



UPPER SEVEN LAW

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HOLD THE POWERFUL ACCOUNTABLE

VIA EMAIL & HAND DELIVERY

Governor Greg Gianforte
C/O Anita Milanovich
General Counsel
Office of the Governor
State Capitol, Room 204
Helena, MT 59601

Dear Governor Gianforte,

We represent Wild Montana, a conservation group who worked mightily throughout the legislative session in support of Senate Bill 442 (“SB 442”) and who stands to benefit directly from the law. On behalf of our client, we ask you to return the bill with the reasons for your veto to the Secretary of State, and thereby allow the Legislature to exercise its constitutional prerogative to consider final action on SB 442. *See* Mont. Const. art. VI, § 10(3), (4) (under all contemplated circumstances, two-thirds of the members of the Legislature may override a governor’s veto).

Through SB 442, the Montana Legislature came together—across lines of partisanship and despite different policy goals—to craft and pass an overwhelmingly bipartisan, politically popular measure that balances the interests of taxpayers, localities, and the State. Because of the timing of your veto, which reached the Senate after it could be read over the rostrum and considered by the full body, the legislative process has been stunted.

On the penultimate day of the session, the Senate passed SB 442 by a vote of 48 to 1. It was delivered to you on May 2, 2023, the day of adjournment sine die. That very afternoon, you vetoed the bill, timing the veto to hit the Senate in a no man’s land: too late for the originating house to consider and override the veto but also too soon for the Secretary to poll the Legislature. Whether this timing is gamesmanship or accident, to fail to take further action would create a dangerous precedent, through which your successors likewise could unilaterally undo months of deliberation and destroy the Legislature’s lawmaking authority and role as a check on the veto power. In the alternative, because your veto deprived the Senate of any opportunity to consider further action, SB 442 arguably becomes law ten days after its delivery to you. Section 5-4-307, MCA.

The Constitution and relevant statutes do not contemplate this precise situation because the Constitution necessarily presumes the good faith of Montana’s elected officials, not the exploitation of perceived loopholes. But the principles underlying our constitutional

provisions and laws make crystal-clear that the Legislature—not the Governor—has the last say on whether a bill becomes law.

The Constitution provides that the Legislature has the power to override a veto by two-thirds vote in all circumstances: “If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.” Mont. Const. art. VI, § 10(3). When the Legislature is not in session at the time of veto, the Secretary must conduct a poll by mail, and the Legislature may reconvene to override the veto. *Id.* § 10(4). Consistent with these constitutional provisions, § 5-4-305, MCA, provides for the Legislature’s absolute authority to override a veto—with no limitations identified—and § 5-4-306, MCA, gives the Legislature authority to override a veto through a poll conducted by the Secretary after the session has ended.

While the Constitution does not set forth the process by which the Legislature may exercise its override power when the veto is returned to the Legislature without meaningful opportunity for consideration, this is only because the Constitution does not deal in absurdity. Core to the separation of powers, the fundamental principle stands: the Legislature may override a veto by a two-thirds vote.

Nothing in Montana law suggests that there are circumstances in which the Legislature is simply out of luck and unable to respond to a veto. In other words, there is no legal support for an argument that the Governor has divested the Legislature of its authority to override his veto through creative timing. Because the constitutional and statutory provisions do not identify a mechanism by which the Legislature may respond to an eleventh-hour veto, the only possible construction is that which comports with constitutional separation of powers principles.

Democratic norms and constitutional principles require that you return SB 442, along with the reasons for your veto, to the Secretary of State. All that supports a contrary view is a perceived loophole that is not grounded in the statutory text. Thus, Wild Montana asks that you fulfill your duties within the system of checks and balances and allow the Legislature to exercise its constitutional powers.

As the Governor, you have the authority—and responsibility—to return SB 442 to the Secretary of State and to safeguard the democratic process. It may be that, on May 2, 2022, the timing of the veto was coincidental. But refusal to return SB 442 at this juncture can only be an intentional play to circumvent the full and fair consideration of an important policy by the branch of government constitutionally delegated to pass laws.

Dated: May 10, 2023

Sincerely,



Constance Van Kley
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UPPER SEVEN LAW