

1 SENATE RESOLUTION NO. 2

2 INTRODUCED BY N. SWANDAL

3

4 A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING IMMEDIATE LEGAL
5 INTERVENTION ON BEHALF OF THE SENATE AS AN INDISPENSABLE PARTY IN ORDER TO PROTECT
6 THE INTEGRITY OF THE SENATE'S CONSTITUTIONAL CONFIRMATION AUTHORITY AND PROCESS
7 UNDER ARTICLE VI, SECTION 8, OF THE MONTANA CONSTITUTION, THE ASSOCIATED IMPLEMENTING
8 STATUTES, AND RULES OF THE MONTANA STATE SENATE.

9

10 WHEREAS, Article VI, section 8, of the Montana Constitution authorizes the Governor to appoint, subject
11 to confirmation by the Senate of the State of Montana, all officers provided for in the Constitution or by law whose
12 appointment or election is not otherwise provided for; and

13 WHEREAS, pursuant to section 13-37-102, MCA, there is a Commissioner of Political Practices who is
14 appointed by the Governor, subject to confirmation by a majority of the Senate; and

15 WHEREAS, pursuant to sections 13-37-102 through 13-37-104, MCA, the statutory legislative history and
16 the Legislature's intent, the Governor's historical nomination and appointment practice for the office of
17 Commissioner of Political Practices, and the Senate's historical confirmation process of the Commissioner all
18 clearly provide that the Commissioner's office is subject to a cyclical 6-year term to begin in January every 6 years
19 in odd-numbered years; and

20 WHEREAS, the current Commissioner of Political Practices, Jonathan Motl, was appointed by Governor
21 Steve Bullock and submitted to the Senate by written communication dated May 20, 2013; and

22 WHEREAS, in the appointment letter to Secretary of State Linda McCulloch, the Governor stated that
23 Mr. Motl's term as Commissioner of Political Practices "will end January 1, 2017" in adherence with the 6-year
24 cycle term of the Commissioner's office that began on January 1, 2011; and

25 WHEREAS, on April 24, 2015, a majority of the members of Senate, acting pursuant to the Senate's
26 constitutional and statutory confirmation authority, passed Senate Resolution 53 (2015) concurring in, confirming,
27 and consenting to the appointment of Jonathan Motl as Commissioner of Political Practices, made by the
28 Governor and submitted by written communication dated May 20, 2013, to the Senate; and

29 WHEREAS, Senate Resolution 53 (2015), citing the vacancy provision in section 13-37-104, MCA, stated
30 that Mr. Motl was "appointed to a term ending January 1, 2017"; and

1 WHEREAS, the Senate confirmed Commissioner Motl in Senate Resolution No. 53 (2015), which clearly
2 and unambiguously provided that he was "appointed to a term ending January 1, 2017"; and

3 WHEREAS, a lawsuit (Cause No. BDV 2016-1055) was filed in the First Judicial Court on December 20,
4 2016, on behalf of Christine Kaufmann, Linda McCulloch, Montanans for Experienced Judges, Jesse O'Hara, and
5 Al Smith, Executive Director of MTLA, as the plaintiffs/petitioners against Steve Bullock, Governor of Montana,
6 the defendant/respondent, alleging that Mr. Motl's term as Commissioner Political Practices does not expire on
7 January 1, 2017, but expires on June 10, 2019; and

8 WHEREAS, the plaintiffs named the Governor as a defendant but failed in their petition to the Court to
9 name the Montana State Senate as an indispensable party that acted in its constitutional and statutory capacity
10 in Mr. Motl's nomination and confirmation process; and

11 WHEREAS, the plaintiffs and the Governor have entered into a stipulation dated December 23, 2016,
12 in which the parties agree that the expiration date of Commissioner Motl's term of January 1, 2017, "shall have
13 no force and effect and shall not be enforced by the Governor" despite the clear and unambiguous language in
14 the senate resolution confirming his term; and

15 WHEREAS, the plaintiffs' lawsuit and the relief sought would thwart the Senate's authority to confirm a
16 new Commissioner of Political Practices during the current Legislative Session; and

17 WHEREAS, the plaintiff's lawsuit and the relief sought clearly contravenes the Senate's constitutional
18 confirmation authority and process under Article VI, section 8, of the Montana Constitution, the associated
19 implementing statutes, and rules of the Montana State Senate.

20

21 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

22 (1) That the Legislative Services Division Legal Services Office on behalf of the Senate:

23 (a) immediately file all necessary motions in order to intervene in the proceeding of Christine Kaufmann,
24 Linda McCulloch, Montanans for Experienced Judges, Jesse O'Hara, and Al Smith, Executive Director of MTLA,
25 v. Steve Bullock, Governor of Montana, Cause No. BDV 2016-1055;

26 (b) vigorously defend and protect in all court proceedings the legal integrity of Senate's constitutional
27 confirmation authority and process under Article VI, section 8, of the Montana Constitution, the associated
28 implementing statutes, and rules of the Montana State Senate; and

29 (c) assert in all court proceedings that under the law the term of the current Commissioner of Political
30 Practices ends January 1, 2017; and

