

Montana State Senate



The Treasure State

SENATOR JASON ELLSWORTH
PRESIDENT OF THE SENATE

March 18, 2024

HELENA ADDRESS:
PO BOX 200500
HELENA MT 59620-0500
PHONE: (406) 444-4800

HOME ADDRESS:
1073 GOLF COURSE RD
HAMILTON, MT 59840

Montana Supreme Court
215 N. Sanders.
Helena, MT 59601

Lewis and Clark District Court
228 E. Broadway St.
Helena, MT 59601

Justices of the Montana Supreme Court and Judge Menahan:

We have a unique situation involving the constitutional separation of powers of all three branches of state government.

Article 3 Section 1 of the Montana Constitution sets out the separation of powers in Montana state government. "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..." The court has overstepped its constitutional authority by encroaching on the legislative branch's constitutional role and its rules.

The judicial branch, both at the district court and now the Supreme court level has ordered the executive branch to conduct a veto override poll of the legislature on SB 442. This bill was vetoed while the legislature was in session. Article VI Section 10 (4) (a) states that "if the legislature *is not in session* when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefore to the secretary of state". The Secretary of State then conducts a poll. The *legislature was in session* when the bill was vetoed, so no poll is to be conducted based on Article VI section 10 (4) (a).

The timing of the Governor's veto and the Minority Leader's successful sine die motion meant that the Legislature had possession of the bill when the session ended. The Senate remains in

possession to this day. To our knowledge, nowhere in the judicial process was basic fact-finding done to determine which branch of government currently possesses this bill.

The district court, backed by a 6-0 ruling from the Supreme Court, has ordered the Executive Branch to conduct a veto override poll within the next week. It is unclear to us whether the Judicial Branch intends:

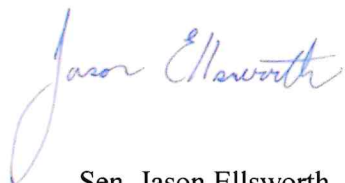
1. That the Executive Branch conduct a veto override poll without having possession of the bill.¹
2. That the Executive Branch take possession of the bill from the Legislative Branch to conduct the override, without the consent of the Legislature when the bill is currently in the Senate leadership offices on the third floor of the Montana State Capitol.² We the undersigned find that to conduct an override poll by a trespass of legislative space is a violation of the constitutional separation of powers and the text of Article VI section 10 (4) (a).

We are at a crossroads. We believe the Judicial Branch has issued an order which not only violates the principles of the separation of powers, but our own legislative rules as well. We do not believe the Executive Branch has the authority to conduct an action on a bill that is in the Legislature's possession and that was vetoed when the legislature was in session based on Article VI Section 10 (4) (a). The legislature will not participate in an unconstitutional poll.

In addition, Judge Menahan's opinion that there is no "speedy and adequate remedy in the ordinary course of law" is false. There is a remedy. Article V section 6 gives the legislature the opportunity to call itself into session at any time to reconsider the legislation and pass the bill or something similar.

We are deeply concerned about the Legislative branch's independence and integrity, and the court's lack of judicial restraint. We take our oath to uphold the constitution seriously. We are currently collaborating with the Attorney General for other remedies.

Sincerely,



Sen. Jason Ellsworth
President of the Senate



Sen. Ken Bogner
Senate President Pro Tempore



Sen. Steve Fitzpatrick
Senate Majority Leader

Sen. Steve Hinebauch, Senate Majority Whip
Sen. Dennis Lenz, Senate Majority Whip
Sen. Tom McGillvray, Majority Whip
Sen. Barry Usher, Majority Whip
Sen. Becky Beard, Senate District 40
Sen. Mike Cuffe, Senate District 1
Sen. Daniel Emrich, Senate District 11
Sen. John Esp, Senate District 30
Sen. Chris Friedel, Senate District 26
Sen. John Fuller, Senate District 4
Sen. Bruce Gillespie, Senate District 9
Sen. Carl Glimm, Senate District 2
Sen. Greg Hertz, Senate District 6
Sen. Theresa Manzella, Senate District 44
Sen. Wendy McKamey, Senate District 12
Sen. Mark Noland, Senate District 5
Sen. Keith Regier, Senate District 3
Sen. Dan Salomon, Senate District 47
Sen. Jason Small, Senate District 21
Sen. Jeremy Trebas, Senate District 13
Sen. Shelley Vance, Senate District 34
Sen. Terry Vermeire, Senate District 39
Sen. Jeff Welborn, Senate District 36
Sen. Daniel Zolnikov, Senate District 22

¹ Such an action would set an alarming precedent. Bills are the most fundamental product of the Legislative Branch of government. Another branch being able to act on a bill without having possession of it would amount to a severe breach of Legislative Branch power. Imagine the Executive Branch issuing a preemptive veto of a bill before it has arrived at the Governor's desk.

² For the record, we would view any raid on Legislative Branch space by the Executive Branch or judiciary to take possession of official documents as a violation of the separation of powers.