

ORIGINAL

FILED

09/07/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0173

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0173

BETH MCLAUGHLIN,

Petitioner,

v.

The MONTANA STATE LEGISLATURE
and the MONTANA DEPARTMENT OF
ADMINISTRATION,

Respondents.

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Clerk of Supreme Court
State of Montana

ORDER

Respondent Montana State Legislature petitions for rehearing of this Court's July 14, 2021 Opinion and Order quashing two subpoenas, one issued to the Department of Administration and the second to the Petitioner, and directing the Legislature to return the documents it obtained pursuant to those subpoenas. *McLaughlin v. Montana State Legislature*, 2021 MT 178. Petitioner Beth McLaughlin opposes the petition.

Under M. R. App. P. 20, this Court will consider a petition for rehearing only if the opinion "overlooked some fact material to the decision," if the opinion missed a question provided by a party or counsel that would have decided the case, or if our decision "conflicts with a statute or controlling decision not addressed" by the Court. M. R. App. P. 20. Without addressing these three criteria, the Legislature urges the Court to rehear its case, "incorporat[ing] its prior arguments" and arguing that the Court must reconsider essentially every aspect of its decision, including whether to hear the case at all. Following its petition, the Legislature also submitted supplemental authority, a decision from the United States District Court for the District of Columbia.¹ McLaughlin responds

¹ We have considered the supplemental authority but, in accordance with M. R. App. P. 12(6), we do not entertain additional argument included in a party's post-briefing notice.

that the Legislature has not shown that the Court overlooked any material facts or issues the parties presented or that its decision conflicts with a controlling statute or case.

Having reviewed the petition and response, we conclude that the Legislature has not established grounds for rehearing. Instead, it mischaracterizes or misapprehends numerous provisions of the Court's decision and suggests rulings the Court did not make. First, the Court cited *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020), not—as the Legislature fears—as controlling authority to justify “forever expropriat[ing] legitimate legislative oversight tool[s]”, but as an insightful analysis of legislative subpoena power and a helpful “balanced approach” to the consideration of subpoenas that raise “interbranch confrontation” concerns. *McLaughlin*, ¶ 19. Second, the Opinion did not hold in any fashion that the Legislature cannot issue a subpoena to or otherwise obtain appropriate information from a government official.

As it did in briefing on *McLaughlin*'s Petition, the Legislature argues again that the Court must forego consideration of the matter in favor of negotiation with its coordinate branch of government. Contrary to the Legislature's arguments, the Opinion neither addressed nor foreclosed discussions between the branches or “refused any further consideration of production of the Court administrator's public records.” The Court instead analyzed and resolved the legal issues presented by the two subpoenas the Legislature issued without first engaging in the negotiation it now urges. The Opinion does not contain the “absolute rule[s]” the Legislature grafts onto it. The Court examined the language of the subpoenas at issue and the Legislature's own stated purposes and decided the case before it.

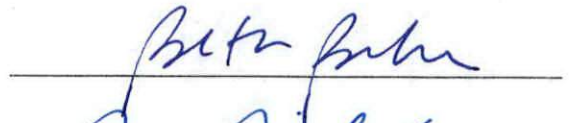
Finally, the Court did not order the Legislature to “put the Jack back in the box” by retrieving from others the e-mails it already disseminated, nor did it purport to forbid the Legislature's discussions with its own attorneys. The Order is clear and speaks for itself.

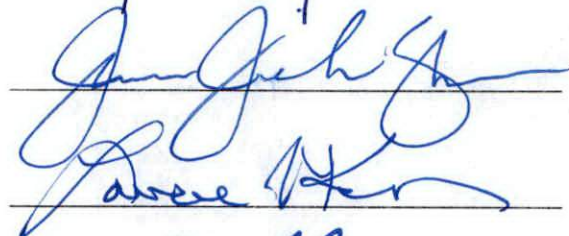
IT IS THEREFORE ORDERED that the petition for rehearing is DENIED.

The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 7th day of September, 2021.

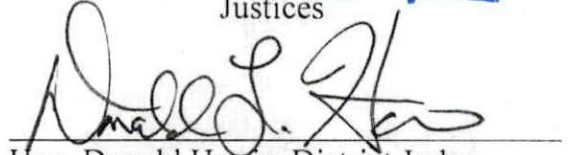

Chief Justice








Justices



Hon. Donald Harris, District Judge,
sitting by designation for Justice Jim
Rice