

1 IN THE SUPREME COURT OF THE STATE OF MONTANA

2  
3 STATE OF MONTANA, ex rel, *WILLIAM M. CASHMORE, D.*  
4 AND STANLEY C. BURGER,

5 Petitioner,

6 vs

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

9 Respondent.

10 AMICUS CURIAE BRIEF OF  
11 JOSEPH P. MONAGHAN

12 May it please the Court, from the press account  
13 in this morning's Montana Standard it appears that the  
14 Court anticipates an adversary proceeding involving the  
15 above case and a similar related case. Hence this  
16 brief. Under the front page story of the Governor's  
17 approval of the new Constitution by declaring the vote  
18 sufficient there appears a story slanted to influence  
19 a decision favorable to his determination. In that  
20 connection the writer of this brief has checked the  
21 law and finds it well stated in the case of *IN RE DENNY*,  
22 59 NORTHEASTERN REPORTER at pages 360 and 361 as follows:  
23 "In our system of government a written constitution is  
24 the highest expression of law. None other emanates  
25 directly from the sovereign people themselves. It is the  
26 deliberate and affirmative utterance of the sovereign  
27 majority. It seems unnatural to say that the sovereign  
28 majority, the authors of the designedly permanent,  
29 the fundamental, the organic law, intended that any of  
30 its safeguards should be abrogated by a failure to  
demand the abrogation; that the indifference of the many  
should be a positive element in effecting an organic  
change desired by the few; that a judgment abolishing  
the writ of habeas corpus or the right of trial by  
jury should be taken by default. On the contrary, one  
would expect a provision that the charter of our liberties  
should stand unaltered until the sovereign majority by  
affirmative action expressed their desire for and effected  
a change. And such is the clear letter and spirit of  
article 16. If a majority of the electors of the state  
shall ratify a proposed amendment, it shall become a  
part of the constitution; otherwise, not. There is no  
room for construction. The language is too plain to  
admit of quibbling. "Majority" means "more than half."  
"Electors," with reference to an election, means,  
according to the lexicographers, and universally  
accepted usage, "persons who perform the act of voting,"  
and "persons who have the qualifications entitling them  
to vote." Constitutions are drafted with care. The

**FILED**

JUN 28 1972

*Thomas J. Kearney*  
CLERK OF SUPREME COURT  
STATE OF MONTANA

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1 framers of our constitution deliberately selected and  
2 used the words in the meaning of which there could be  
3 no ambiguity. The sentence, "If more than half of the  
4 persons in the state who possess the legal qualifications  
5 entitling them to vote shall ratify the proposed  
6 amendment it shall become a part of the constitution,"  
7 is a cumbersome equivalent. The idea is clearly and  
8 more succinctly expressed in the wording of the  
9 constitution. No other standard for the adoption of  
10 proposed constitutional amendments may be set up by  
11 this court, becomingly or lawfully, than the one  
12 fixed by the constitution, -- the affirmative ratification  
13 by "a majority of the electors of the state." So, in  
14 any case, the question becomes one not of constitutional  
15 construction, but of evidence. ...This court takes  
16 judicial notice of the returns made to the secretary  
17 of state, and if the trial court had stated a different  
18 number the finding would be ignored, because this court  
19 is charged with judicial knowledge of the fact that  
20 240,031 is the correct number. From the same source  
21 and with the same authenticity this court knows judi-  
22 cially that at the same election 664,094 votes were cast  
23 for presidential electors, 655,965 votes for governor,  
24 and 493,670 votes on the other proposed amendment.  
25 Since we know absolutely that more than twice 240,031  
26 electors of the state participated in the election, we  
27 hold that the proposed amendment in question was re-  
28 jected."

29 In the case of Morse vs Granite County, 44 Montana  
30 78 in which Judge Brantly affirmed apparently erroneous  
31 opinion in the case of Tinkel vs Griffin, 26 Mont, 426,  
32 he made this preliminary premise at page 88: "By way  
33 of preliminary, it may be remarked that the validity  
34 of the proposed bond issue is questioned solely on the  
35 ground that the board was guilty of an omission to  
36 observe the requirement of the law in substantial  
37 particulars. There is no allegation or suggestion of  
38 fraud or willful wrongdoing, by which the plaintiff or  
39 any other elector was misled so that he lost his vote."

40 Was the voter misled? The Great Falls Tribune in  
41 an editorial appearing on June 9, 1972 entitled CONVENTION  
42 WAS CLAIRVOYANT said; As it turned out, the Constitutional  
43 Convention was clairvoyant last winter when it separated  
44 the unicameral legislature, death penalty and gambling  
45 issues from the body of the new constitution. Any one  
46 of these, locked into the constitution instead of being  
47 presented as a separate question, would have been enough  
48 to drag the constitution itself down to defeat.

49 Was the voter confused? See the attached letter  
50 written by A.R. Graesser, Whitehall hereunto attached  
51 together with the other divergent articles on the subject  
52 of the proposed constitution appearing on the same page.

53 Was there any "willful wrong doing?" See attached  
54 letter of Earl W. Kinney of Billings, Montana together  
55 with copies of the stories from the Billings Gazette  
56 alluded to therein and hereunto attached.

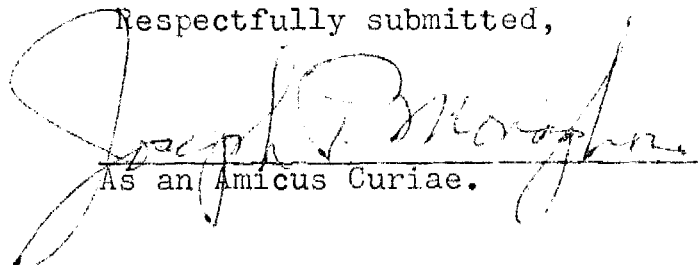
57 We call the Court's attention to the opinion  
58 of Cale Crowley supporting the position of the petition  
59 in the above entitled matter a copy of which is hereunto  
60 attached.

1 The irregularities which occurred in presenting the  
2 matters to the voters has been set forth in the case of  
3 PEOPLE'S ADVOCATES, Unincorporated, a/k/a "PUN", Relators  
4 vs. Frank Murray, SECRETARY OF STATE, et al. No. 12276;  
5 now pending on appeal to the United States Supreme Court  
6 contains numerous irregularities in connection with the  
7 election presentation.

8 Election fraud appearing to exist in several  
9 counties of the State where the proposed new constitution  
10 appeared to be prevailing caused the writer and his  
11 associates in the above action to have 30,000 cards  
12 printed for a post elections survey to be conducted in  
13 Deer Lodge County and in Cascade County but the hoods  
14 in Anaconda dispersed without a single signature the  
15 solicitors who were attempting to perfect the survey  
16 there and Pat Murphy of Great Falls who first agreed  
17 to arrange for the canvass there reported that he would  
18 be shot if he attempted to pursue it in Great Falls  
19 in view of the feeling that existed there.

20 When we went to the FBI in Butte, Montana seeking  
21 cooperation we conferred with one Vincent G. McCarthy  
22 who advised us that the FBI was familiar with the  
23 existence of the proposed new constitution for the United  
24 States of America which had been drafted some short time  
25 ago in Santa Barbara, California which was to be presented  
26 for adoption after the 32nd state (which would have been  
27 Montana) would have approved the enabling provisions which  
28 would ultimately led our nation into the custody of the  
29 United Nations these facts we have not had sufficient to  
30 bring to the attention of the unwary voter. Nor has this  
writer had sufficient time to put into mailable form  
a letter which he proposed to send to his fellow attorneys.  
Despite constant study and attention to this vast  
drastic and violent change which has been proposed in  
our form of state government which has been intensive  
for approximately two months the writer has been unable  
to analyze scrutinize more than the judicial changes  
that have occurred by the reason of the DELETIONS, which  
were proposed at the eleventh hour as simply removing  
archaic and anachronistic provisions of the old constitution.  
It therefore appears not only was the electorate misled  
and confused and confounded but likewise "Con-Con" delegates  
themselves.

Respectfully submitted,



As an Amicus Curiae.