

ORIGINAL

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No. 12309

IN THE SUPREME COURT OF THE STATE OF MONTANA

THE STATE OF MONTANA, ex rel. WILLIAM F. CASHMORE, M. D.,

Relator,

-vs-

FORREST H. ANDERSON, as Governor of the State of Montana,

Respondent.

APPLICATION FOR DECLARATORY JUDGMENT,
ALTERNATE WRIT OF INJUNCTION,
ALTERNATE WRIT OF PROHIBITION,
and
ORDER TO SHOW CAUSE

FILED

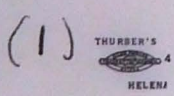
JUN 20 1972

Thomas J. Kearney
CLERK OF SUPREME COURT
STATE OF MONTANA

The relator above-named hereby applies to this Court for a declaratory judgment, alternate writ of injunction, alternate writ of prohibition and order to show cause, and in support thereof, states and alleges as follows:

1. This is a proceeding for declaratory relief under Title 93, Chapter 89, R.C.M., 1947, the Uniform Declaratory Judgments Act of the State of Montana. The relator also seeks an alternate writ of injunction or an alternate writ of prohibition or other appropriate writ or relief.

2. That the relator is now and at all of the times hereinafter mentioned was a citizen, resident, voter and taxpayer of Lewis and Clark County and of the State of Montana and is beneficially interested in the proper outcome of this election. That the relator is one voter among the voters of the State



ORIGINAL

1 of Montana who voted upon the Constitution at the
 2 special election on the 6th day of June, 1972, and
 3 is beneficially interested in the proper outcome
 4 of this election. The relator is informed and
 5 believes, and therefore alleges, that the facts which
 6 give rise to this controversy are not in dispute.

7 3. That the voters of the State of Montana at
 8 the general election held on the 3rd day of November,
 9 1970, voted to call a Constitutional Convention for
 10 the State of Montana, and that thereafter the Legislative
 11 Assembly of the State of Montana enacted Chapter 296 of
 12 the laws of 1971 to set up a Constitutional Convention;
 13 that Constitutional Convention delegates were elected over
 14 the state of Montana in the number of One Hundred (100)
 15 as provided by that chapter, and the Convention duly
 16 convened and adopted a proposed Constitution which
 17 was regularly completed on the 24th day of March,
 18 1972, and that the Convention fixed the date and other
 19 procedures for the election on such proposed Constitu-
 20 tion as the 6th day of June, 1972, all in a resolution,
 21 a copy of which is more fully set forth in a resolu-
 22 tion marked Exhibit "A", hereto attached and hereby
 23 made a part hereof.

24 4. That the proposed Constitution so adopted
 25 by the Constitution Convention, as aforesaid, was
 26 regularly submitted to the people on the 6th day of
 27 June, 1972, for a vote thereon on a ballot, a copy
 28 of which is hereto attached, marked Exhibit "B" and
 29 hereby made a part hereof, to which reference is
 30 hereby specifically made. That the said proposed
 31 Constitution was submitted along with three other issues,

32



1 and all voters were directed to vote upon said four
2 issues by the official ballot as is more fully disclosed
3 by said Exhibit "B" hereto attached.

4 5. That the official canvass of the State of
5 Montana indicated that Two Hundred Thirty-seven Thousand
6 Six Hundred Eighty-eight (237,688) actually voted on
7 the official ballot for the proposed Constitution. That
8 One Hundred Sixteen Thousand Four Hundred Fifteen
9 (116,415) voted for the proposed Constitution submitted
10 by the Constitutional Convention aforesaid, and One
11 Hundred Thirteen Thousand Eight Hundred Eighty-three
12 (113,883) electors voted against the proposed Consti-
13 tution so submitted by the Constitutional Convention, all
14 of which more fully appears from the official report
15 of the State Board of Canvassers, hereto attached,
16 marked Exhibit "C" and hereby made a part hereof.

17 6. That Section 8 of Article XIX of the Montana
18 Constitution adopted in 1889 and now in effect provides
19 in part that "unless * * * approved by a majority of
20 the electors voting at the election, no such revision,
21 alteration or amendment shall take effect." That the
22 official figures of the Board of State Canvassers
23 show that Two Hundred Thirty-seven Thousand Six Hundred
24 Eighty-eight (237,688) electors voted at the election
25 on June 6, 1972, and that only One Hundred Sixteen
26 Thousand Four Hundred Fifteen (116,415) electors
27 voting at the election approved of the Constitution
28 so submitted by the Constitutional Convention to
29 the people and electors of the State of Montana, being
30 less than a majority of the electors voting at the
31 election.



1 10. That it is a matter of great public concern
2 and of widespread interest to all of the qualified electors
3 and citizens of the State of Montana that this Court deter-
4 mine whether the proposed Constitution submitted by the
5 Constitutional Convention as aforesaid to the electors
6 of the State of Montana for their approval on the 6th
7 day of June, 1972, was adopted as required by Section
8 8, Article XIX of the Montana Constitution. That the
9 relator and all other persons similarly situated have
10 no clear and adequate remedy at law except by way of
11 declaratory judgment or in the alternative by writ of
12 injunction or prohibition as herein prayed.

13 WHEREFORE, relator prays for the following
14 relief:

15 1. That the Supreme Court of the State of Montana
16 take and accept original jurisdiction of the above
17 entitled controversy and immediately proceed to herein
18 determine the issues involved therein.

19 2. That this Court issue an order to show
20 cause to the respondent herein named, directing
21 that he appear before this Court on a day certain to
22 be heard as to why the said Constitution should not
23 be declared as not having received the approval of a
24 majority of the electors voting at the election on
25 June 6, 1972.

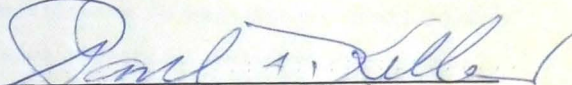
26 3. That upon such hearing, this Court adjudge
27 that the said Constitution submitted to the electors
28 voting at the election on June 6, 1972, did not
29 receive the approval of a majority of the electors
30 voting at the election on June 6, 1972, and that the
31 same was not adopted and approved by the voters as

1 required by Section 8, Article XIX of the Montana
2 Constitution.

3 4. That this Court issue an alternate writ
4 of injunction or an alternate writ of prohibition or
5 other remedial writ enjoining, restraining and pro-
6 hibiting the Governor of the State of Montana from
7 issuing the proclamation that the said Constitution
8 submitted to the electors voting at the election and
9 did not receive the approval of a majority of the
10 electors voting at the election, and therefore the
11 same is not approved by the voters of the State of
12 Montana as required by Section 8, Article XIX of the
13 Montana Constitution.

14 5. That the relator be granted such other and
15 further relief as may to the Court appear to be meet
16 and just in the premises.

17 PAUL T. KELLER, PAUL F. REYNOLDS
18 CHARLES E. PETAJA, P. KEITH KELLER

19 By: 
20 South Annex Power Block
21 Helena, Montana 59601
22 Attorneys for Relator

23 A F F I D A V I T

24 STATE OF MONTANA)
25 : ss.
26 County of Lewis and Clark)

27 WILLIAM F. CASHMORE, being first duly sworn,
28 deposes and says:

29 That he is the relator named in the above-
30 entitled action; that he has read the above and fore-
31 going application for declaratory judgment, alternate
32 writ of injunction, alternate writ of prohibition and



1 order to show cause, knows the contents thereof and
2 the matters and things therein stated are true except
3 as to those matters therein stated on information and
4 belief, and as to those matters, he believes to be
5 true.

W. H. Ashmore M.D.

6
7 SUBSCRIBED AND SWORN to before me, this 20th
8 day of June, 1972.

Perry D. Taylor

9
10 NOTARY PUBLIC for the State of Montana
11 Residing at Helena, Montana
12 My commission expires June 30, 1972.

(S E A L)

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27 EXHIBIT "A"



MONTANA CONSTITUTIONAL CONVENTION

1971 - 1972

RESOLUTION NO. 11

DATE INTRODUCED: MAR 4 1972

A RESOLUTION TO APPOINT AN ELECTION FOR RATIFICATION OR REJECTION OF THE PROPOSED CONSTITUTION AND TO PROVIDE FOR PUBLICATION OF THE PROPOSED CONSTITUTION WITH COMMENTS

Section 1. In accordance with Section 17 of the Constitutional Convention Enabling Act (Chapter 296, Laws of 1971 as amended by Chapter 1, Extraordinary Session, Laws of 1971) the Convention hereby resolves that:

(1) An election separate from the state primary election shall be held simultaneously on June 6, 1972, for the purpose of ratifying or rejecting the proposed Constitution.

(2) The question of adopting the proposed Constitution and related questions shall be submitted to the people on a separate ballot which shall be certified by the Secretary of State in the form to be adopted by the Constitutional Convention.

(3) The County Commissioners in each County shall furnish separate pollbooks, precinct registers, tally sheets and any other supplies necessary for holding a separate election.

(4) The votes cast for the ratification or rejection and related questions shall be tabulated, returned and canvassed separately from the votes cast in the primary election but in the same places, in the same manner, and by the same election judges, clerks and canvassers.

(5) The Secretary of State shall prescribe the form of

EXHIBIT "A"

referred to, and that I have computed and determined the votes from the abstracts transmitted to the Secretary of State by the County Clerks of all fifty-six counties in the State of Montana, and I declare the result to be as follows:

Exhibit "C"

1 the election notice and direct each ^{Clark & Recorder} ~~election judge~~ to post the
2 notice in public places in their precincts at least 20 days
3 prior to the election and direct each board of county
4 commissioners to publish notice of the election in a newspaper
5 of general circulation in the county once at least 10 days before
6 the election.

7 (6) The election laws of Montana shall apply in all other
8 respects to the Constitutional ratification or rejection election
9 including notice of close of registration.

10 Section 2. (1) The Secretary of State is hereby requested
11 to requisition the Purchasing Division of the Department of
12 Administration to call for bids for the printing of the proposed
13 Constitution with comments and report to the people as required
14 by subsections (4) and (5) of Section 17 of the Constitutional
15 Convention Enabling Act, which shall be printed in the form
16 prescribed by the Convention.

17 (2) There is attached to this Resolution a Requisition
18 approved by the Constitutional Convention for use by the
19 Secretary of State in requesting the call for bids.

21 *Introduced by Committee on Rules*
22 *Marshall Murray, Chairman*

24 INTRODUCED BY: Committee on Rules
25 Marshall Murray
26 Chairman

27
28
29
30 EXHIBIT "A"
Cont.

referred to, and that I have computed and determined the votes
from the abstracts transmitted to the Secretary of State by the
County Clerks of all fifty-six counties in the State of Montana,
and I declare the result to be as follows:

...AND THE SEPARATE PROPOSITIONS IS AVAILABLE FOR INSPECTION AT YOUR POLLING PLACE. IF THE PROPOSED CONSTITUTION FAILS TO RECEIVE A MAJORITY OF THE VOTES CAST, ALTERNATE ISSUES ALSO FAIL.

Office

OFFICIAL BALLOT

PROPOSED CONSTITUTION

PLEASE VOTE ON ALL FOUR ISSUES

1.

(Vote for One)

FOR the proposed Constitution.

AGAINST the proposed Constitution.

The proposed Constitution will include a bicameral (2 houses) legislature unless a majority of those voting in this election vote for a unicameral (1 house) legislature in Issue 2.

2.

(Vote for One)

2A. **FOR** a unicameral (1 house) legislature.

2B. **FOR** a bicameral (2 houses) legislature.

3.

(Vote for One)

3A. **FOR** allowing the people or the legislature to authorize gambling.

3B. **AGAINST** allowing the people or the legislature to authorize gambling.

4.

(Vote for One)

4A. **FOR** the death penalty.

4B. **AGAINST** the death penalty.

EXHIBIT "B"

CERTIFICATE
PROPOSED CON
AT THE SEPAR
CONVENTION T
IN THE STATE

This

9:00 o'clock A
presence of th
cordance with
by Extraordina
Resolution No.
March 4, 1972,
in the State o
1972, for and
Propositions t

NOW, THEREFORE, I, FRANK MURRAY, Secretary of State, do hereby certify that the following is a true, correct and complete statement of the number of votes cast for and against the proposed Constitution and Separate Proposition thereon and of the number of electors voting at the election hereinabove referred to, and that I have computed and determined the votes from the abstracts transmitted to the Secretary of State by the County Clerks of all fifty-six counties in the State of Montana, and I declare the result to be as follows:

Exhibit "C"

Office of the Secretary of State



OF THE STATE OF MONTANA

CERTIFICATE OF THE ABSTRACT OF VOTES CAST FOR AND AGAINST THE PROPOSED CONSTITUTION AND THE SEPARATE PROPOSITIONS THEREON AT THE SEPARATE ELECTION APPOINTED BY THE CONSTITUTIONAL CONVENTION TO BE HELD SIMULTANEOUSLY WITH THE PRIMARY ELECTION IN THE STATE OF MONTANA ON

TUESDAY, JUNE 6, 1972

This is to certify that on Thursday, June 15, 1972 at 9:00 o'clock A.M., I, FRANK MURRAY, Secretary of State, in the presence of the Governor and State Treasurer proceeded in accordance with Chapter 296, Laws of Montana, 1971, as amended by Extraordinary Chapter 1, Laws of Montana, 1971, and Resolution No. 11 of the Constitutional Convention, adopted March 4, 1972, to canvas the votes cast at the Election held in the State of Montana on Tuesday, the Sixth day of June, A.D. 1972, for and against the proposed Constitution and the Separate Propositions thereon, as set forth within.

NOW, THEREFORE, I, FRANK MURRAY, Secretary of State, do hereby certify that the following is a true, correct and complete statement of the number of votes cast for and against the proposed Constitution and Separate Proposition thereon and of the number of electors voting at the election hereinabove referred to, and that I have computed and determined the votes from the abstracts transmitted to the Secretary of State by the County Clerks of all fifty-six counties in the State of Montana, and I declare the result to be as follows:

Exhibit "C"

FOR the proposed Constitution.	116,415
AGAINST the proposed Constitution.	113,883
2A. FOR a unicameral (1 house) legislature.	95,259
2B. FOR a bicameral (2 houses) legislature.	122,425
3A. FOR allowing the people or the legislature to authorize gambling.	139,382
3B. AGAINST allowing the people or the legislature to authorize gambling.	88,743
4A. FOR the death penalty.	147,023
4B. AGAINST the death penalty.	77,733
Total number of electors voting.	237,600

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this twentieth day of June, A. D. 1972.

FRANK MURRAY
Secretary of State

Forrest H. Anderson-Governor

Alex B. Stephenson-State Treasurer

Exhibit C