

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4 By: Senator Dowd

S.C.R. 21

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7 **SENATE CONCURRENT RESOLUTION**

8 SERVING NOTICE AND DEMAND ON THE JUDICIAL BRANCH OF  
9 GOVERNMENT TO CEASE AND DESIST FROM ISSUING MANDATES THAT  
10 ARE BEYOND THE SCOPE OF ITS CONSTITUTIONALLY DELEGATED  
11 POWERS.  
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13 **Subtitle**

14 SERVING NOTICE AND DEMAND ON THE  
15 JUDICIAL BRANCH OF GOVERNMENT TO CEASE  
16 AND DESIST FROM ISSUING MANDATES THAT  
17 ARE BEYOND THE SCOPE OF ITS  
18 CONSTITUTIONALLY DELEGATED POWERS.  
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20 WHEREAS, Article 4, Section 1 of the Arkansas Constitution reads as  
21 follows:

22 "The powers of the government of the State of Arkansas shall be divided  
23 into three distinct departments, each of them to be confided to a separate  
24 body of magistracy, to wit: Those which are legislative to one, those which  
25 are executive to another, and those which are judicial to another."; and

26 WHEREAS, Article 4, Section 2 of the Arkansas Constitution reads as  
27 follows:

28 "No person, or collection of persons, being one of these departments,  
29 shall exercise any power belonging to either of the others, except in the  
30 instances hereinafter expressly directed or permitted."; and

31 WHEREAS, Article 4 defines the scope of the doctrine of "Separation of  
32 Powers" for the three distinct bodies of the government of the State of  
33 Arkansas; and

34 WHEREAS, Article 5, Section 1 of the Arkansas Constitution reads as  
35 follows:

36 "The legislative power of this State shall be vested in a General

1 Assembly, which consists of the Senate and House of Representatives."; and  
2 WHEREAS, Article 5, Section 29 of the Arkansas Constitution reads as  
3 follows:

4 "No money shall be drawn from the treasury except in pursuance of  
5 specific appropriation made by law, the purpose of which shall be distinctly  
6 stated in the bill, and the maximum amount which may be drawn shall be  
7 specified in dollars and cents; and no appropriation shall be for a longer  
8 period than two years."; and

9 WHEREAS, the legislative department is the branch of government  
10 authorized to appropriate money in conformity with Article 5 of the Arkansas  
11 Constitution; and

12 WHEREAS, the executive body includes numerous state agencies charged  
13 with carrying out the responsibilities of that branch of government; and

14 WHEREAS, state agencies must submit their budgets to the General  
15 Assembly every two years, budgeting specific sums for distinct purposes for  
16 operating those agencies for a period of two years; and

17 WHEREAS, state agencies may expend no funds within each two-year period  
18 for purposes other than those for which the General Assembly has made  
19 appropriation; and

20 WHEREAS, state agencies may not exceed their appropriation as  
21 established by the legislature for each two-year period; and

22 WHEREAS, the scope of Article 4 of the Arkansas Constitution means that  
23 under the separation of powers doctrine, as the Arkansas Supreme Court stated  
24 in Wells v. Purcell, 267 Ark. 456, 462, 592 S.W.2d 100(1979), "[n]either of  
25 the three separate departments of government is subordinate to the other and  
26 neither can arrogate to itself any control over either one of the others in  
27 matters which have been confided by the constitution to such other  
28 department."

29 WHEREAS, state trial courts mandates for state agencies to expend funds  
30 that are not within their appropriation made by law are in direct violation of  
31 the separation of powers doctrine; and

32 WHEREAS, state agencies failure to follow mandates to expend funds in  
33 excess of their budgetary maximums or their appropriations should not result  
34 in findings of contempt and subject state employees to being jailed for  
35 carrying out the lawful duties and responsibilities of their employment with

1 the state;

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3 NOW THEREFORE,

4 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-FIRST GENERAL ASSEMBLY OF THE STATE  
5 OF ARKANSAS, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

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7 (1) That the General Assembly of the State of Arkansas hereby notes  
8 that the separation of powers doctrine applies equally to the judiciary and to  
9 the other two departments of state government.

10 (2) That this serve as Notice and Demand to the judicial branch of  
11 government to cease and desist, effective immediately, issuing mandates that  
12 are beyond the scope of its constitutionally delegated powers.

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14 BE IT FURTHER RESOLVED,

15 That copies of this Resolution be sent by the Secretary of the Senate to  
16 the Chief Justice of the Arkansas Supreme Court, the Chief Judge of the  
17 Arkansas Court of Appeals, and each Circuit Judge, Chancery Judge, and  
18 Circuit-Chancery Judge in all Judicial Circuits in the state.

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