

ORIGINAL

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No. _____

1
2 IN THE SUPREME COURT OF THE STATE OF MONTANA
3 * * * * *

4 THE STATE OF MONTANA,
5 ex. rel. STANLEY C. BURGER,
6
7 Petitioner,
8 vs.

FILED
JUN 20 1972
Thomas J. Kearney
CLERK OF SUPREME COURT
STATE OF MONTANA

9 FORREST H. ANDERSON, as Governor of
10 the State of Montana,
11 Respondent
12 * * * * *

13 APPLICATION FOR DECLARATORY JUDGMENT,
14 ALTERNATE WRIT OF INJUNCTION,
15 ALTERNATE WRIT OF PROHIBITION,
16 and
17 ORDER TO SHOW CAUSE
18 * * * * *

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

23 1. This is a proceeding for declaratory relief under
24 Title 93, Chapter 89, R.C.M., 1947, the Uniform Declaratory
25 Judgments Act of the State of Montana. The Petitioner also seeks
26 an alternate writ of injunction or an alternate writ of prohibi-
27 tion or other appropriate writ or relief.

28 2. That the Petitioner is now and at all of the times
29 hereinafter mentioned was a citizen and resident, elector and
30 taxpayer of the State of Montana.

31 3. That the Petitioner is one elector among the electors
32 of the State of Montana who voted upon the Constitution which
has been proposed to the people of the State of Montana, at the
election on the 6th day of June, 1972, and is beneficially
interested in the proper determination of the outcome of this
election.

(2)

1 4. That the Petitioner is informed and believes, and there-
2 fore alleges, that the facts which give rise to this controversy
3 are not in dispute.

4 5. That the electors of the State of Montana at the general
5 election held on the 3rd day of November, 1970, voted to call a
6 Constitutional Convention for the State of Montana, and that
7 thereafter the Legislative Assembly of the State of Montana
8 enacted Chapter 296 of the laws of 1971 to set up a Constitutional
9 Convention; that Constitutional Convention delegates were elected
10 from throughout the State of Montana in the number of One Hundred
11 (100) as provided by that chapter, and the Convention duly com-
12 pleted on the 24th day of March, 1972, and that the Convention
13 fixed the date of the election on such proposed Constitution as
14 the 6th day of June, 1972.

15 6. That the proposed Constitution so adopted by the Consti-
16 tutional Convention, as aforesaid, was regularly submitted to
17 the people on the 6th day of June, 1972, for a vote thereon on
18 a ballot, a copy of which is hereto attached, marked Exhibit "A"
19 and hereby made a part hereof, to which reference is hereby
20 specifically made. That the said Constitution was submitted
21 as one of four issues, and all electors were directed to vote
22 upon said four issues by the official ballot as is more disclosed
23 by said Exhibit "A".

24 7. That pursuant to law, the Secretary of State of the
25 State of Montana has made out and filed in his office a state-
26 ment of the canvass and has transmitted a copy to the Governor
27 of the State of Montana, Forrest H. Anderson.

28 8. That a copy of the statement of the canvass, as filed
29 in the office of the Secretary of State, of the State of Montana,
30 and transmitted to the Governor of the State of Montana, Forrest
31 H. Anderson, is attached hereto, as Exhibit "B", and by reference
32 made a part hereof.

1 9. That Section 8 of Article XIX of the Montana Constitution
2 adopted in 1889 and now in effect provides in part that "unless
3 * * * approved by a majority of the electors voting at the elec-
4 tion, no such revision, alteration or amendment shall take effect."
5 That the official figures of the Board of State Canvassers, as
6 set forth in Exhibit "B", show that Two Hundred Thirty-Seven
7 Thousand ~~Six Hundred Eighty-Eight~~ (237,600) electors voted at
8 the election on June 6, 1972, and that only One Hundred Sixteen
9 Thousand Four Hundred Fifteen (116,415) electors voting at the
10 election approved of the Constitution so submitted by the Consti-
11 tutional Convention to the people and electors of the State of
12 Montana, being less than a majority of the electors voting at
13 the election.

14 10. That the Petitioner is informed and believes, and
15 therefore alleges that unless the Governor of the State of
16 Montana is restrained, enjoined and prohibited, he will issue
17 a proclamation ministerial in nature declaring the Constitution
18 adopted by a majority of the electors of the State of
19 Montana.

20 11. That Petitioner herein is informed and believes, and
21 therefore alleges that the said Constitution has not been pro-
22 perly adopted as required by Section 8, Article XIX of the
23 Montana Constitution adopted in 1889, and therefore is of no
24 force or effect and should not be adopted, and that the Respondent
25 herein should now be restrained, enjoined or prohibited from
26 taking any of the statutory and constitutional steps required
27 to make the said Constitution effective.

28 12. That time is of the essence in this subject matter and
29 the subject matter of this action is of great and widespread
30 public and governmental concern and should be resolved at the
31 earliest possible time. That filing an action in the District
32 Court and final determination by an appeal to this Court is an

1 inadequate remedy because of the delay which would ensue before
2 final decision could be had. That for all of the foregoing
3 reasons, it is appropriate and proper for this Court to accept
4 original jurisdiction for this proceeding to insure a just and
5 speedy determination of the question involved at a time when
6 such determination will be meaningful and effective.

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

18 WHEREFORE, Petitioner prays for the following letter:

19 1. That the Supreme Court of the State of Montana take and
20 accept original jurisdiction of the above entitled controversy
21 and immediately proceed to herein determine the issues involved
22 therein.

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

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

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

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

11 6. That the Petitioner be granted such other and further
12 relief as may to the Court appear to be meet and just in the
13 premises.

MORROW, NASH & SEDIVY, P.C.

By: [Signature]
Security Bank & Trust Co. Bldg.
208 East Main, Bozeman, Montana,
Attorneys for Petitioner

18 STATE OF MONTANA)
19 County of Gallatin) ss:

20 STANLEY C. BURGER, first duly sworn upon oath, for himself
21 says:

22 That he is the Petitioner named in the foregoing application;
23 that he has read the foregoing application and knows the contents
24 thereof, and that the matters and things therein set forth are
25 true to his own knowledge.

[Signature]
Stanley C. Burger

26
27 Subscribed and sworn to before me this 20 day of
28 June, A.D., 1972.

[Signature]
EDMUND P. SEDIVY, JR.,
Notary Public for the State of
Montana. Residing at Bozeman, Mont.
My commission expires: 5/9/75

31 JAMES H. MORROW, JR.
32 DONALD A. NASH,
EDMUND P. SEDIVY, JR.
208 East Main Street
Bozeman, Montana
Attorneys for the Petitioner

INSTRUCTIONS TO VOTERS: PLACE AN "X" IN THE BOXES WHICH EXPRESS YOUR PREFERENCES. THE FULL TEXT OF THE PROPOSED CONSTITUTION 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.

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.

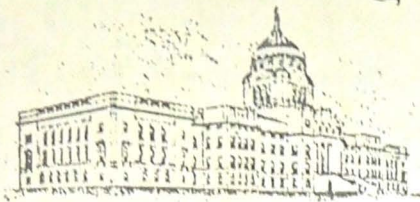
4.

(Vote for One)

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

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

Office of the Secretary of State



OFFICE
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:

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