

1 IN THE SUPREME COURT OF THE STATE OF MONTANA

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3 FILED

4 JUL 13 1972

5 Thomas J. Kearney
6 CLERK OF SUPREME COURT
7 STATE OF MONTANA

8 THE STATE OF MONTANA, ex rel.
9 WILLIAM F. CASHMORE, M.D., AND
10 STANLEY C. BURGER,

11 Relators,

12 vs.

13 NO. 12309

14 FORREST H. ANDERSON, as Governor
15 of the State of Montana,
16 Respondent.

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18 SUPPLEMENTAL BRIEF OF JOSEPH P. MONAGHAN ATTORNEY FOR "PUN"
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21 MAY IT PLEASE THE COURT : This is the fourth brief filed
22 with this court opposing the proposed constitution of
23 1972, to-wit : one in the Kaavalen case, one in the " PUN"
24 CASE, now on appeal to the Supreme Court of the U.S., brief
25 on the question of the requisite vote to adopt a revised
26 constitution filed herein before the court consolidated
27 the above causes and before timely permission could be
28 granted for an amicus curiae brief therein, and this one
29 supplementing the previous briefs. My colleagues in Boze-
30 man suggested that I waive my right to claim the privilege
31 of oral argument and in as much as I have been afforded
32 this opportunity before in the case brought by " PUN " I
hereby relinquish any time that I might be allowed on July
17, 1972 to the firm of MORROW, NASH & SEDIVY, on this im-
portant question.

33 CONTRAST SHOWS INTENT

34 Reading section 7 of article XVI of the 1889 constitution
35 we find this very pertinent language re: vote of adoption
36 of its provisions : "provided, however, that no form
37 of government permitted in this section shall be adopted

1 or discontinued until after it is submitted to the quali-
2 fied electors in the territory affected and by them approv-
3 ed." Compare this with the provision here in question in
4 this cause : " and unless so submitted and approved by a
5 majority of the electors voting at the election, no such
6 revision, alteration or amendment shall take effect." Sec.
7 8 of Article XIX of the 1889 constitution. Since all cit-
8 izens are affected vitally by such drastic changes it was
9 the intent of the framers of the 1889 constitution to not
10 allow revisions and amendments in the fundamental law of
11 the state to be made except by a decisive vote of the
12 electorate. They chose not to employ the language of Art.
13 XVI, Section 7 aforesaid thus evidencing their mandate in
14 favor of the absolute majority as interpreted by the Sec-
15 retary of State of Montana. One need not be a practicing
16 lawyer to distinguish these two articles of the constitution.
17 BLACK'S LAW DICTIONARY, Fourth Edition defines it as foll-
18 ows : MAJORITY VOTE. Where a question is required to be
19 submitted at a certain regular election and is made to de-
20 pend upon " majority of votes " cast at "such election" a
21 majority of all votes cast at election is meant, and not
22 merely majority of votes cast on that particular question
23 208 Ind.168,193 N.E.865.

24 Where legislative body provides that propo-
25 sition shall be submitted to voters and those
26 in favor of proposition shall cast affirmative
27 vote while those opposed shall cast negative vote ,
28 and that " majority of votes " given shall be
29 requisite to adoption of measure, only votes to
30 be counted in de-termining whether measure was
31 adopted are those given on particular question
32 involved. In re Todd, 208 Ind168,193 N.E.865.

29 Following this general rule of law the court in the case
30 of IN RE DENNY, 59 N.E. 359, at page 361, (Cited in our
31 preceeding brief) held : " The general assembly enacted
32 that a vote on the proposed amendments should be taken at

1 the next general election. The trial court found that
2 240,031 votes were cast in favor of the adoption of the
3 proposed amendment in question. The trial court probably
4 made the finding from the facts within its judicial know-
5 ledge. It was unnecessary for the parties to prove the
6 vote. This court takes judicial notice of the returns made
7 to the Secretary of State, and if the trial court had stat-
8 ed a different number the finding would be ignored, because
9 this court is charged with judicial knowledge of the fact
10 that 240,031 is the correct number. From the same source
11 and with the same authenticity this court knows judicial-
12 ly that at the same election 664,094 votes were cast for
13 presidential electors, 655,965 for governor, and 493,670
14 votes on the other proposed amendment. Since we know ab-
15 solutely that more than twice 240,031 electors of the state
16 participated in the election, we hold that the proposed
17 amendment in question was rejected. "

18 PROPOSED CONSTITUTION UNCONSTITUTIONAL

19 We trust this court will take judicial notice of the foll-
20 owing which render the proposed constitution unconstitu-
21 tional : 1. Article III Sec 2 of the 1889 Constitution
22 provides : " The people of the state have the
23 sole and exclusive right of governing themselves,
24 as a free, sovereign, and independent State, and
25 to alter and abolish their constitution and form
of government, whenever they may deem it necess-
ary to their safety and happiness, provided such
change be not repugnant to the constitution of
the United States. "

26 As indicated in the attached copy of flyer to the electorate
27 the deletion of the phrase begining with "whenever they deem
28 it necessary etc." is repugnant to Article 4 Section 4 of
29 the U. S. Constitution gauranteeing ". every state in this
30 union a republican form of government,..." At page 629 of
31 Vol. 11 of American Jurisprudence Under Sec. 25 we find
32 this pertinent language :

1 -- REVOLUTIONARY CHANGES - It is universally
2 conceded that the people are sovereign and
3 that they have power to adopt a Constitution
4 and to change their own work at pleasure. The
5 people must act by majorities, however, and in
6 adopting a Constitution the majority which does
7 so has in effect prescribed the method by which
8 the majority of the people may alter or amend it.
9 An attempt by the majority to change the funda-
10 mental law in violation of the self imposed re-
11 strictions is unconstitutional and revolutionary.

12 2. Among the 130 deletions is Sec. 28 of Art. III providing:

13 " There shall never be in this state either slavery or in-
14 voluntary servitude, except as punishment for crime,
15 whereof the party shall have been duly convicted."

16 This attempts to repeal-and is therefore repugnant to the
17 Constitution of the U.S.- the identical proviso known as
18 Amendment 13, Sec. 1. " Neither slavery nor involuntary ser-
19 vitude, except as a punishment for crime, whereof the party
20 has been duly convicted, shall exist within the United
21 States, or any place subject to their jurisdiction. "

22 3. Making all citizens subject to militia service regard-
23 less of sex or age is repugnant to Art. I Sec. 8 of the U.
24 S. Constitution.

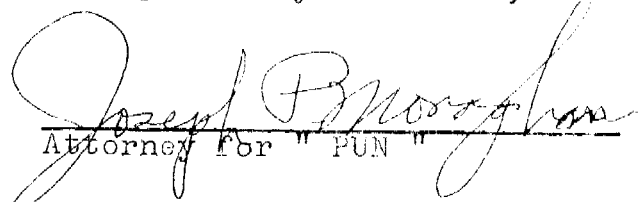
25 4. Repeal by deletion of Articles I.&II. of the 1889 con-
26 stitution regarding Boundaries and military reservations
27 is also violative of Article I. Sec. 8 of the U.S. Consti-
28 tution.

29 WATER RIGHTS THE KEY TO A SINE CURE

30 Fortifying the "Missouri River Compact" has, it seems, become
31 a sort of executive attraction which has engaged the var-
32 ious Governors major attention since out of its accomplish-
ment will arise a grand plum for some deserving or rather
undeserving governor to the tune of a \$72,000 a year posi-
tion. What price glory? Executive Director of the Missouri
River Compact- Salary \$72,000 annually. Why should the Ad-
visory Commission on Intergovernmental Relations worry a-
bout the tab as long as their scheme to enslave the people
is accomplished.

1 Consider the irregularities involved in this election :
2 the people themselves did not initiate it; they were to-
3 tally unaware of its importance and consequences; the re-
4 presentation they got was unsolicited; the ideas advanc-
5 ed were not theirs; the time of voting was not their choice;
6 the leadership was foreign; the money although supplied by
7 them was not of their instigating; the revisions were not
8 sought by them; the laws made to protect them were not ad-
9 hered to or obeyed; in fact they had no part whatsoever in
10 the making of the so-called improvement, to wit: the new con-
11 stitution. Yet they must be bound by its treasonous pro-
12 visions. If you do not believe this to be a conspiracy please
13 read the attached proposed new Constitution for the United
14 Republics of America. These outsiders and schemers are
15 fully aware of the weaknesses that permeate our society: money
16 and its undue influence. So they have used money, - ours-
17 not theirs, to initiate, promulgate, and promote their dia-
18 bolical plot. To many money is the be all and end all of
19 their existence. But the scriptural admonition is good for
20 you and me : " SEEK YE FIRST THE KINGDOM OF GOD AND HIS JUS-
21 TICE AND ALL THESE THINGS WILL BE ADDED TO YOU."

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23 Respectfully submitted,

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25 Attorney for "PUN"
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