that protect Minnesota's environment*: Partnering with other states to ensure that the federal government properly enforces landmark law such as the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and the Endangered Species Act, to the benefit of Minnesota's environment, the businesses that rely on it, and the Minnesotans across our state who enjoy it.
- *State of Minnesota vs. American Petroleum Institute, ExxonMobil Corporation, Koch Industries, et al.*: Litigating the State's landmark consumer-protection lawsuit against ExxonMobil, Koch Industries, and the American Petroleum Institute, which was filed at my sole direction in June 2020. The intent of the lawsuit is to hold those entities accountable for their well-documented, decades-long scheme to deceive Minnesotans about the true harm their product caused Minnesotans and our environment — which they knew and had a duty to disclose, but instead hid and lied about, leaving Minnesotans holding the very substantial bill. It is a lawsuit very much in the spirit of Minnesota's groundbreaking litigation against Big Tobacco, which brought and continues to bring billions of dollars into State coffers and has dramatically improved public health in our state, especially among youth. It may interest you to know that publicly available documents show that the Freedom Fund of Minnesota run by Ms. Meeks, who testified in favor of SF 2818, is funded in part by the American Petroleum Institute, one of the defendants in this lawsuit, and in part by the Charles G. Koch Foundation, the family foundation of another one of the defendants.

To reiterate, the claim that there are “Bloomberg-funded” attorneys in the Attorney General's Office is false. The two attorneys in question, who have repeatedly and loyally served the State and the people of Minnesota on critically important matters, work at my sole direction and owe a duty of loyalty solely to the Attorney General's Office — as do all employees of the Attorney General's Office. Any other implication or insinuation is unfounded and misleading.

Other funding sources for the Attorney General's Office

At the February 9 hearing, Senator Pratt asked my Office to provide information on “any cases that are being funded outside of the Attorney General's Office and by who those are being funded.”



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The answer is that no cases are being funded outside of the Attorney General's Office. The Office does receive some outside funding for some staff, but no direct funding for cases. No one directs the agenda of the Attorney General's Office or decides what cases we will work on but me.

Nonetheless, below are the sources and purposes of outside funding that the Office receives for staff.

- Because I believe in building the future of the legal profession, we have agreements with several other law schools to provide fellows, clerks, or interns to the Attorney General's Office. These include the University of Minnesota Law School, Mitchell Hamline School of Law, the University of St. Thomas School of Law, Harvard Law School, and the American Bar Association. In most cases, these fellows, clerks, or interns are paid directly by those schools and the funds do not pass through the Attorney General's Office, as is the case with the attorney fellows whose salaries are paid by New York University School of Law. This is common practice in attorney general offices around the country.
- We receive other local philanthropic and non-profit support: from the McKnight Foundation to fight human trafficking; from the Saint Paul and Minnesota Foundation to support our work to make expungements easier to obtain for those non-violent former offenders who are eligible for them; and from the Great Northern Innocence Project as a subgrantee of a grant they received from the U.S. Department of Justice to support our small Conviction Review Unit.
- Finally, we have received a sizeable yearly grant from the U.S. Department of Health and Human Services — authorized at more than \$3.5 million in FY 2022 — to fund 75 percent of the staff of our Medicaid Fraud Control Unit, with the remainder funded by the State of Minnesota. Medicaid fraud is the one area in which the Attorney General's Office has original criminal jurisdiction. In recent years, the work of the staff of the Unit has included:
 - Charging 10 people connected with Chappy's Golden Shores, a former assisted-living facility in Aitkin County, with 76 counts of manslaughter, assault, neglect, racketeering, theft, and other serious crimes.
 - Winning a conviction in Nobles County against the former operator of a home care nursing agency in a complex, multi-state case for which the attorneys involved were named Attorneys of the Year by Minnesota Lawyer.
 - Obtaining a guilty plea in Ramsey County against a former operator of four personal care assistant agencies for defrauding Minnesota's Medical Assistance (Medicaid) program of more than \$4 million.
 - Winning convictions in Hennepin County against the manager of five home care agencies for defrauding the Medical Assistance program of more than \$7 million, the largest Medicaid-fraud case ever brought in Minnesota state court.



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Protecting and providing value for taxpayers

Because I am committed to rebuilding the Minnesota Attorney General's Office to the strength required to fully meet the needs of the state and the people of Minnesota in the 21st century, I intend to continue to secure outside revenue from legitimate sources in a transparent, arm's-length manner.

As I have shared with you in previous budget presentations, the number of attorneys in the Minnesota Attorney General's Office today is roughly half of what it was a little more than 20 years ago. In those 20 years, however, society has become more complex, the legal system has become more litigious, and the challenges Minnesota consumers face in afford their lives — including scams, deception, fraud, and abuse — have become far more daunting. For this reason, it is essential to rebuild the staff strength of the Attorney General's Office so that we may protect Minnesotans from these and many other threats.

I do appreciate the additional funding that the Legislature has provided to the Attorney General's Office in the last two biennia, after three biennia of no increases before I became Attorney General. More is needed to restore the Office to the strength required to meet Minnesotans' needs in the 21st century. To that end, I hope to present my Office's supplemental budget to the committee very soon this session and look forward to the opportunity.

While I continue to work with you to rebuild the Office, I will continue to pursue outside sources of revenue to fund staff to do the work of protecting Minnesotans — at no cost to taxpayers, saving Minnesotans money.

Constitutional concerns

I am concerned that SF 2818 violates the separation-of-powers doctrine and places a potentially unconstitutional burden on the Attorney General.

The Attorney General is a constitutional officer and chief legal officer for the State of Minnesota. The Attorney General's Office represents the sovereign interests and the public in litigation involving the state. *State ex rel. Cassill v. Peterson*, 259 N.W. 696, 698 (Minn. 1935) ("The Attorney General represents the sovereign state and the people thereof."). The Attorney General has discretionary power over the conduct of this litigation, and another branch of government can "not control the discretionary power of the attorney general in conducting litigation for the state." *Slezak v. Ousdigian*, 110 N.W.2d 1, 5 (Minn. 1961). Otherwise, it would violate the constitutional separation of powers.



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SF 2818 threatens to infringe on the Attorney General's discretionary power over how to staff and conduct litigation on behalf of the state. While SF 2818 is vague on this point, it could be read as, for example, preventing the Attorney General from accepting pro bono services from attorneys who want to help the state write an important brief on a complex matter. However, if the Attorney General believes it is in the state's interest to accept pro bono legal services to advance the state interest in a complex case, she or he has the discretionary power to make that decision and staff the case accordingly. The Legislature cannot prevent any Attorney General from exercising such judgment. Additionally, by significantly circumscribing the financial resources of the Office of the Minnesota Attorney General, the Legislature further violates separation of powers by interfering with the operation of executive function. *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 782 (Minn. 1986)

Our working relationship

While I appreciate the opportunity you afforded my legislative director to testify at the February 9 hearing, I respectfully request that in the future, you allow committee staff to relay information to her regarding any known purpose or background of a bill upon her inquiry, in advance of any future hearing, especially when a bill concerns my Office. It is our intention and our practice always to come prepared for any legislative hearing. However, when my legislative director inquired of committee staff about the content and purpose of SF 2818 in advance of the hearing, she was told only to attend it to learn about the author's reasoning for bringing forth the bill and was provided no further information that would have allowed her to prepare for and answer your questions and concerns.

As always, if you have concerns about the functioning of the Attorney General's Office, I encourage you to share them with me directly.

I look forward to working with you for the best interests of our mutual constituents and the people of Minnesota.

Sincerely,

Keith Ellison
Minnesota Attorney General