

# Montana State Senate



*The Treasure State*

**SENATOR JASON ELLSWORTH**  
**PRESIDENT OF THE SENATE**

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September 3, 2024

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VIA E-Mail:

Judicial Standards Commission  
c/o Honorable Mike Menahan  
1<sup>st</sup> Judicial District  
228 East Broadway  
Helena MT 59601

Dear Judge Menahan:

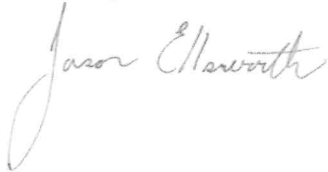
I understand you are in receipt of Justice McGrath's correspondence dated August 6, 2024. Based on the content, it appears the Chief informed you previously that he does not expect you, the Judicial Standards Commission (JSC) members, or staff to cooperate with the Senate Select Committee on Judicial Oversight and Reform (SJOR). I have copied you on my response to Justice McGrath. JSC and the Legislature does not take direction from Chief Justice McGrath. Neither Justice McGrath nor the Supreme Court may direct anyone, including JSC to not cooperate with the Legislature via administrative edict. You and the JSC are expected to continue cooperating with SJOR. Given the uncertainty the Chief has caused, subpoenas were personally served and should make clear you are on formal notice of your obligations. Such subpoenas align with the investigative and enforcement authority of the Legislature that Montana's Supreme Court recognized in 2021 in *McLaughlin v. Montana State Legislature*, 405 Mont. 1, 493 P.3d 980 (2021). In *McLaughlin*, the Court acknowledged "a legislature's power to obtain information is 'broad' and 'indispensable.'" Should you or anyone associated with JSC choose to disregard formal process, all Legislative authority to enforce its subpoenas will be invoked. This enforcement authority will include assessing penalties and fees against the witness in a personal capacity where the contempt exceeds the authority of any office. Oliver Wendell Holmes, *Early English Equity*, 1 L. Quart. Rev. 162, 162 n.2 (1885) noted that, at common law, the penalty for failing to comply with a subpoena "was usually money, but might be life and limb".

The people of Montana may not be expected to pay for official misconduct such as a deliberate failure to cooperate with the Legislature that causes the institution harm. Given the role of the Supreme Court in inviting the contempt, it would not have the requisite impartiality to hear the

contempt case and would need to recuse. The Supreme Court as presently seated may not legitimately hold that the Legislature has no authority to enforce its subpoenas through imposition of individual fines. It is my intent to ensure the Legislature's authority is upheld and will pursue all available avenues for relief should you and the JSC leave me no alternative.

Your courtesies and cooperation in this regard are appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Jason Ellsworth". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Jason Ellsworth  
President of the Senate

cc: Members of the Montana Supreme Court  
Clerk of the Supreme Court Bowen Greenwood  
Members of the Senate Select Committee on Judicial Oversight and Reform  
Members of the Legislative Audit Committee