



January 6, 2025

Sen. Barry Usher  
Barry.usher@legmt.gov

Dear Senator Usher:

This letter is in response to Senator Fuller’s letter to me dated December 23, 2024, and I am addressing my response to you as chair of the Senate Judiciary Committee. I trust that you will share this letter with the other signatories of the December 23 letter. I accept your invitation to appear before the committee on Tuesday, January 7; however, I will have to appear via Zoom due to preexisting commitments that require my presence in Billings on that date.

I look forward to having a dialogue with the committee about how lawyers and legislators can work together to better serve the people of Montana. To that end, I would like to begin by highlighting several things we can agree on, including:

**1. The rule of law is good for business.**

As Senator Matt Regier stated at the Republican majority press conference on January 3, 2025, stability in our legal system is important for our business economy.

While this press conference was occurring, I was in the House chambers participating in the Law School for Legislators program, which was attended by 75 legislators. During my remarks, I stated: “In our state, the rule of law is critical to creating a stable environment for commerce. It provides the predictability and security that businesses need to thrive, invest, and create jobs.”

**2. The State Bar does (and should continue to) take diversity into account in connection with its CLE programs.**

The State Bar does take diversity of viewpoint into consideration in its CLE programming. This principle is incorporated into our written policies, which state, “The State Bar recognizes that it is an organization of individuals with diverse interests, backgrounds and philosophies.”

It is important for the public to understand that CLE programming from the State Bar is not politically motivated or biased. Our CLE programs typically concern issues of substantive law, and we always seek a diverse range of speakers—plaintiffs’ and defense counsel, prosecutors and criminal defense attorneys, and transactional lawyers of all types. Although individual speakers all have their own backgrounds and experiences, the goal of our programming is to foster high levels of learning and competence among practitioners.

**3. It is important to maintain the separation of powers as set forth in the U.S. and Montana Constitutions.**

We agree with Senator Fuller’s statement in his December 23 letter that “separation of governmental powers is central to our constitution.” Upon admission to the Montana State Bar, all attorneys take an oath to “support the Constitution of the United States and the Constitution of the State of Montana.” The federal and state constitutions both set forth a framework in which governmental power is shared by three coequal branches of government.

As Chief Justice Roberts stated in the 2024 Year End Report on the Federal Judiciary, “[T]wo of the majority pillars of our Republic—separation of powers and judicial review—create an inevitable tension between the branches of our government.” It is this very tension that signifies a healthy democracy.

In anticipation of my testimony before your committee, I would like to clarify the following:

**4. The State Bar is not a governmental entity.**

The Montana State Bar is an independent professional organization that is entirely self-funded. Our funding does not come from appropriations made by the legislature but from dues paid by our members. The State Bar is governed by a Board of Trustees that is comprised of individuals elected by members of the State Bar by geographic area. State Bar officers are elected by all members of the State Bar on a statewide basis. Each trustee serves a two-year term and may be re-elected for subsequent terms. Most officer positions are for one year. Any member of the State Bar may run for a trustee or officer position.

The ability of the State Bar to remain independent of governmental influence is key to the achievement of fairness in our justice system. As the Preamble to our Rules of Professional Conduct states:

Self-regulation helps maintain the legal profession’s independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

**5. The State Bar is a nonpartisan organization.**

Our policies expressly state that “[t]he State Bar of Montana is a nonpartisan organization.” In fact, the President, President-Elect and Executive Director are prohibited from running for or holding a partisan elective office.

With regard to proposed legislation, our activities are governed by the U.S. Supreme Court’s decision in *Keller v. State of California*, 496 U.S. 1 (1990). In that case, the U.S. Supreme Court held that a mandatory State Bar may use membership fees to fund activities germane to the State’s

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interest in regulating the legal profession and improving the quality of legal services. Furthermore, all members of the Montana State Bar have the right to request a pro rata refund of funds used for lobbying purposes if they disagree with a position taken by the State Bar. This right was set forth in *Reynolds v. State Bar of Montana*, 660 P.2d 581 (Mont. 1983), and it is stated in our Bylaws. We also publish a summary of lobbying activities in the *Montana Lawyer* after the close of each legislative session, and we remind our members of this right. Very few people have ever objected formally to the State Bar's lobbying activities.

Although the December 23 letter touches on a number of issues, the main focus of the letter is on the April 2024 Bench-Bar CLE event. As you know, I was not President of the State Bar when this event occurred, I did not attend the event, and I was not involved in its planning. Having said that, the State Bar did apologize, within days of this event, to the governor's office for unscripted comments that were made at this particular CLE by an individual who is not a member of State Bar leadership and who has admitted publicly that he was speaking on his own behalf and not as a representative of the State Bar. We regret that these comments have overshadowed what was otherwise an outstanding educational program.

Finally, I understand from Senator Fuller's December 23 letter that this matter has been referred to the Office of Disciplinary Counsel (ODC), and the State Bar does not comment on disciplinary proceedings. Nothing in this letter should be interpreted as a comment on the accuracy of any of the assertions set forth in the December 23 letter or an opinion on any matters before the ODC.

I look forward to seeing you tomorrow.

Sincerely,

A handwritten signature in cursive script that reads "Antoinette M. Tease". The signature is written in black ink and is positioned above the typed name and title.

Antoinette M. Tease

President, State Bar of Montana

cc: John Mudd, Executive Director  
Members of the State Bar Executive Committee