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SPECIAL JOINT SELECT COMMITTEE ON JUDICIAL
TRANSPARENCY AND ACCOUNTABILITY

MINORITY REPORT TO THE 68TH MONTANA LEGISLATURE

**MINORITY REPORT
FROM THE 67TH
LEGISLATURE**

Introduction. From the start, this Committee’s activities have manufactured a false conflict with the Judicial Branch of the State of Montana. This week’s Majority Report—which adds virtually nothing new from the predecessor report authored a year and a half ago—is another tired effort by the Committee to shift the public’s focus away from the passage of unconstitutional legislation, and to channel it into a partisan attack on Montana’s independent judiciary.

Courts at every level of the American judicial system have rejected the Majority Report’s assertions. And Montana voters overwhelmingly rejected cynical efforts to paint the Montana Judiciary as a partisan institution by re-electing the two incumbent Justices of the Montana Supreme Court on the ballot in November 2022.

Montanans want to move on—to address real problems like Montana’s crisis of childcare availability, housing affordability, and responsibly managing the budget. But this Committee won’t listen. Through the proposed Majority Report, the Committee appears poised to deepen the artificial conflict between the Legislature and the Judiciary. This effort should be rejected for the ploy it is.

Though the Majority Report adds nothing new, it is rife with errors, misstatements, hyperbole, and unsupported accusations. To inform the public, this Minority Report details the errors and omissions of the Majority Report. This Minority Report also examines the utter lack of any substance behind the Majority Report’s most bombastic accusations.

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Separation of Powers

Article III, Section 1 of the Montana Constitution provides that,

The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Power in state and federal constitutional democracies is divided among three branches: Legislative, Executive and Judicial. For this division to promote liberty, these three powers must be separate, and each must act independently.

The doctrine of separation of powers divides government responsibilities into distinct branches and limits any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. Under this system, the Legislature is responsible for passing laws, the Executive is responsible for seeing that these laws are carried out, and the Judiciary is responsible for interpreting these laws.

In 1803, the United States Supreme Court embraced the doctrine of judicial review vesting the Judiciary with the power to “say what the laws is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). So, when the Legislative or Executive branch acts in excess of its powers, the Judiciary has the final say. The issue of whether the Executive or the Legislative branch has exceeded its authority arises most often when either of these bodies does something which violates the fundamental rights of the citizens as set forth in the constitution. The doctrine of judicial review gives citizens protection when the Legislature or the Executive exceeds the limits of power, and it is up to the Judiciary to make the final determination.

Most of the time, courts uphold legislative enactments. But where an enactment plainly violates the constitution, courts must enjoy the independence to engage in judicial review without interference by the other branches. These principles—which the Montana Constitution fully embraces—are the bedrock of the rule of law in Montana and the United States. They protect private property and individual liberties from the overreach of government. Through its report, the Majority seems to be unaware of, or is purposely ignoring, these two fundamental pillars of our political system: the doctrines of separation of powers and judicial review.

Judicial Ethics and the Legislative Process

The branches of government in Montana do not simply communicate through judicial review. Since statehood, the Legislature has solicited the views of the Judiciary on legislation that affects courts. The Executive branch appears daily before committees of the Legislature, commenting on various proposals presumably on state time and using state resources.

Montana’s Code of Judicial Conduct specifically authorizes judges to appear before the Legislature to express their views on matters that implicate judges’ special expertise in the court system. The [Montana Code of Judicial Conduct](#) provides a judge may “appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body” when “in connection with matters concerning the law, the legal system, or the administration of justice.” Mont. Code Jud. Conduct, Rule 3.2. Participation is appropriate because “[j]udges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.” *Id.*, cmt. 1.

Not only is participation in the legislative process appropriate, it is also encouraged: “Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.” *Id.*, cmt. 2.

Consistent with these standards, for years the Judiciary has appeared before various committees of the Legislature through the Montana Judges Association (“MJA”). In the Minority members’ decades of collective experience, no one ever questioned whether MJA representatives appearing before committees were accurately representing the views of judges in Montana. Nor, prior to the 2021 session, did anyone question how MJA determined its members’ positions on bills affecting the Judiciary. MJA was a routine participant in the legislative process and provided useful input into matters related to courts and the Judiciary.

But from its very first paragraph, the Majority Report frames MJA’s involvement in the legislative process as a “revelation” to legislators. Maj. Rep. 2 (asserting that the Committee was convened “in response to revelations concerning judicial lobbying practices”). This is nonsense. The Majority’s members have long known of—and invited—MJA’s views and input on legislation affecting the court system. The report seeks to rewrite history. In so doing, it exposes just how pretextual the Majority Report’s attacks, accusations, and assertions are.

The Majority report has everything to do with the Legislature’s ongoing attack on the independence of the judiciary; records policies and the MJA are just kindling for the Committee.

Review of the Majority Report **Timeline**

Editorial decisions in the Majority Report’s timeline tell their own story.

First, the timeline contains false information. For example, it accuses the Montana Supreme Court of “quashing their own subpoenas” on April 16, 2021. This is untrue. The Montana Supreme Court did not “quash” its subpoenas. To the contrary, the Justices appeared before this Committee. The Legislature later dropped the subpoenas of its own accord.

Second, the timeline shows the Committee is as fixated on the Legislature’s dismal record in unrelated litigation challenging laws passed in 2021 as it is on anything else in the report. For example, the timeline inexplicably chronicles the dates Billings Judge Gregory Todd announced his expected retirement and, later, removed himself from litigation challenging new abortion restrictions. Neither event has anything to do with MJA’s polling, the Judiciary’s records policies, or anything else that allegedly spurred the creation of this Committee. The only connection appears to be that Judge Todd happened to be president of the MJA in early 2021, then in late 2021 removed himself from a case for unrelated reasons. The two have nothing to do with each other. The inclusion of these events in the report is baffling; conspiracism without the connective tissue.

Third, the timeline also chronicles the activities of the Attorney General’s Senior Advisor Jake Eaton.¹ In the timeline and supporting exhibits, the Majority Report demonstrates a pattern of coordination with the Attorney General and his surrogates in their multifaceted efforts to undermine the independent judiciary in Montana.

Fourth, the timeline notes the Committee was formed on April 14, 2021. While the Committee met several times to question witnesses, there is no mention in the timeline that the Committee ever met to write the report. Indeed, the two Minority members of the Committee were wholly removed from the process of reviewing materials obtained by the Committee, or formulating the report and its recommendations. The final entry in the timeline shows that the fix is in: the draft report issued on December 16, 2022 announces that the final report—with all the errors, wild accusations, and misstatements chronicled below—was “adopted” on December 22, 2022. This statement is reflective of the partisan, politically motivated effort to undermine the Judiciary and the Committee’s total disregard for normal process or serious consideration of the proposed findings.

¹ Eaton previously served as a campaign advisor to the Attorney General. During the April 2021 events largely at issue in this report, the Department of Justice listed him as a senior advisor. *See*

<https://web.archive.org/web/20210425075229/https://directory.mt.gov/govt/state-dir/agency/justice>

Finally, and most telling, the timeline mentions that the Judiciary has adopted a new records retention policy—resolving one of the Majority’s central grievances. If the Judiciary’s records retention plan is truly the impetus for this Committee, it begs the question why this Committee has continued to function and incur public expense long after the Montana Supreme Court adopted a new policy and “fixed” the alleged problem.

Review of the Majority Report **Judges and the Legislative Process** **(“MJA Polling” and “MJA Lobbying” Sections)**

As discussed above, the Majority’s assertions about MJA and the role of judges in the legislative process rewrite history. The Montana Code of Judicial Conduct anticipates that judges will appear before the Legislature and share their views on pending legislation affecting courts. Surely it is no surprise that judges and their representatives in MJA solicited their colleagues’ views before presenting them to the Legislature.

Beyond the report’s conspiratorial rhetoric and selective storytelling, this much is clear:

- **The Legislature has long invited judges to share their views on legislation affecting the Court system.** There is no dramatic “revelation”; nothing “came to light” about the MJA.
- **MJA only polled on court system and Judiciary bills.** There is some innuendo in the report suggesting that MJA issued polls on the substantive constitutionality of legislation, or polled on legislation unrelated to the court system. This is false and highly misleading.
- **There is no evidence any judge or Justice who expressed a view during the legislative process later sat on any case involving that legislation.** To the contrary, all the evidence shows that judges and Justices recused in later cases, consistent with the Code of Judicial Conduct.

There is no smoke. There is no fire. Rather, the Majority Report’s narrative turns on selective and misleading anecdotes, some of which have nothing to do with the events that allegedly spurred the creation of the Committee. For example, the Majority Report again highlights an unrelated challenge to abortion restrictions passed in 2021. That case has nothing to do with the Judiciary’s records policy, MJA polling, or the alleged focus of the Committee. A non sequitur reference to that case would be one matter. But the Majority then rewrites the history of that case, too. It falsely links the judge’s recusal there to unspecified “similar due process concerns” and misleadingly quotes a media commentator.

The abortion case anecdote perfectly encapsulates how the Majority Report builds its spurious case against the Judiciary: selective storytelling, marshalling facts from unrelated events that don’t quite connect, and an underlying fixation on the 2021 Legislature’s poor track record of passing unconstitutional legislation.

Similarly, the Majority Report alleges without any elaboration that the Montana Supreme Court issued an “improperly preemptive opinion”—whatever that means—about the activities of its

administrator. The idea of an “improperly preemptive opinion” then animates a host of other accusations, proposed remedies, and observations throughout the rest of the report. This kind of conclusory, ad hominem attack on the Judiciary is characteristic of the report. It’s striking for its total lack of substance. The report’s admonishing tone promises scandal, but it never delivers.

At bottom, the Majority Report’s main grievance about MJA appears to be that it is a private association, and that Montana’s judges should use some official entity to inform the Legislature of their views on legislation affecting the Judiciary. After a year and a half of proceedings, hundreds of thousands of dollars of spending, and the worst crisis in interbranch relations in decades, this is the Majority’s bottom line: the MJA should go public.

The Majority’s proposed remedies are also of minimal value, especially when measured against the democratic expense of this Committee’s activities over the past year and a half. Of the “potential remedies” for MJA polling, the first two are already happening: the MJA has ceased polling its members on bills affecting the judiciary, and judges and Justices already recuse themselves from cases involving bills upon which they have expressed a view. There is no evidence to the contrary. The third suggestion—file ethics complaints against everyone—begs only to waste more taxpayer resources. The Code of Judicial Conduct discussed above clearly authorizes and encourages participation in the legislative process.

The “MJA lobbying” remedies also land with a thud. In effect, they ask the MJA to re-form as a public organization. And the recommendations suggest that members of the Legislature should ask judges and MJA representatives to identify on whose behalf they are speaking when appearing before legislative committees—a routine practice in the Montana Legislature already.

Here, and throughout the report, the “problems” identified by the Majority and their corresponding “remedies” are flatly out of proportion with this Committee’s year and a half track record of public expense, spectacle, and damage to our separation of powers.

Review of the Majority Report **Public Records Retention**

Perhaps the most meaningful work of this Committee has been to highlight just how poor record retention practices are across state government—including, and especially, in the Legislative and Executive branches of government. But the Majority Report focuses on the Judiciary only, and once again tries to manufacture a cloud of scandal.

As with other sections of the report, the alleged ethical violations are thick with rhetoric but lack any real substance. For example, on Page 16 of the Majority Report, the Majority describes how the Judiciary’s records retention plan in effect in early 2021 allowed some emails to be deleted, and later to drop off of the Department of Administration’s servers. Then the report leaps to the conclusion that this “obscured potential violations of judicial ethics rules and laws.” This is pure hyperbole and speculation. The Majority Report does not identify a single instance in which a private, pecuniary interest prevailed over the public interest, or how the public’s interest diverges from the interests of the Judiciary in any way. The Majority Report lobbs serious ethical allegations, but appears to lack basic knowledge about what ethical and legal requirements govern state employees or judges. Tellingly, the Majority Report contains no citations to any individual standard of judicial conduct.

Burying the lead, the Majority Report reluctantly acknowledges that the Judiciary has, in fact, adopted a new records retention schedule that addresses the Committee’s concerns. By contrast, the Executive still appears to follow a [dated records retention policy](#) whose first section is entitled, “What is Email?”

Again, the spectacle this Committee has cultivated during its existence is out of proportion to the Majority’s actual findings and remedies.

Review of the Majority Report
McLaughlin v. Legislature Litigation
(“Conflicts of Interest” Section)

The “Conflicts of Interest” section of the Majority Report simply rehashes the exact subject matter of *McLaughlin v. Montana Legislature* and related cases. These issues have been reviewed—and the Majority Report’s assertions rejected—by every level of the American court system, including the United States Supreme Court.

What’s more, the alleged “conflicts of interest” described in the report lack any substance. For example, the Majority cites the issuance of a “surprise weekend order.” It leaves out what the briefs and court orders in *McLaughlin* detail extensively: that the attorney for McLaughlin pleaded with the Administration to slow things down and pause the publication of judicial branch records to the Legislature, and appropriately sought emergency relief when he was ignored. The attorney was not only ethical in his representation, but he was both professional and accommodating. There was no “surprise.” In any event, members of this body or their staff effectively un-did the Court’s emergency order, anyway, by leaking the emails they received to a conservative talk radio website (which the Majority cites extensively in its report). Executive branch attorneys frequently seek emergency relief from courts. This branch would do the same if circumstances required. The practice is not “unethical” when an attorney for the Judiciary does the same.

Conflict of interest rules are a shield to protect litigants and the integrity of the judicial process. But the Committee, and its counsel the Attorney General, would use them as a sword: manufacturing conflicts to rid themselves of judges they don’t like. This kind of legal strategy is typically the domain of vexatious litigants. But its intellectual bankruptcy is no different when employed by a state’s legislature or chief legal officer. Courts across the United States routinely reject the “build a conflict” theory of judge selection, and Montana’s courts were correct to do the same here.

Review of the Majority Report

Judicial Standards Commission Complaints

(“Judicial Standards Commission” and “JSC Complaints and Decisions” Sections)

The Majority Report’s basic grievance about the Judicial Standards Commission appears to be that the Judicial branch oversees its own discipline. But the same is true for the Legislature and, in practice, most ethical requirements for the Executive.

The Legislature relies almost entirely on self-disclosure for conflicts of interest, and its weak rules do not actually require members to recuse themselves in the event of a conflict—even when voting or on sponsoring legislation that creates a huge financial windfall to them or their employers. Most Executive branch ethics enforcement and discipline occurs inside an agency and, at worst, is elevated to another Executive officer—the Commissioner on Political Practices. The Montana Constitution’s decision to empower the Judicial branch to oversee its own discipline is not out of place at all; it is consistent with basic concepts of separation of powers and is the normal practice for virtually all state and federal courts in America.

The composition of the Judicial Standards Commission is fixed by the Montana Constitution. *See* Art. VII, § 11(1). It makes little sense to pursue changes that would allow the Legislature to pack the Judicial Standards Commission with its own appointees. At worst, this would give rise to a back door veto by the Legislature to judicial decisions it doesn’t favor—anathema to an independent judiciary.

The findings in these sections of the Majority Report do not appear to identify problems. Rather, they chronicle the Committee’s dissatisfaction with the confidentiality rules that cover the complaint process, as well as a series of complaints filed by a Republican political operative at the apex of the 2022 election. Like other “problems” identified in the Majority Report, the underlying conduct appears to be quite routine: processing complaints, and timely dismissing those that do not identify an actual ethical violation.

Two decades ago, the Montana Supreme Court observed that “Confidentiality provisions are enacted to protect the reputation of innocent judges wrongfully accused of misconduct” and to “maintain confidence in the judiciary by avoiding premature disclosure of alleged misconduct.” *Harris v. Smartt*, 2002 MT 239, ¶ 43, 311 Mont. 507, 57 P.3d 58. “Montana’s statutory framework balances these goals against the public’s right to know.” *Id.* The Majority Report offers no good reason why a political operative’s bevy of unsuccessful, election-season ethics complaints should cause the Legislature to reconsider that balance.

Review of the Majority Report

Personal Attacks on McLaughlin's Attorney

Among the Majority Report's low points are its inexplicable, unsupported personal attacks on McLaughlin's attorney. The allegations fall apart on even a cursory look.

The first allegation appears to be that the attorney was "unethical" because he sought emergency relief to protect his client. It's telling that the Majority fails to cite a single rule of professional conduct the attorney is alleged to have violated. That's because it is entirely ethical for an attorney to seek emergency relief from an appropriate court when the attorney's client faces imminent grave or irreparable injury. Not only did the attorney act ethically, he appears to have gone above and beyond his ethical duties to plead, accommodate, and bargain with the Administration to stop the publication of private information that the Court ultimately enjoined. There was no surprise; the Attorney General's attorneys were automatically, electronically notified right away. And emergency relief is almost always, by its very nature, *ex parte*: it preserves or restores the status quo until the other side can be heard. That's what happened, and the Legislature and Attorney General promptly made their case to the Court thereafter. The Majority Report appears to take the position that while there is no issue with the Administration working over the weekend to publish Judicial branch information to the Legislature, the Judiciary's attorney should have waited until the next week to do something about it.

The other allegation is that McLaughlin's attorney is a liar. The Majority Report makes this allegation based on selective quotes, stripped of any context, that do not do the work the Majority Report wants them to do—they do not make the attorney a liar, or anything close to it. The accusation is ill-considered, irresponsible, and false.

Attacking a private citizen for his successful representation of a public entity client crosses into new terrain for this body. The Minority members want to make clear that they had nothing to do with the drafting of the Majority Report; they learned about the existence of the Majority Report just hours before it was released to the press. To characterize McLaughlin's attorney as "unethical" without even so much as citing a rule he allegedly violated is too personal, too far, and totally unsupported. The Minority members condemn these attacks on an individual citizen in the strongest terms. They are beneath the dignity of this body. This portion of the Majority's report should be removed.

Review of the Majority Report **Personal Attacks on the Chief Justice**

The section regarding the Chief Justice should also be removed.

Were there any doubt, the Majority Report's penultimate section clarifies that everything else has just been pretext: this report is about attacking the independence of Montana's judiciary, and the Majority wants to do it by pinning responsibility for all its manufactured scandals on the Chief Justice of the Montana Supreme Court.

That dog doesn't bark. The allegations are written to sound grave, but they simply do not follow from the facts the Majority presents. This section reads like a lawyer giving a closing argument in the wrong case – the facts just won't comply.

The Majority accuses the Chief Justice of showing “a lack of candor with the Legislature and the public” and that he “misled and was untruthful with legislative committees.” These are astonishing accusations, and they collapse under any degree of scrutiny.

The Majority's argument has three parts:

First, the Majority tries, and fails, to use the Chief Justice's words against him. The Majority recites four quotations from the Chief Justice regarding judges' role in the legislative process. In short, the quotes establish that the Chief Justice believes that judges who express an opinion on a bill affecting the court system should recuse themselves from sitting on a case involving that legislation; that MJA does not poll on the constitutionality of a bill; that the Chief Justice has testified on specific bills but generally other Justices do not; and that it would be inappropriate for judges to weigh in on a bill's constitutionality and that doing so would require their recusal if a case involving that bill came before them. The Majority says that these statements are inconsistent with the Chief Justice's actions.

The argument falls apart. The Majority had a year and a half to cherry pick quotes and selectively retell the history of the Chief Justice's interactions with this Committee. But after all that time, the Majority cannot point to a single inconsistency between the Chief Justice's statements and his actions. Its accusations that he is a liar flop.

The Majority hones in on three bulleted points it says prove its case, but none work. First, the Majority writes that,

In dozens of emails Chief Justice McGrath takes a leading role in the judicial branch's and MJA's lobbying preparation and strategy during the 2021 legislative session and is one of the primary players coordinating opposition to legislation.

This is entirely consistent with the quotes highlighted by the Majority. “Taking a leading role” in learning Montana judges’ views on bills affecting the courts, so that those views may be shared with the Legislature, is the Chief Justice’s job. As discussed above, MJA did not organize polls on the constitutionality of bills, nor did it poll on bills that were not related to courts or the Judiciary. The only thing “misleading” here is the Majority’s innuendo that the MJA polling somehow extended beyond courts-related bills, or that Chief Justice McGrath ever organized a poll about a bill’s constitutionality. Neither is true, and the Majority stops short of saying so because it knows this allegation is false.

Next, the Majority writes that “Chief Justice McGrath personally lobbied Governor Gianforte against SB 140.” This is not inconsistent with his statements, either. The ethical rules for judges authorize them to meet with executive officials, too. Once the Chief Justice met with the Governor on SB 140, he then recused himself from the challenge to SB 140 that followed. He followed the rules. Of note, the Montana Supreme Court ultimately upheld SB 140.

Finally, the Majority writes that,

McGrath himself weighed in on the constitutionality of a bill before it had even had its first hearing, writing that HB 685 “would be entirely inconsistent with other provisions of the constitution” to the chair and vice chair of the Judicial Standards Commission as well as a lobbyist and staff.

House Bill 685 would have referred a constitutional amendment to the voters that would change various aspects of the Judicial Standards Commission in Article VII, Section 11 of the Montana Constitution. The Chief Justice’s statement is both unremarkable and obvious: a constitutional referendum by definition is inconsistent with the constitution, because it changes it. This allegation seeks to make a mountain out of a molehill.

The remainder of the Majority’s first argument is a series of bullets highlighting quotes from other people about the constitutionality of proposed legislation—conduct the Chief Justice criticizes in the quoted sections above.

The Majority fails to support its accusation that the Chief Justice was untruthful. So the second major part of the Majority’s argument is that the Chief Justice is unethical. This, too, lacks any substance. The argument that the Chief Justice had a conflict of interest follows the same tortured logic that courts at every level of the American justice system have rejected arising from the *McLaughlin v. Montana Legislature* case and related litigation. Litigants may not simply manufacture perceived conflicts in order to prevent judges they don’t like from hearing a case.

The Majority’s third and final argument is that as Chief Justice, he is responsible for everything else in the Majority Report that the Majority doesn’t like—the Judiciary’s old records policy (now updated, though the Legislature and the Executive remain in the Stone Age when it comes to furnishing records to the public), employing an attorney who successfully defeated this body in

litigation time and again, the activities of the MJA, and unspecified allegations of other ethical failings.

These allegations, like the rest of the report, ring hollow. In the Minority members' experience, the Chief Justice has been forthcoming, respectful, and dignified in responding to even the most outrageous accusations and requests by this Committee. Where the Legislature has sought to infuse conflict, he has counseled for a calmer, steadier path. He has modeled ethical Montana leadership, where this Committee has pursued the kind of gamesmanship, spectacle, and underhandedness that was once foreign to Montana politics.

At bottom, it's clear that the Majority hasn't seriously considered—or doesn't care—about the implications of insinuating that the leader of a co-equal branch of government is a liar, then failing utterly to prove it. But this is the summation of a year and a half of work, of spectacle, and of public expense. The case is pitifully weak, and it exposes the pretextual nature of this Committee and its work for what they really are: another front in the Legislature's attempt to undermine the independence of Montana's courts.

Recommendations

The “final” Majority Report adds almost nothing new from the predecessor report published a year and a half ago. Its findings and “proposed remedies” are starkly out of proportion with the spectacle, expense, and injury to Montana’s separation of powers that this Committee’s activities have occasioned. In re-electing two incumbent Justices in November 2022, Montanans sent this body a clear message that they’re uninterested in efforts to undermine the independence of Montana’s courts. This Committee should receive that message and move on to issues of actual importance to Montanans.

In light of that mandate from voters, and to preserve Montana’s separation of powers, the Minority recommends the following:

- Reverse the Legislature’s decision to hide legal notes from public view; require the Budget Office to include anticipated litigation costs in fiscal notes to bills where legislative attorneys have identified possible constitutional defects.
- Provide the Judiciary with its own information technology resources and email systems that are not subject to interference by the Governor’s political appointees. The Legislature enjoys its own IT infrastructure and email system; there is no reason the Judiciary should not enjoy the same under Montana’s separation of powers.
- Enact legislation requiring the Legislative and Executive branches to adopt updated records retention policies in line with the Judiciary’s.
- Require authorization of the Legislative Council before the Legislature retains counsel, pursues litigation, or issues a legislative subpoena on behalf of the body as a whole.
- Retract the portions of the Majority Report that levy unsupported attacks against a private citizen and the Chief Justice.