

2-1-2016

Introduction

Paul F. Kirgis

Alexander Blewett III School of Law at the University of Montana, paul.kirgis@umontana.edu

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Recommended Citation

Paul F. Kirgis, *Introduction*, 77 Mont. L. Rev. 1 (2016).

Available at: <https://scholarship.law.umt.edu/mlr/vol77/iss1/1>

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FOREWORD

INTRODUCTION

Paul F. Kirgis*

It is my great pleasure to introduce Volume 77, Issue 1 of the *Montana Law Review*, the first issue of the Law Review published in my tenure as Dean.

When I accepted the position of Dean of the Alexander Blewett III School of Law in the Fall of 2014, I did so in large measure because I valued the special place the School of Law holds in the Montana legal system. As the only law school in Montana, this institution is the custodian of the legal education for the entire state. One of the central planks in its mission is to serve as the academic legal center for Montana. Further, the School of Law has always prided itself on its commitment to serve the practical needs of the legal profession, from training new lawyers in both the theory and practice of the law, to providing resources and continuing education to bench and bar. While many law schools struggle to define their roles in these times of declining enrollments and disenchantment with the legal academy, this law school remains firmly grounded, with a clear purpose to guide its efforts.

The *Montana Law Review* plays a central role in fulfilling that purpose. For seventy-five years, the Law Review has been the conduit for the transmission of both scholarly and practical learning from the academy to the public. At a time when legal scholarship has come under withering criticism—by Chief Justice John Roberts among many others—for being out of touch with the legal system in the real world, the *Montana Law Review* has retained its long commitment to publishing high-quality scholarship with

* Professor Paul F. Kirgis is Dean of the Alexander Blewett III School of Law at the University of Montana.

practical value for Montana's legal community, as well as for the legal community beyond our borders. And this commitment extends beyond the traditional print journal. Led by advisor Anthony Johnstone and the dedicated student-editors, the Law Review has expanded its reach and its relevance by publishing online "precaps," "recaps," and "casenotes" of cases before the Montana Supreme Court. These tightly-written case analyses allow busy judges and attorneys to quickly grasp the background, arguments, and outcomes of the important decisions handed down by our Supreme Court. They are a model for the kind of high-impact work a student journal can deliver in the digital age.

This issue of the Montana Law Review captures the journal's commitment to scholarship in the service of the Montana public by focusing on our student-authors, each of whom addresses a difficult question involving the Montana Constitution. Some of these tackle big questions about constitutional interpretation. Tyler Stockton takes on the fundamental issue of how the Constitution should be interpreted. He argues that the Supreme Court has given too much deference to the intentions of the drafters of the Constitution, instead of properly focusing on the public understanding of the Constitution at the time of its adoption. John Wolff compares the protection for speech contained in Montana's Bill of Rights to the right to free speech in the first amendment of the United States Constitution. Focusing on Montana's deliberate use of the word "impair" rather than "abridge," he argues that Montana affords greater protection for speech than the federal constitution. Michelle Tafoya looks to constitutional history to analyze Montana's initiative and referendum process. Advocating for greater public participation in the lawmaking process, she argues for a relaxation of the standards limiting initiatives and referenda to "legislative," as opposed to "administrative," acts. Tom Bourguignon goes back even further, beginning his analysis of the "inalienable rights" provision of the Montana Constitution with the *Magna Carta*. He contends that the Montana Supreme Court has effectively limited Montanans' "inalienable" rights to the set of rights enumerated in the Constitutional text.

Michael Dougherty addresses a specific legal issue facing our state today, analyzing recent Montana legislation providing for a \$150 tax credit for charitable donations to any private school scholarship fund. He assesses the constitutionality of this legislation under Montana's constitutional proscription of direct or indirect aid to sectarian institutions. Tracing this provision from its 19th Century roots to the present, he argues that the Montana Constitution should be read to invalidate the tax credit.

Finally, instead of analyzing an existing constitutional provision, Ariel Overstreet-Adkins addresses the potential for modification of the Constitution. Looking to recent examples from other states, she assesses the need

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for a constitutional amendment that would establish a “right to farm.” She ultimately concludes that such an amendment would be beneficial, and offers suggestions about where an amendment might fit in the constitutional scheme and what the text might say.

In sum, this issue of the Montana Law Review presents our law school at its best. As their efforts here show, our students, recent graduates, and faculty take pride in this institution and in the enterprise of legal scholarship. Their work in this issue challenges us to think critically about vital aspects of our state’s legal system. It is exactly the kind of relevant and timely scholarship that the legal academy should be emphasizing. I hope you are as proud of their work as I am, and I hope you continue to get value out of the Montana Law Review.

