



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

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

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

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

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

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

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

WHEREAS, Senate Resolution 53 (2015), citing the vacancy provision in section 13-37-104, MCA, stated

that Mr. Motl was "appointed to a term ending January 1, 2017"; and

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

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

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

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

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

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

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

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

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

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

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

(d) assert and defend the provisions of SR 53 (2015), which clearly and unambiguously state that the current Commissioner's term ends on January 1, 2017.

(2) That the Legislative Services Division Legal Services Office may contract for legal services to assist in all legal proceedings in the matters subject to this resolution.

- END -

I hereby certify that the within resolution,
SR 0002, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2017.

SENATE RESOLUTION NO. 2

INTRODUCED BY N. SWANDAL, E. BUTTREY, F. THOMAS

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