



SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

68th Montana Legislature

SENATE MEMBERS

Mary Ann Dunwell
Janet Ellis
Jason Ellsworth
Daniel Emrich
Steve Fitzpatrick
Chris Friedel
Carl Glimm
Jen Gross
Steve Hinebauch
Tom McGillvray
Wendy McKamey
Shane Morigeau
Mark Noland
Andrea Olsen
Barry Usher

HOUSE MEMBERS

Lyn Hellegaard
Fiona Nave
Sue Vinton

PUBLIC MEMBERS

Andrew Billstein
Joan Mell
Jim Ramlow

COMMITTEE STAFF

Jameson Walker, Attorney
Jaret Coles, Attorney
Todd Everts, Legal Services Director
Julianne Burkhardt, Attorney
Julie Johnson, Deputy Legal Director
Jolanda Songer - Secretary

MINUTES LOG

June 12, 2024
Room 137
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <https://leg.mt.gov>. From the home page, select the "Committees" drop down menu at the top, then select Administrative or Interim, and the appropriate committee. The written minutes log can be located by expanding the accordion menu for the date of the meeting. Links to the audio/video files can be located by selecting the Video/Audio button on the same page, then the "past/current recordings" button. From there, use the calendar to select the date of the meeting you wish to view/listen to. The written Minutes Log, along with links to the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed. Please contact the Legislative Services Division at 406-444-3064 for more information.

MEMBERS PRESENT:

Sen. Jason Ellsworth, Chair (R)
Sen. Barry Usher, Vice Chair (R)
Sen. Daniel Emrich (R) – Via Zoom
Sen. Chris Friedel (R) – Via Zoom
Sen. Carl Glimm (R)
Sen. Steve Hinebauch (R)
Sen. Tom McGillvray (R)
Sen. Mark Noland (R)
House Majority Leader Sue Vinton (R)
Rep. Lyn Hellegaard (R)
Rep. Fiona Nave (R)

Andrew Billstein, Public Member
Joan Mell, Public Member
Jim Ramlow, Public Member

MEMBERS EXCUSED:

Sen. Steve Fitzpatrick (R)
Sen. Wendy McKamey (R)

MEMBERS ABSENT:

Sen. Jen Gross (D)
Sen. Shane Morigeau (D)
Sen. Mary Ann Dunwell (D)
Sen. Janet Ellis (D)
Sen Andrea Olsen (D)

STAFF PRESENT:

Jameson Walker, Legislative Attorney
Jaret Coles, Legislative Attorney
Todd Everts, Legal Services Director, and Code Commissioner
Julianne Burkhardt, Legislative Attorney – Via Zoom
Julie Johnson, Deputy Legal Director - Via Zoom
Jolanda Songer, Secretary

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

CALL TO ORDER/ROLL CALL

09:02:46 Presiding Officer Jason Ellsworth called the meeting to order at 9:04 AM. The committee secretary took roll.
09:04:24 Presiding Officer Jason Ellsworth
09:05:28 Vice Presiding Officer Barry Usher
09:06:08 Presiding Officer Jason Ellsworth

OVERVIEW OF MARBURY V. MADISON

09:08:19 Sen. Tom McGillvray
[EXHIBIT 1](#)
[EXHIBIT 2](#)
09:29:22 Jaret Coles, Attorney, Legislative Services Division (LSD)

Public Comment

09:42:37 Pascal Redfern
[EXHIBIT 3](#)
10:07:27 Bruce Spencer, State Bar of Montana
[EXHIBIT 4](#)
10:13:43 Presiding Officer Jason Ellsworth

Questions from the Committee

10:15:28 Joan Mell, Public Member
10:16:59 Bruce Spencer
10:19:24 Sen. Carl Glimm
10:19:25 Presiding Officer Jason Ellsworth
10:19:47 Sen. Carl Glimm
10:20:39 Bruce Spencer
10:26:09 Presiding Officer Jason Ellsworth objected to the inference made by Bruce Spencer.
10:26:48 Bruce Spencer
10:27:33 Sen. Carl Glimm
10:28:14 Bruce Spencer
10:28:41 Sen. Steve Hinebauch
10:30:00 Bruce Spencer
10:33:42 Sen. Tom McGillvray
10:34:29 Bruce Spencer
10:38:02 Sen. Mark Noland
10:38:26 Pascal Redfern
10:47:37 Sen. Daniel Emrich
10:49:25 Pascal Redfern
10:55:20 Bruce Spencer
10:55:36 Sen. Daniel Emrich
10:57:17 Bruce Spencer
11:00:09 Andrew Billstein
11:01:49 Presiding Officer Jason Ellsworth
11:06:58 Sen. Tom McGillvray
11:08:55 James Ramlow
11:14:46 Sen. Tom McGillvray
11:21:15 Majority Leader Sue Vinton
11:21:49 Bruce Spencer
11:22:07 Presiding Officer Jason Ellsworth
11:22:37 Vice Presiding Officer Barry Usher
11:22:56 Bruce Spencer
11:23:17 Rep. Fiona Nave
11:24:00 Bruce Spencer
11:25:06 Presiding Officer Jason Ellsworth
11:25:57 Bruce Spencer
11:29:31 Presiding Officer Jason Ellsworth
11:31:06 Bruce Spencer
11:40:10 Rep. Fiona Nave

11:42:14 Rep. Lyn Hellegaard
 11:43:00 Pascal Redfern
 11:48:14 Sen. Daniel Emrich
 11:50:36 James Ramlow
 11:52:38 Vice Presiding Officer Barry Usher
 11:53:11 Jaret Coles
Symposium Article: The Rhetorical Uses of Marbury v. Madison: The Emergence of a "Great Case", Douglas, 38 Wake Forest L. Rev. 375 (2003), available at <https://scholarship.law.wm.edu/facpubs/115/>.
 11:55:36 Vice Presiding Officer Barry Usher
 11:56:02 Bruce Spencer
 12:05:56 Presiding Officer Jason Ellsworth
 12:07:14 Jaret Coles
 12:11:32 Jameson Walker
 12:11:46 **Recessed**
 13:03:07 **Reconvened**
 13:03:13 Vice Presiding Officer Barry Usher
 13:03:53 Presiding Officer Jason Ellsworth
 13:04:20 Senator Wendy McKamey

OVERVIEW OF CERTAIN LEGAL TERMS

13:05:26 Jameson Walker, Attorney, LSD
[EXHIBIT 5](#)
 13:10:18 Presiding Officer Jason Ellsworth
 13:10:39 Vice Presiding Officer Barry Usher

Public Comment

13:11:03 None

Questions from the Committee

13:11:34 Sen. Mark Noland
 13:12:17 Jameson Walker
 13:29:40 Presiding Officer Jason Ellsworth
 13:31:22 Sen. Mark Noland
 13:31:35 Joan Mell
 13:33:40 Jameson Walker
 13:36:46 Presiding Officer Jason Ellsworth
 13:36:58 Jameson Walker
 13:38:25 Majority Leader Sue Vinton
 13:38:40 Jameson Walker
 13:39:16 Joan Mell
 13:40:39 Rep. Fiona Nave
 13:41:10 Jameson Walker

13:44:38 Joan Mell
13:46:21 Rep. Fiona Nave
13:46:35 Joan Mell
13:46:56 Rep. Lyn Hellegaard
13:47:43 Jameson Walker
13:48:35 Presiding Officer Jason Ellsworth
13:49:14 Jameson Walker
13:49:57 Joan Mell
13:51:11 Vice Presiding Officer Barry Usher

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

13:52:19 Jameson Walker (See Exhibit 5, Page 10, #3)

Questions from the Committee

13:55:34 Presiding Officer Jason Ellsworth
13:55:59 Jameson Walker
13:57:03 Bruce Spencer, State Bar of Montana
13:59:05 Vice Presiding Officer Barry Usher
13:59:43 Bruce Spencer
14:00:23 Joan Mell
14:01:55 Majority Leader Sue Vinton
14:02:14 Joan Mell

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

14:02:31 Jameson Walker (See Exhibit 5, Page 11)

Questions from the Committee

14:12:12 Sen. Steve Hinebauch
14:13:21 Jameson Walker
14:13:57 Bruce Spencer
14:15:14 Sen. Tom McGillvray
14:16:22 Bruce Spencer
14:17:38 Sen. Steve Hinebauch
14:18:49 Majority Leader Sue Vinton
14:19:53 Bruce Spencer
14:23:22 Vice Presiding Office Barry Usher
14:24:06 Bruce Spencer
14:25:03 Joan Mell
14:25:53 Vice Presiding Officer Barry Usher
14:26:41 Bruce Spencer
14:27:40 Presiding Officer Jason Ellsworth
14:28:01 Bruce Spencer

14:29:10 Presiding Officer Jason Ellsworth requested information from Bruce Spencer.
14:29:42 Presiding Officer directed a question to Jameson Walker.
14:30:45 Joan Mell
14:31:44 Bruce Spencer
14:32:17 Vice Presiding Officer Barry Usher
14:32:44 Bruce Spencer

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

14:33:14 Jameson Walker (See Exhibit 5, Page 20)

Questions from the Committee

14:35:09 Sen. Tom McGillvray directed a question to Jameson Walker.

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

14:38:45 Jameson Walker (See Exhibit 5, Page 21)
14:40:30 Joan Mell
14:41:31 Sen. Tom McGillvray
14:42:01 Joan Mell
14:43:15 Sen. Steve Hinebauch
14:44:17 Jameson Walker

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

14:46:33 Jameson Walker (See Exhibit 5, Page 23)
14:46:35 Presiding Officer Jason Ellsworth left the meeting
14:46:38 Vice Presiding Officer Barry Usher assumed the chair.
14:51:47 Sen. Tom McGillvray
14:51:59 Jameson Walker
14:52:06 Presiding Officer Jason Ellsworth resumed the chair.
14:53:43 Vice Presiding Officer Barry Usher
14:55:21 Jameson Walker
14:58:27 Sen. Tom McGillvray
14:58:44 Jameson Walker
14:59:42 Presiding Officer Jason Ellsworth requested information from Jameson Walker.

OVERVIEW OF CERTAIN LEGAL TERMS - Continued

15:01:06 Jameson Walker (See Exhibit 5, Page 32)
15:04:06 Rep. Lyn Hellegaard
15:04:20 Jameson Walker
15:05:23 Presiding Officer Jason Ellsworth
15:05:42 Jameson Walker
15:06:38 Joan Mell
15:08:34 Jameson Walker (SB 191)
15:09:37 Sen. Steve Hinebauch
15:09:58 Presiding Officer Jason Ellsworth

15:11:08 Vice Presiding Officer Barry Usher requested information from Jameson Walker.
15:12:24 Rep. Lyn Hellegaard requested information from staff.
15:13:06 Jameson Walker
15:14:58 **Recessed**
15:32:12 **Reconvened**

DISCUSSION OF ENACTED LEGISLATION REGARDING COURT RULES OF PROCEDURE AND OF ARTICLE VII, SECTION 2, OF THE MONTANA CONSTITUTION

15:32:33 Julliane Burkhardt, Attorney, LSD

[EXHIBIT 6](#)

[EXHIBIT 7](#)

Questions from the Committee

15:40:16 Sen. Tom McGillvray
15:41:19 Sen. Carl Glimm

DISCUSSION OF ENACTED LEGISLATION REGARDING COURT RULES OF PROCEDURE AND OF ARTICLE VII, SECTION 2, OF THE MONTANA CONSTITUTION - Continued

15:43:04 Julianna Burkhardt

Public Comment

15:52:45 None

Questions from the Committee

15:53:07 Sen. Tom McGillvray directed a question to Julianna Burkhardt.
15:56:35 Vice Presiding Officer Barry Usher
(See Exhibit 7)
15:59:34 Vice Presiding Officer Barry Usher requested information from Julianna Burkhardt.
16:00:47 Presiding Officer Jason Ellsworth
16:03:02 Julianna Burkhardt
16:06:30 Vice Presiding Officer Barry Usher
16:07:34 Sen. Carl Glimm
16:08:39 Presiding Officer Jason Ellsworth
16:09:08 Vice Presiding officer Barry Usher
16:10:10 Presiding Officer Jason Ellsworth
16:11:36 James Ramlow

OVERVIEW OF LEGAL REVIEW NOTES, AMENDMENTS WITH LEGAL CHALLENGES, AND LITIGATION RELATING TO THE 2021 AND 2023 SESSIONS, INCLUDING SB 442 (2023)

16:14:45 Todd Everts, Chief Legal Counsel and Code Commissioner, LSD

[EXHIBIT 8](#)

[EXHIBIT 9](#)

16:30:32 Presiding Officer Jason Ellsworth left the meeting.

16:31:22 Vice Presiding Officer Barry Usher assumed the chair.

**OVERVIEW OF LEGAL REVIEW NOTES, AMENDMENTS WITH LEGAL CHALLENGES,
AND LITIGATION RELATING TO THE 2021 AND 2023 SESSIONS, INCLUDING SB 442
(2023) – Continued**

16:32:22 Todd Everts

16:36:44 Presiding Officer Jason Ellsworth resumed the chair.

16:53:42 Vice Presiding Officer Barry Usher

16:59:19 Presiding Officer Jason Ellsworth

Public Comment

16:59:56 None

Questions from the Committee

17:00:24 Majority Leader Sue Vinton

17:01:24 Sen. Tom McGillvray

17:07:56 Sen. Steve Hinebauch

17:09:30 Joan Mell

17:13:25 Presiding Officer Jason Ellsworth

17:13:45 Jameson Walker

17:14:05 Joan Mell

17:14:55 James Ramlow

17:16:59 Todd Everts

17:17:06 James Ramlow

[EXHIBIT 10](#) ###

17:24:11 Sen. Carl Glimm

17:26:09 Joan Mell

17:31:37 Sen. Carl Glimm

PUBLIC COMMENT ON ANY TOPIC UNDER THE COMMITTEE'S JURISDICTION

17:33:28 John Opitz

17:35:15 Vice Presiding Officer Barry Usher

RECESS UNTIL 9 A.M. ON THURSDAY, JUNE 13

ADJOURNMENT

Adjournment: 17:39:58