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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 12309

THE STATE OF MONTANA, ex rel.
WILLIAM F. CASHMORE, M.D., and
STANLEY C. BURGER,

Relators,

vs.

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

Respondent.

FILED

JUN 22 1972

Thomas J. Kearney

CLERK OF SUPREME COURT
STATE OF MONTANA

PER CURIAM:

ORDER

William F. Cashmore, M.D., as relator filed in this Court a verified application for declaratory judgment, alternative writ of injunction or other remedial relief, in cause No. 12309, entitled "THE STATE OF MONTANA, ex rel. WILLIAM F. CASHMORE, M.D., Relator, vs. FORREST H. ANDERSON, as Governor of the State of Montana, Respondent; thereafter and on the same day Stanley C. Burger, as a Petitioner, filed in this Court his application for declaratory judgment, alternate writ of injunction, alternate writ of prohibition and order to show cause in cause No. 12310, entitled "THE STATE OF MONTANA, ex rel. STANLEY C. BURGER, Petitioner, vs. FORREST H. ANDERSON, as Governor of the State of Montana, Respondent.

Counsel in both causes were heard ex parte and it appears that the relief sought in both actions is a determination of whether or not the new constitution voted on at the election of June 6, 1972, received the approval of a majority of the electors voting at the said election, it being contended that it did not receive such approval as required by Section 8, Article XIX of the Montana Constitution.

While a restraining order was sought to prohibit the respondent Governor from issuing any proclamation upon the election the Court was advised by counsel during the course of their ex parte arguments that the proclamation had been issued by the Governor.

It further appearing that the relief sought in each of the actions, as hereinbefore related, is similar, a motion was made for the consolidation of the actions, which motion was granted and it was ordered that causes numbered 12309 and 12310, each entitled as hereinbefore set forth, be consolidated under cause No. 12309, to be entitled as this Order is entitled, and the Clerk is directed to make such amendments to his records as required to evidence these changes.

Upon consideration of the allegations contained in the pleadings,

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the exhibits appended thereto, and the ex parte oral presentations before this Court, it would appear that the matters raised thereby are to secure interpretations of provisions of our present constitution in light of its wording and under precedents established in the case law of Montana and other states of the Union, and, further, that no fact questions arise which would require the taking of testimony, and in such a situation an adversary hearing before this court is all that would be required to present the legal issue for determination.

NOW THEREFORE, IT IS HEREBY ORDERED that this cause be set for an adversary hearing before this Court on the 17th day of July, 1972, at the hour of 9:00 a.m.

IT IS FURTHER ORDERED that service of a copy of this Order, of the two applications now on file, with their exhibits, and any memorandums of authorities to be furnished by the relators, be served upon the HONORABLE FORREST H. ANDERSON, as Governor of the State of Montana, forthwith; and identical service of such documents shall be made upon HONORABLE ROBERT L. WOODAHL, as Attorney General of the State of Montana, forthwith.

IT IS FURTHER ORDERED that the respondent shall file such motions or other pleadings as is desired, and, without waiver, shall file his answers to the petitions in this cause, all such pleadings to be served and filed on or before three days before the date fixed for hearing herein.

In view of the statewide interest in the question here presented, applications for leave to intervene or to appear herein amicus curiae should be addressed to the Chief Justice and filed within ten days from the date of this Order. Intervenors may appear in oral argument upon application to the Court for time therefor; amicus curiae must apply to the Court for permission to present oral argument and such application must fully set forth the reasons for the application. Amicus curiae shall appear by brief.

Briefs of all parties may be in typewritten form, and shall be filed with the Clerk of this Court at least three days before the day set for argument. All briefs shall be served upon counsel for all parties who have previously appeared, but any group appearing shall be entitled to but one copy thereof, and law firms appearing shall likewise be entitled to but one copy. The names of all parties who have previously appeared may be obtained from the office of the Clerk.

It appearing further that the members of the Constitutional Convention and/or the members of the primary election canvassing board may or may not be interested in appearing as parties in intervention or as amicus curiae, and for that reason copies of this order shall be served upon the president, first vice-president, eastern district vice-president, western district vice-president and secretary of the Constitutional Convention and upon the Governor, State Treasurer and Secretary of State, comprising the primary election canvassing board by mail.

Counsel will be notified of their time for argument at least 24 hours before the hearing.

DATED this 22nd day of June, 1972.