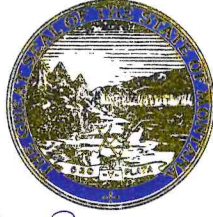


Montana State Senate



The Treasure State

SENATOR JASON ELLSWORTH
PRESIDENT OF THE SENATE

September 3, 2024

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VIA E-Mail:

Chief Justice Mike McGrath
Justice Building
215 N. Sanders
P.O. Box 203001
Helena, MT 59620-3001

Dear Chief Justice McGrath:

Your correspondence of August 6, 2024 was not well received. As President of the Senate, Chair of the Senate Select Committee on Judicial Oversight and Reform (SJOR), and the Legislative Audit Committee, I ask where the Constitution or any other binding authority or professional courtesy affords the Chief Justice or the Supreme Court such lack of deference to its co-equal branch, particularly over transparency concerns that are purely self-serving.

I am considering the implications to those involved. There are basic fundamental rights at issue. Deliberate indifference to individual rights must concern you; yet on your own, outside any existing cause of action before the Court and well beyond any administrative authority you may have over Montana courts, you mail me an edict. It does not appear the Supreme Court was involved in the decision as I see no public meeting to concur in this administrative matter. In response, I caution you and those who may choose to defer to you to proceed with caution. The Legislature also has sanction authority that it may exercise independently to address contempt of its process. Absent prompt retraction, you compromise your own otherwise respectable legacy in these waning hours before you and your administration finally separate at year end. Transparent leadership by example would be invaluable at this juncture. A dose of deference is in order. The public benefits not at all if we take up arms to forge steely fissures between our branches at this critical transitional point in time over the public's right to know how the judges the people elect are fulfilling expectations.

Your letter included curt notice that you advised Judicial Standards Commission ("JSC") staff and Commissioners to disregard investigative inquiries from the SJOR. At the same time and without reservation, you concede correctly that Commissioners and staff must appear and cooperate with Montana's Legislative Audit Committee, Mont. Const. Art. V Sec. 10(4) to address the audit. Curious why you suppose other Legislative functions similarly set forth in the Constitution may be ignored. For example, the Legislature is tasked with providing for the

manner, procedure, and cause for impeachment and other proceedings for removal from public office for cause. Art. V Sec. 13. The Legislature must create a Judicial Standards Commission and provide for the appointment of its members. Art. VII Sec. 11. The Legislature may disapprove judicial rules of procedure. Art. VII Sec. 3. The Legislature appropriates judicial branch expenses and establishes the law. Art. II Sec. 11. SJOR's work is well-grounded in the Constitution.

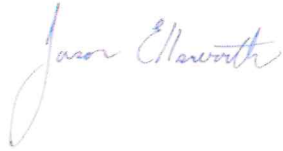
The Constitution does not require bipartisan participation when carrying out Legislative Constitutional obligations. The vote of the people controls who is in charge, not individual stakeholders or judges. Indeed, it would violate judicial canons were you to use the power of your position to favor the party to which you are partial. Canon 1.3 (A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.) Canon 2.2 (Impartiality - Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.) Your letter shows bias when you reference SJOR as "another group of Republican Senators and members of the public..." SJOR is not just "another group"; it is a legislative committee comprised of legislators from both chambers and both parties. Republicans have the majority and control all Legislative committees, including the Audit Committee. Democrats have chosen not to participate on SJOR, but whether they choose to participate or not for partisan reasons has no bearing on the validity of the work performed. You are ethically bound not to adopt their political strategies because you may not permit social, political, or other interests or relationships to influence your conduct or judgment. Canon 2.4. Your mention of efficiencies is purely pretextual. Having prepared complaint materials for the Audit committee should mean the same information is readily available to share with SJOR as well. There would be no reason to reconfigure the same information, if SJOR seeks the same data.

You are concerned about confidentiality because you believe Complaints are to remain confidential. While historically judges have enjoyed strict confidentiality, the laws have changed in this regard. Pursuant to the Constitutional authority at Art. VII Sec. 11 (4) "The proceedings of the commission are confidential except as provided by statute", the Legislature struck the confidentiality limitation on JSC's reporting requirements to it in 2023. Ch. 460, Sec. 6. JSC must report to the Legislature details specific to Complaints, which aligns with the Constitution that allows the Legislature to dictate the perimeters of any privilege.

You may contend that, because you are the Chief Justice, you have administrative authority over the Commission, but the fact that the Judicial Standards Commission is co-located at the Supreme Court and reviews complaints against judges does not make it a "court" within your control to administer, Mont. Const. art. VII Sec. 2. Dating back to 1980, the Legislature proposed and the people approved by constitutional amendment a discrete citizen-involved review board that derives its power directly from the Constitution. To have any integrity at all the JSC must have independence from the Chief Justice and Supreme Court intermeddling prematurely. You and your brethren are the final arbiters of judicial misconduct. Interference with that process before the matter comes before you corrupts the system. I recognize there exists extreme consternation among judges over SJOR and conservative leadership accessing potentially compromising information on judges and disrupting long-standing secret processes, but you and the judges you lead may only instill public trust and confidence in the judiciary by opening the doors and letting the sunshine in. Now is the time for courage, not fear, and faith in the public's ability to act on the information it has a right to know at election time.

I appreciate your cooperation so that we may proceed accordingly without further disruption.

Sincerely,

A handwritten signature in blue ink that reads "Jason Ellsworth". The signature is written in a cursive style with a large, looping initial "J".

Jason Ellsworth
President of the Senate

cc:

Members of the Montana Supreme Court

Chairman of the Judicial Standards Committee, Honorable Mike Menahan

Clerk of of the Supreme Court Bowen Greenwood

Members of the Senate Select Committee on Judicial Oversight and Reform

Members of the Legislative Audit Committee