

ORIGINAL

12309

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1 IN THE SUPREME COURT OF THE STATE OF MONTANA

2  
3 No. 12309  
4

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

8 Relators,

9 vs.

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

12 Respondent.

**FILED**

JUL 12 1972

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

13 ANSWER OF ATTORNEY GENERAL

14 NOW COMES ROBERT L. WOODAHL, duly elected, qualified  
15 and acting Attorney General of the State of Montana, and  
16 on behalf of Respondent, himself, and the executive branch  
17 of the government of the State of Montana, answers the  
18 petitions on file herein as follows:

19 I.

20 ANSWER TO PETITION NUMBERED 12309, ENTITLED  
21 "THE STATE OF MONTANA, EX REL. WILLIAM F.  
22 CASHMORE, M. D., RELATOR, VS. FORREST H.  
23 ANDERSON, AS GOVERNOR OF THE STATE OF MON-  
24 TANA, RESPONDENT."

25 1. Admits the allegations of Paragraphs 1, 2, 3 and  
26 4.

27 2. Answering Paragraph 5, denies that 237,600 elec-  
28 tors actually voted on the official ballot; admits that  
29 116,415 electors voted for, and 113,883 voted against the  
30 proposed constitution; alleges that the number of persons  
31 receiving ballots in the separate election and those re-  
32 ceiving and returning absentee ballots in said separate  
election total 237,600 electors, and that the total number  
of individual electors voting at such election is some



1 number less than, and perhaps markedly less than, 237,600;  
2 that this allegation is based upon the Affidavit of the  
3 Secretary of State of the State of Montana attached hereto,  
4 marked Exhibit "A", and by this reference hereby incor-  
5 porated herein and made a part hereof.

6 3. Answering Paragraph 6, admits that the portion of  
7 Section 8 of Article XIX of the Montana Constitution reads  
8 as quoted; admits that 116,415 electors voted for approval  
9 of said constitution; denies the remaining allegations of  
10 said paragraph; alleges that a majority of the electors  
11 voting at said election voted in favor of said constitu-  
12 tion.

13 4. Denies the allegations of Paragraphs 7 and 8.

14 5. Answering Paragraphs 9 and 10, admits that the  
15 subject matter of this action is of great and widespread  
16 public concern and should be judicially resolved as rapidly  
17 as possible; denies the remaining allegations of said  
18 paragraphs; denies every other allegation of the petition  
19 not hereinabove specifically admitted.

20 II.

21 ANSWER TO PETITION NUMBERED 12310, ENTITLED  
22 "THE STATE OF MONTANA, EX REL. STANLEY BURGER,  
23 PETITIONER, VS. FORREST H. ANDERSON, AS GOVER-  
24 NOR OF THE STATE OF MONTANA, RESPONDENT."

25 1. Admits the allegations of Paragraphs 1, 2, 3, 5,  
26 6, 7 and 8.

27 2. Answering Paragraph 4, denies that the facts which  
28 give rise to this controversy are not in dispute; alleges  
29 that the total number of 237,600 is the total number of  
30 individuals receiving ballots at the polls plus those re-  
31 ceiving and returning absentee ballots; alleges that the  
32 total number of electors voting at such separate election  
was less than, and perhaps markedly less than, 237,600.



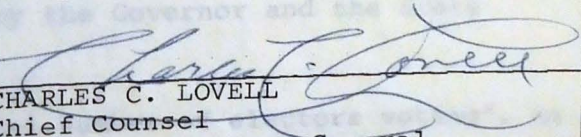
1 3. Answering Paragraph 9, admits the quoted portions  
2 of the provisions of Section 8, Article XIX of the Montana  
3 Constitution; denies that the official figures of the Board  
4 of State Canvassers shows that 237,600 electors voted at  
5 the election on June 6, 1972; admits that 116,415 electors  
6 voted for adoption of the proposed constitution at said  
7 election; denies the remainder of said paragraph.

8 4. Denies the allegations contained in Paragraphs 10  
9 and 11.

10 5. Answering Paragraphs 12 and 13, admits that this  
11 is a matter of great and widespread public and governmental  
12 concern, and should be resolved at the earliest possible  
13 time; denies the remaining allegations of said paragraphs;  
14 denies every allegation of said petition not hereinabove  
15 specifically admitted.

16 WHEREFORE, this intervening respondent, on his own  
17 behalf, and on behalf of the executive branch of the govern-  
18 ment of the State of Montana, prays that this honorable  
19 Court, having assumed jurisdiction herein, issue its  
20 declaratory judgment, adjudicating and decreeing the Montana  
21 Constitution of 1972 to have been duly and properly adopted  
22 by the people of Montana at the separate election held  
23 June 6, 1972, all as earlier proclaimed by the Governor  
24 of the State of Montana.

25 ROBERT L. WOODAHL  
26 Attorney General of the State of Montana

27 By:   
28 CHARLES C. LOVELL  
29 Chief Counsel  
30 Office of Attorney General  
31 P. O. Box 1645  
32 Great Falls, Montana 59403

WILLIAM N. JENSEN  
Assistant Attorney General  
State Capitol Building  
Helena, Montana 59601



1 IN THE SUPREME COURT OF THE STATE OF MONTANA

2 involving and returning absentee ballots in said separate  
3 election, total 23,500 electors.

4 No. 12309

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

8 Relators,

9 vs.

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

11 Respondent.

12  
13 AFFIDAVIT

14  
15 STATE OF MONTANA )  
16 County of Lewis & Clark ) ss.

17 The undersigned, FRANK MURRAY, Secretary of State of  
18 the State of Montana, being first duly sworn, upon his  
19 oath deposes and says:

20 That affiant, on Thursday, June 15, 1972, at 9:00  
21 o'clock A. M., in the presence of the Governor and the  
22 State Treasurer, proceeded to canvass the votes cast at the  
23 election held in the State of Montana on Tuesday, June 6,  
24 1972, and that affiant did thereafter on June 20, 1972,  
25 certify the results of said election, which said certifi-  
26 cation was concurred in by the Governor and the State  
27 Treasurer;

28 That the phrase "Total number of electors voting", as  
29 used in said canvass and certificate, refers to the total  
30 number of electors appearing at the polls and receiving  
31 ballots, plus the number of electors receiving and return-  
32 ing absentee ballots; that therefore, the number of persons



1 receiving ballots in the separate election and those re-  
2 ceiving and returning absentee ballots in said separate  
3 election, total 237,600 electors.

4 of record by mailing a  
5 true copy thereof this date in an envelope with postage  
6 prepaid addressed to

7 Joseph P. Murray  
2219 Elm St.  
Butte, Montana

*Frank Murray*  
Frank Murray, Secretary of State  
of the State of Montana

8 Gibbs, Sweeney, Colberg & Koessler  
9 P. O. Box 1321  
Billings, Montana 59101

10 SUBSCRIBED AND SWORN to before me this 12th day of  
11 July, 1972.

12 Marshall G. Candee  
13 P. O. Box 617  
Libby, Montana 59601

14 A. W. Scribner  
15 Power Block  
Helena, Montana 59601

*Charles E. Jones*  
NOTARY PUBLIC for the State of Montana.  
Residing at Great Falls, Montana  
My Commission Expires: August 10, 1974

16 (NOTARIAL SEAL) Neely  
17 2022 First Avenue North  
Billings, Montana 59101

18 Jerome T. Loendorf  
19 Professional Building  
Helena, Montana 59601

20 C. W. Leaphart, Jr.  
21 Montana Club Building  
Helena, Montana 59601

22 Diana S. Bowling  
23 309 North Rodney  
Helena, Montana 59601

24 D. Patrick McKittrick  
25 1717 South Avenue South  
Great Falls, Montana 59401

26 Lawrence E. Edd  
27 310 North Higgins  
Missoula, Montana 59801

28 Franklin E. Langer  
29 Securities Building  
Billings, Montana 59101

30 John Layne  
31 1301 University Avenue  
Helena, Montana 59601



CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Answer of Attorney General upon counsel of record by mailing a true copy thereof this date in an envelope with postage prepaid addressed to:

Joseph P. Monaghan  
2218 Elm Street  
Butte, Montana 59701

Hibbs, Sweeney, Colberg & Koessler  
P. O. Box 1321  
Billings, Montana 59101

Douglas Y. Freeman  
Courthouse  
Hardin, Montana 59034

Marshall G. Candee  
P. O. Box 617  
Libby, Montana 59923

A. W. Scribner  
Power Block Building  
Helena, Montana 59601

Gerald J. Neely  
2822 First Avenue North  
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Billings, Montana 59101

John Layne III  
1301 University Avenue  
Helena, Montana 59601



1 Clayton R. Herron  
2 P. O. Box 783  
3 Helena, Montana 59601

4 Donald C. Robinson  
5 Silver Bow Block  
6 Butte, Montana 59701

7 William F. Meisburger  
8 Courthouse  
9 Forsyth, Montana 59327

10 Robert L. Kelleher  
11 2108 Grand Avenue  
12 Billings, Montana 59103

13 Calvin A. Calton  
14 P. O. Box 1178  
15 Billings, Montana 59101

16 Forrest H. Anderson  
17 Governor of the State of Montana  
18 Helena, Montana 59601

19 Keller, Reynolds and Drake  
20 South Annex, Power Block  
21 Helena, Montana 59601

22 Morrow, Nash & Sedivy  
23 208 East Main Street  
24 Bozeman, Montana 59715

25 DATED this 12th day of July, 1972.

26 ROBERT L. WOODAHL  
27 Attorney General

28 CHARLES C. LOVELL  
29 Chief Counsel

30 WILLIAM N. JENSEN  
Assistant Attorney General

Attorneys for Intervenor  
Attorney General

By:

William N. Jensen



ORIGINAL

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1 IN THE SUPREME COURT OF THE STATE OF MONTANA

2 that this allegation is based upon the Affidavits of the

3 No. 12309

4 marked Exhibit A, and the reference made to the

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

8 Relators,

9 vs.

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25 2. Answering Paragraph 5, denies that 237,600 elec-  
26 tors actually voted on the official ballot; admits that  
27 116,415 electors voted for, and 113,883 voted against the  
28 proposed constitution; alleges that the number of persons  
29 receiving ballots in the separate election and those re-  
30 ceiving and returning absentee ballots in said separate  
31 election total 237,600 electors, and that the total number  
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(411)



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6 3. Answering Paragraph 6, admits that the portion of  
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13 4. Denies the allegations of Paragraphs 7 and 8.

14 5. Answering Paragraphs 9 and 10, admits that the  
15 subject matter of this action is of great and widespread  
16 public concern and should be judicially resolved as rapidly  
17 as possible; denies the remaining allegations of said  
18 paragraphs; denies every other allegation of the petition  
19 not hereinabove specifically admitted.

20 Declaratory judgment, adj; II.

21 ANSWER TO PETITION NUMBERED 12310, ENTITLED  
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25       ROBERT L. WOODAHL  
26       Attorney General of the State of Montana

27       By: 

28       CHARLES C. LOVELL  
29       Chief Counsel  
30       Office of Attorney General  
31       P. O. Box 1645  
32       Great Falls, Montana 59403

31       WILLIAM N. JENSEN  
32       Assistant Attorney General  
       State Capitol Building  
       Helena, Montana 59601



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17 The undersigned, FRANK MURRAY, Secretary of State of  
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1 receiving ballots in the separate election and those re-  
2 ceiving and returning absentee ballots in said separate  
3 election, total 237,600 electors.

4 true copy thereof this date in an envelope with postage  
5 prepaid addressed to

6 Joseph P. Murray

7

8

9

10

11 SUBSCRIBED AND SWORN to before me this 12th day of

12 July, 1972.

13

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21

22

23

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25

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28

29

30

Frank Murray, Secretary of State  
of the State of Montana

NOTARY PUBLIC for the State of Montana.  
Residing at Great Falls, Montana  
My Commission Expires: August 10, 1974

(NOTARIAL SEAL) Neely

2322 First Avenue North  
Billings, Montana 59101

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Professional Building  
Helena, Montana 59601

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Franklin S. Longen  
Securities Building  
Billings, Montana 59101

John Layne III



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2 CERTIFICATE OF SERVICE

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4 of Attorney General upon counsel of record by mailing a  
5 true copy thereof this date in an envelope with postage  
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8 2218 Elm Street  
9 Butte, Montana 59701

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24 Bozeman, Montana 59715

25 DATED this 12th day of July, 1972.

26 ROBERT L. WOODAHL  
27 Attorney General

28 CHARLES C. LOVELL  
29 Chief Counsel

30 WILLIAM N. JENSEN  
31 Assistant Attorney General

Attorneys for Intervenor  
Attorney General

By:

William N. Jensen