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**Minnesota Attorney General Keith Ellison**  
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May 9, 2022

Representative Michael Nelson, Chair  
585 Rev. Dr. Martin Luther King Jr. Blvd.

Senator Mary Kiffmeyer, Chair  
3103 Minnesota Senate Building

Representative Frank Hornstein  
545 Rev. Dr. Martin Luther King Jr. Blvd.

Senator Scott Newman  
3105 Minnesota Senate Building

Representative Mary Murphy  
343 Rev. Dr. Martin Luther King Jr. Blvd.

Senator Jeff Howe  
3231 Minnesota Senate Building

Representative Erin Koegel  
445 Rev. Dr. Martin Luther King Jr. Blvd.

Senator John Jasinski  
3211 Minnesota Senate Building

Representative Jim Nash  
349 Rev. Dr. Martin Luther King Jr. Blvd.

Senator Scott Dibble  
2213 Minnesota Senate Building

Dear Conference Committee Members:

Thank you for the opportunity to submit information on provisions in HF 4293 (Nelson, M)/SF 3975 (Kiffmeyer). I write to urge you to (1) adopt the House provision to fully fund the Supplemental Budget Request for an operating adjustment of \$2.335 million for the Office of the Minnesota Attorney General and (2) not adopt the Senate provision on “performance of legal services.”

[Adopt \\$2.335 million Operating Adjustment in House Bill Spreadsheet, line 17. Article 1 Side-by-Side, R2-A1](#)

The Office of the Minnesota Attorney General has a supplemental budget request for an operating adjustment of \$2.335 million. In addition, the House Public Safety and Judiciary Omnibus Bill includes the other part of my supplemental request, which is \$1.821 million to assist County Attorneys with prosecutions across Minnesota by expanding the criminal division of the Office. With Minnesotans throughout our state concerned about crime and safety, funding the Office of the Attorney General to allow it to carry out its role in public safety by primarily helping rural county attorneys prosecute violent offenders at their request, is critical to ensuring safe communities.

For fiscal year 2023, our General Fund appropriation is currently \$26.19 million dollars. Twenty years ago, the General Fund appropriation for Attorney General’s Office appropriation was



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\$26.83 million, almost identical to our 2023 General Fund appropriation. But when you factor in inflation, that appropriation from 20 years ago is the equivalent of \$38.6 million in today's dollars. This means that our 2023 appropriation is worth 30% less in inflation-adjusted dollars than it was 20 years ago. Minnesota's population has since grown. Society has become more complex and more litigious. The challenges Minnesotans face in affording their lives and living with dignity, safety, and respect are more daunting by the day. We must close the gap between those challenges and the resources of the Attorney General's Office to help Minnesotans meet them.

Retaining an expert workforce is essential for the AGO to fulfill its duty to the state and serve and protect Minnesotans. Our attorneys earn less than public attorneys for local metro counties, and almost a third less than attorneys the U.S. Attorney's office. Sometimes our attorneys leave the AGO for these other public law offices because they can earn more for their families there and still serve the public. When they do, their knowledge and expertise leaves with them. Funding our operating adjustment allows us to retain our talent.

The capacity of the administrative, non-legal side of the office has always been tight. While employees of the Office are very resourceful and continue to serve their colleagues well, the capacity of critical internal administrative functions like human resources, information technology and finance to meet the needs of the Office, are stretched beyond their limits. The policy, communications, and outreach functions of the Office also require enhancements to handle the increasing complexity of the work of the Attorney General's Office and contribute to a 21st-century Attorney General's Office that fully meets the needs of its clients and Minnesotans. Funding our operating adjustment allows us to invest in these staff.

Reject "Performance of Legal Services" provision of Senate Bill

*Article 2 Side-by-Side, R2-A2*

*Article 5, Section 6 of Senate Bill, lines 39.20-40.13*

*Language from SF 2818 (Kiffmeyer)*

The "performance of legal services" policy provision in Article 5, section 6 of the Senate Bill violates the separation-of-powers doctrine and places a potentially unconstitutional burden on the Attorney General. This springs from the claim that the Office of the Minnesota Attorney General is using "Bloomberg" funded attorneys to pursue the narrow and specialized policy choice of former New York Mayor, businessman, and philanthropist Michael Bloomberg.

There are no "Bloomberg" attorneys at the Office of the Attorney General. There are two attorneys, out of approximately 135, whose placement contracts 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 direct their work. Their placement contracts further state



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that the Office “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.” These two attorneys are paid by a program at New York University School of Law, currently ranked number six in the country. That program’s website 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.” 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. These NYU Fellows have worked cases such as the following:

- *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.
- *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 the underlying bill, 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.



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There are no “Bloomberg” attorneys in the Attorney General’s Office. 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.

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.

This policy language 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)

Sincerely,

Keith Ellison  
Attorney General