

SENATE JOINT RESOLUTION NO. 11

INTRODUCED BY K. REGIER

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AFFIRMING THE STATUTORY DEFINITION OF LAW AND ITS BINDING EFFECT ON THE COURTS.

WHEREAS, there is a conflict between what the Supreme Court says the law is and what the statutes of Montana and the Montana Constitution say the law is; and

WHEREAS, Article V, section 11(1), of the Montana Constitution begins, "A law shall be passed by bill"; and

WHEREAS, the statutes of Montana define the law as provided in section 1-1-101, MCA: "Law' is a solemn expression of the will of the supreme power of the state"; and

WHEREAS, the supreme power of the state is defined as provided in section 1-1-102, MCA: "The will of the supreme power is expressed by: (1) the constitution; (2) statutes"; and

WHEREAS, Canon 1, Rule 1.1, of the Code of Judicial Conduct as promulgated by the Montana Supreme Court states: "A judge shall comply with the law, including the Code of Judicial Conduct", which defines law as "court rules as well as statutes, constitutional provisions, and decisional law"; and

WHEREAS, Article VII, section 2(3), of the Montana Constitution authorizes the Supreme Court to make rules, specifying the categories of appellate procedure, procedure for all other courts, admission to the bar, and conduct of its members; and

WHEREAS, nowhere does the Montana Constitution authorize the Supreme Court to define the law; and

WHEREAS, the conflict is on the definition of the law and is not about procedural rules; and

WHEREAS, when there are conflicts between the Legislative and Judicial Branches on what the law is, since the Legislature creates the law, the Legislature by definition determines what the law is; and

WHEREAS, the Supreme Court has no power and no authority to define the law; and

WHEREAS, while judicial independence requires the Legislature to not usurp the power of the

1 Judiciary, Legislative independence requires the judicial power to be hands-off in defining the law; and
2 WHEREAS, "decisional law" as defined by the Supreme Court is sometimes legislating beyond the
3 Supreme Court's constitutional boundaries; and

4 WHEREAS, decisions by the Supreme Court are labeled as opinions, should be advisory only, and
5 should be treated as such.

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7 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF
8 THE STATE OF MONTANA:

9 That it is the Legislature that defines what constitutes law, not the Supreme Court.

10 BE IT FURTHER RESOLVED, all subsequent actions involving the Legislature and the Executive or
11 Judicial Branches will use this resolution to determine what constitutes law.

12 BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to all Montana
13 Supreme Court Justices, District Court Justices, Water Court Justices, Justices of the Peace, and Municipal
14 Court Justices, the Governor, all state agency directors, and each member of the Montana Congressional
15 Delegation.

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