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**FILED**

JUL 07 2021

ANGIE SPARKS, Clerk of District Court  
BY *[Signature]* Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

THOMAS WINTER AND BARBARA  
BESSETTE,

PLAINTIFFS,

V.

THE STATE OF MONTANA, BY AND  
THROUGH GREG GIANFORTE, IN HIS  
OFFICIAL CAPACITY AS GOVERNOR  
OF MONTANA,

DEFENDANT.

Cause No. ADV-2021-699

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

Plaintiffs, through counsel, submit this Reply in Support of their pending Ex Parte Motion for Temporary Restraining Order and Motion to Show Cause (hereinafter "Motion"), following the State's Response to Ex Parte Motion for Temporary Restraining Order (hereinafter "Response") and state as follows.

For the purposes of the motion pending before the Court, the most crucial aspect of the State's Response is not what is said, but what is omitted: the State does not claim that the Governor will not appoint a replacement to the pending vacancy in the Eighth Judicial District Court within the next ten days. The urgency of the State's Response implies that the Governor does intend to

*Winter, et al. v. The State of Montana, et al.*

Plaintiffs' Reply in Support of Motion for Temporary Restraining Order

Page 1 of 7

make this appointment. Indeed, the implication of the State's opposition to Plaintiffs' requested relief is that the Governor's appointment is imminent, making even more critical the relief requested by Plaintiffs.

The Montana Supreme Court's opinion in *Brown v. Gianforte* demonstrates precisely why the requested relief is necessary, as the Court provided an extraordinary insight into the harm that would be caused by the appointment of a judge lacking constitutional authority. "Simply put, the appointed person is not a judge and any judicial acts he or she purports to make are void." *Brown*, ¶ 15 (citing *Blodgett v. Orzech*, 2012 MT 134, ¶ 22, 365 Mont. 290, 280 P.3d 904). This Court knows full well the scope of power of a district court judge including the power to declare guilt or innocence and divest litigants of property, regardless of whether, as the Montana Supreme Court noted, the judge's rulings are "legally correct, biased, or otherwise improper." *Brown*, FN 3.

The Response adds further weight to Plaintiffs' argument that this Court should grant the requested relief and issue a temporary restraining order enjoining the Governor from exercising his appointment power under Senate Bill 140 regarding the pending vacancy in the Eighth Judicial District Court.

**I. Plaintiffs have established a prima facie case and are entitled relief.**

In the context of judicial appointments, SB 140 allows the Governor to be both player and referee because it allows the Governor unfettered discretion in the investigation of, and access to, eligible persons during the application process prior to the designation of said persons as nominees and then allows the Governor to appoint a replacement from said nominees. This statutory scheme violates Article III, Section 1, of Montana's Constitution because the clause "the governor shall appoint a replacement from nominees selected in the manner provided by law," constitutes an implied limitation on the Governor's exercise of power in this circumstance—if the Governor can

both appoint a replacement from nominees and choose who those nominees are, the “from nominees” language becomes meaningless.

Further, even if this implied limitation does not exist, SB 140’s delegation of legislative authority is overly broad and therefore void. When evaluating delegations of legislative authority to administrative agencies, the Montana Supreme Court has held that “[a] statute granting legislative power to an administrative agency will be held to be invalid if the legislature has failed to prescribe a policy, standard, or rule to guide the exercise of the delegated authority. If the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, the statute is invalid.” *In re Petition to Transfer Territory from High Sch. Dist. No. 6*, 2000 MT 342, ¶ 15, 303 Mont. 204, 209, 15 P.3d 447, 450.

SB 140 cannot withstand review under this standard. SB 140 grants the Governor complete discretion over the investigation of eligible persons during the application process prior to the designation of a nominee, grants the Governor the authority to determine who qualifies as an applicant, grants the Governor the authority to set the terms of the applications and receive applications directly, and grants the Governor the authority review applications, public comment, and letters of support. *See* Complaint, ¶¶ 53–54. Further, the Governor’s actions in the past weeks—including the creation of an Advisory Council not contemplated by the statutory scheme—demonstrate the Governor’s unconstrained exercise of power.

But, the Governor is not an administrative agency and delegations of authority to the Governor in this context—where the fundamental balance of power between the judicial and executive branches is at issue—should be reviewed with more scrutiny. “Liberty of the people can never be endangered by the courts of justice . . . so long as the judiciary remains truly distinct from

both the legislature and the executive.” *Brown*, ¶ 57 (Rice, J., concurring). These considerations apply with equal force to Montana’s own system of government.

Finally, the State argues that because “the prior nomination and appointment scheme delegated many of [SB 140’s] functions to the judicial branch,” the delegation by the legislature to the executive is appropriate here. Response, at 3–4. The State misunderstands Plaintiffs’ argument. First, the Legislature’s delegation of authority in SB 140 is void precisely because it is a delegation of authority to the Governor when the Governor’s exercise of power in this context is impliedly limited. Second, even if an implied limitation did not exist, given the lack of any limitation on the Governor’s power to investigate applicants and determine how eligible persons may become applicants, and given the lack of a guidelines given to the Governor to determine who may be considered “nominees,” the delegation of the legislative authority contained in SB 140 is void.

For these reasons, and as set forth in more detail in the Complaint, Plaintiffs have established a prima face case that SB 140 violates the separation of powers clause of Montana’s Constitution.

**II. The State is incorrect that the question posed by Plaintiffs was decided in *Brown v. Gianforte*.**

According to the State, *Brown*’s “unambiguous” holding was that “the Montana Constitution grants the authority to the Legislature to determine how nominees for a judicial vacancy are presented to the Governor.” Response, at 2. The State omits from this quotation a crucial qualification added by the Court. The quoted sentence reads, in full: “Although the Governor is correct that the Montana Constitution grants the authority to the Legislature to determine how nominees for a judicial vacancy are presented to the Governor, that authority must nevertheless be exercised in compliance with the provisions of the Constitution.” *Brown*, ¶ 24

*Winter, et al. v. The State of Montana, et al.*

Plaintiffs’ Reply in Support of Motion for Temporary Restraining Order

Page 4 of 7

(emphasis added). The State’s selective reading of this paragraph of *Brown* is indicative of its incorrect interpretation of the opinion as a whole<sup>1</sup>.

The Montana Supreme Court noted that the question posed in *Brown* could “more precisely be framed as whether SB 140 is unconstitutional under Article VII, Section 8(2) of the Montana Constitution[.]” *Brown*, FN 1. In pursuing its theory that *Brown* addresses the separation of powers argument raised by Plaintiffs, the State now contends that the review of a statute under one constitutional provision equals the review of a statute under any constitutional provision. This contention should be disregarded.

Further, the record before the Court in *Brown*, or lack thereof, supports the distinction between these two questions. In *Brown*, the Court’s jurisdiction was invoked by a petition for original jurisdiction filed on March 17, 2021—one day after the Governor signed SB 140 into law. *See* Exhibit 1. At that point, the Governor had not yet taken a single act under the authority granted to him by SB 140. In fact, it was not until April 30, 2021, that the Governor was notified of the vacancy in the Eighth Judicial District Court at issue in this motion. The absence of these facts would likely have rendered any challenge regarding the validity of the Governor’s actions moot.

In light of this, it is unsurprising that the Petition for Original Jurisdiction filed March 17, 2021, focused on whether the plain language of Article VII, § 8(2) required the existence of the Judicial Nomination Commission. At the time, the State characterized the Petitioners argument largely the same way. *See* Response to Petition for Original Jurisdiction, at 15 (“Article VII, § 8’s history—like its plain language—repudiates Petitioners’ argument that a Commission is constitutionally required”) (Exhibit 2).

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<sup>1</sup> Relatedly, the State contends that Plaintiffs lack standing. Response, at FN 1. Under *Brown*, and because Plaintiffs, as residents, are subject to the jurisdiction of the district courts in the State of Montana, Plaintiffs have standing to bring their lawsuit. The State’s mischaracterization of *Brown* should be ignored.

For these, and other reasons that will be addressed in the appropriate setting, the State's contention that *Brown* determined, on the merits, that SB 140 does not violate the Montana Constitution's separation of powers clause is unsupported and incorrect. It is a monumental task to turn the *Brown* majority opinion (which cited Mont. Const. art. III, § 1, exactly one time—in the context of its prudential standing analysis—to provide support for its determination that the separation of powers doctrine did not bar the Court from interpreting the issue presented there, *see Brown*, ¶¶ 20–24) into a decision addressing anything but whether SB 140 violated Article VII, § 8(2) of Montana's Constitution, and this Court should reject the State's attempt to do so.

### **III. Plaintiffs' request for the relief sought is timely.**

The State contends that Plaintiffs cannot meet the criteria for an *ex parte* restraining order because they filed their Complaint on June 25, 2021, and filed the instant motion on June 30, 2021.

The State does not, and cannot, point to any provision of the governing statute, Mont. Code Ann. § 27–19–315, that imposes a statute of limitations-esque time bar on an applicant seeking a temporary restraining order.

Plaintiffs have demonstrated that the Governor's appointment of a replacement to the pending judicial vacancy in the Eighth Judicial District Court is imminent, and the Montana Supreme Court's decision in *Brown* demonstrates the harm that would be caused by such an appointment, given the unconstitutionality of SB 140.

### **Conclusion**

For these reasons, Plaintiffs request that this Court grant the requested relief.

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DATED this 1<sup>st</sup> day of July, 2021.

TARLOW STONECIPHER  
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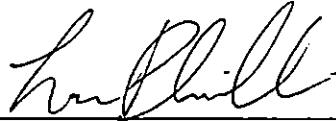


E. Lars Phillips  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of July, 2021, a true and correct copy of the foregoing document was served on the following by e-mail and U.S. Mail:

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E. Lars Phillips

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. \_\_\_\_\_

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BOB BROWN, DOROTHY BRADLEY, VERNON FINLEY, MAE NAN  
ELLINGSON, and the LEAGUE OF WOMEN VOTERS OF MONTANA,

Petitioners,

v.

GREG GIANFORTE, Governor of Montana,

Respondent.

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**PETITION FOR ORIGINAL JURISDICTION**

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(Appearances on next page)



## APPEARANCES

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This is an original proceeding challenging the constitutionality of SB 140, recently passed by the Montana Legislature and signed into law by the Governor. This petition seeks a declaratory judgment and a writ of injunction under Rules 14(2) and (4), M.R.App.P. This case involves purely legal questions of constitutional interpretation. Urgency factors exist, making litigation in the trial courts and the normal appeal process inadequate. The issues presented are of statewide importance.<sup>1</sup>

## **BACKGROUND**

1. The Montana Constitution of 1889 provided that in the case of vacancy in the position of Justice of the Supreme Court, the district court, or the clerk of the Supreme Court “shall be filled by appointment, by the governor of the State.” Mont. Const. (1889), art. VIII, § 34.

2. Addressing concerns over too much power with the Governor’s office and improper politicization of the courts, Article VII of the 1972 Constitution was adopted. Section 8 provided that the Governor could fill vacancies by selection from a group of nominees through a procedure provided by law.

3. Convening the next year, 1973, the 43rd Legislative Assembly

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<sup>1</sup> Because this petition challenges the constitutionality of a State statute, the parties are filing a Notice of Constitutional Question and serving it on the Montana Attorney General pursuant to 5.1(a), M.R.Civ.P, and Rule 27, M.R.App.P.

considered numerous measures necessary to implement the newly-adopted Constitution. Among these was SB No. 28, "An Act Providing for the Filling of Vacancies in the Office of District Court Judge and Supreme Court Justice to Comply with Article VII, Section 8 of the 1972 Montana Constitution; Repealing Sections 93-209, 93-220, 93-309, RCM 1947." That measure passed and is codified at § 3-1-1001, MCA, *et seq.*

4. SB 28 provided for the creation, composition, and function of a "Judicial Nomination Commission." The members are appointed for four-year terms on a staggered basis. The Commission is composed of a diverse group of seven members, four laymen, two attorneys, and a district judge.

5. SB 28 provided that when a judicial vacancy occurs, the Commission publishes a notice of vacancy and establishes a period for receiving applications. The Commission reviews such applications and accepts public comment concerning applicants. The Commission is then required to submit to the Governor or Chief Justice of the Montana Supreme Court a list of three to five nominees for appointment to the vacant position. All such appointments are subject to Senate confirmation. *See* §§ 3-1-1010 and -1011, MCA.

6. This system of filling judicial vacancies, in effect for almost fifty years, has worked effectively to facilitate the independence and competency of the

Montana judiciary. Notwithstanding its efficacy, Montana's Judicial Nomination Commission is now purportedly abolished by SB 140 (copy attached as Appendix A), which was signed into law on March 16, 2021. SB 140 provides that any eligible person may apply directly to the Governor for a vacant judicial position and the Governor has the unfettered discretion to appoint after providing at least thirty days for public comment concerning applicants. This threatens to politicize an otherwise-nonpartisan, independent, and effective means of filling judicial vacancies.

### **PARTIES**

7. Respondent Greg Gianforte is the duly elected Governor of the State of Montana and, as such, is Montana's chief executive officer, ultimately responsible for the effectuation of all state laws.

8. Petitioner Bob Brown was elected to the Montana House of Representatives in 1970 and served two terms as a representative from Flathead County. He was a member of the House Judiciary Committee in 1973 when the Montana Legislature enacted SB 28, which established the Judicial Nomination Commission. He later served eighteen years in the Montana Senate, serving in various leadership positions, including President of the Senate. Mr. Brown served on the State Board of Public Education for four years and as Montana Secretary of

State for a four-year term beginning in 2004. He was the Republican nominee for Governor in 2004.

9. Petitioner Dorothy Bradley served in the House of Representatives in the Montana Legislature as a representative from Gallatin County from 1971–1978 and 1985–1992, including in 1973 when she voted with the majority to adopt SB 28. She has, over the course of her career, been active in Montana politics and in efforts to ensure good government. In 1991–92, Ms. Bradley was the Democratic nominee for Governor of Montana.

10. Petitioner Vernon Finley was born and raised on the Flathead Indian Reservation in his grandparents' home. He credits his grandparents with teaching him the traditional cultural perspective. His western education consists of a Bachelor's, Master's, and Doctoral degrees in Education from the University of Montana, Oklahoma City University, and the University of Georgia, respectively. Mr. Finley is a former teacher and served on the Confederated Salish and Kootenai Tribes' Tribal Council for four years, including for three years as Chairman. He is currently the Director of the Kootenai Culture Committee.

11. Petitioner Mae Nan Ellingson, a resident of Missoula, was the youngest delegate to serve in the 1972 Montana Constitutional Convention and is now one of the few surviving delegates. Now retired, Ms. Ellingson previously

practiced public finance law, including serving as a bond counsel for State and local governments. She is a long-time advocate for good government and equality under the law.

12. Each of the individual Petitioners (Brown, Bradley, Finley, and Ellingson) are residents of Montana and voters and taxpayers.

13. Petitioner the League of Women Voters of Montana is a nonpartisan political organization that encourages informed and active participation in government, seeks to defend and improve our democracy, works to increase understanding of major public policy issues, and influences public policy through education, advocacy and litigation. It supports an independent judiciary with judges selected on the basis of merit and elections that protect the citizens' right to vote.

#### **THE FACTS WHICH MAKE IT APPROPRIATE THAT THE SUPREME COURT ACCEPT JURISDICTION**

The “urgency or emergency factors” required by Rule 14(4), M.R.App.P., exist here because SB 140 purports to go into effect immediately and give the Governor of Montana unfettered discretion to fill judicial vacancies. SB 140 was spirited through the Legislature at extraordinary speed despite the opposition of many responsible organizations such as the Montana Trial Lawyers Association, the State Bar of Montana, the Montana Defense Trial Lawyers Association, and the League of Women Votes of Montana.

At present, there are three judges—in the First Judicial District (Lewis and Clark and Broadwater Counties), the Eighth Judicial District (Cascade County), and the Eighteenth Judicial District (Gallatin County)—who were appointed by the previous Montana Governor in 2020, after careful compliance with the nominating procedures of § 3-1-1001, MCA, *et seq.* They are subject to the approval of the Montana Senate. The pendency of these three appointments and the fact that the Senate has not yet confirmed makes this Petition all the more urgent.

The passage of SB 140 threatens an imminent disruption of Montana's judicial appointment process. If SB 140 is not immediately overturned, the next judicial replacement, at the whim of Montana's Governor, will be constitutionally suspect, probably political, and inimical to the interest of all Montanans in a competent, independent judiciary. Given the palpable unconstitutionality of SB 140 and the imminent threat to the public's interest in independent judicial selection, the need for this Court's exercise of original jurisdiction is compelling.

#### **THE PARTICULAR LEGAL QUESTIONS EXPECTED TO BE RAISED**

Whether SB 140 is unconstitutional under Article VII of the Montana Constitution.

## THE ARGUMENTS AND AUTHORITIES FOR ACCEPTING JURISDICTION AND PERTAINING TO THE MERITS

### A. THE AUTHORITIES FOR ACCEPTING JURISDICTION.

This Court held in *Hernandez v. Bd. of County Commissioners*, 2008 MT 251,

¶9, 345 Mont. 1, 189 P.3d 630:

Assumption by this Court of original jurisdiction over a declaratory judgment action is proper when: (1) constitutional issues of major statewide importance are involved; (2) the case involves purely legal questions of statutory and constitutional construction; and (3) urgency and emergency factors exist making the normal appeal process inadequate. *Montanans for Coal Trust*, ¶ 27 (citing *Butte-Silver Bow Local Govern. v. State*, 235 Mont. 398, 401-402, 768 P.2d 327, 329 (1989); *State ex rel. Greely v. Water Court of State*, 214 Mont. 143, 691 P.2d 833 (1984).... All of these criteria are met here.

See also *White v. State*, 233 Mont. 81, 84, 759 P.2d 971, 973 (1988); *Confederated*

*Salish & Kootenai Tribes of the Flathead Reservation v. Clinch*, 1999 MT 342, ¶¶ 5-9,

297 Mont. 448, 992 P.2d 244; *Mont. Assoc. of Counties, et al. v. Montana*, 2017 MT

267, ¶ 2, 389 Mont. 183, 404 P.3d 733.

In *Keller v. Smith*, 170 Mont. 399, 401, 553 P.2d 1002 (1976), this Court accepted original jurisdiction over the petition of Robert S. Keller, who alleged that certain statutory sections were unconstitutional under the very constitutional section involved in the present case, Article VII, § 8. Keller was a “voter, resident and taxpayer of Flathead County, Montana.” This Court also accepted original



jurisdiction regarding voter challenges to judicial election laws in *Jones v. Judge*, 176 Mont. 251, 577 P.2d 846 (1978) and *Yunker v. Murray*, 170 Mont. 427, 554 P.2d 285 (1976), and accepted supervisory control in *State ex rel. Racicot v. Dist. Ct. of the First Jud. Dist.*, 243 Mont. 379, 794 P.2d 1180 (1990).

In *Hernandez*, this Court considered on original jurisdiction the constitutionality of a legislative measure that authorized Montana counties to establish justice courts as justice's courts of record. *Id.* ¶ 2. This Court held that emergency factors "exist in this case that would make the normal appeal process inadequate," stating:

Before an appeal from a justice court judgment presenting this issue could reach this Court, potentially hundreds of misdemeanor criminal cases would be resolved in the justice's courts of record throughout Montana. If Petitioner's claims were ultimately sustained, any judgments of conviction would be undermined and the prosecutions likely lost due to the running of the statute of limitations....

*Id.* ¶ 10. This Court held that to require an action to be brought in a county which had created such court "would needlessly spawn litigation and any further delay would create confusion as to the administration of justice." *Id.*

The present case involves issues of statewide importance because the Judicial Nomination Commission reviews all persons who apply to fill vacancies on the Montana Supreme Court as well as all applicants to fill vacancies in the district

courts throughout Montana. This case solely involves questions of statutory and constitutional construction.

The normal appeal processes are inadequate. Because SB 140 purports to be effective immediately, any new judicial vacancy may be filled virtually immediately through a process that lacks the vital politically-neutralizing impact of the Judicial Nomination Commission with its procedures to ensure public participation and competence.

Imagine if a Justice of the Montana Supreme Court resigns and the Governor appoints a replacement. There is no viable process for challenging such appointment in the lower courts, nor would there be a viable “normal” appeal process.

*Hernandez*’s holding applies here. Failure by this Court to exercise original jurisdiction would consign the present challenge to a district court, which would be in an impossible position, having to rule on whether a fellow judicial officer had been appointed in a constitutional manner. In the meantime, such judicial officer would presumably serve, consider numerous cases, and issue rulings which, as in *Hernandez*, might be considered suspect because of the constitutional impropriety of the appointment of such judge. Thus, this case presents an almost identical

situation to the one this Court thought appropriate for original jurisdiction in *Hernandez*.

**B. THE ARGUMENTS PERTAINING TO THE MERITS.**

*There is clear agreement on the part of all that we do need good judges.... The question is how to recruit them.*

- Delegate Jim Garlington  
Const. Con. Tr. Vol. IV, p. 1032.

**1. SB 140 is unconstitutional under the plain language of Montana's Constitution.**

Montana's 1889 Constitution provided that judicial vacancies "shall be filled by **appointment**, by the governor of the State." Mont. Const. (1889), art. VIII, § 34 (emphasis added). That was repealed in 1972.

Article VII, § 8(2) now<sup>2</sup> provides: "[T]he governor shall appoint a replacement from **nominees** selected in the manner provided by law." The meaning of the word "nominees" (plural) is obvious. It is clear that the Governor may not make an "appointment" *sua sponte*. The plain language evinces a clear intent of the framers that the Governor is to receive a list of "nominees" from some other source.

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<sup>2</sup> The 1972 language was slightly different, providing that "the governor shall nominate a replacement from a list of nominees selected...." The 1972 version was modified by constitutional amendment in 1992. Amd. Const. Amend. No. 22 (approved November 3, 1992).

2. **The plain language is supported by the Voter Information Pamphlet.**

This Court, in *Keller, supra*, cited the “Convention notes” on the very provision here in question, Article VII, § 8, stating: “Perhaps the best indication of the intent of the framers is found in the explanatory notes as prepared by the Constitutional Convention.” *Keller*, 170 Mont. at 407.

These “Convention notes” (Appendix B) were used in 1972 to inform the voters on the upcoming vote to ratify the new Constitution. That document describes the judicial vacancy feature of Article II, § 8 as follows:

When there is a vacancy (such as death or resignation) the governor appoints a replacement but **does not have unlimited choice** of lawyers as under 1889 constitution. **He must choose his appointee from a list of nominees** and the appointment must be confirmed by the senate – a new requirement.

Appendix B, p. 13 (emphasis added).<sup>3</sup> This confirms the intent that the Governor does not have plenary power to fill a vacancy—he must choose his appointee “from a list of nominees[.]”

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<sup>3</sup> In *State ex rel. Mont. Citizens for the Preservation of Citizens’ Rights v. Waltermire*, 227 Mont. 85, 89–90, 738 P.2d 1255, 1257–58 (1987), this Court stressed the importance of the Voter Information Pamphlet in statewide elections, noting: “It is in the voter information pamphlet that a glaring error as to the text of the proposal was committed[.]” and “[i]t is elementary that the voters not be misled to the extent they do not know what they are voting for or against.”

At a committee hearing on SB 140, opponents pointed out the constitutional defect—absence of a list of nominees carefully vetted by an independent source. The majority then made a crude attempt to address this problem. It added an amendment providing that any applicant for a judicial vacancy who self-nominates will be considered a “nominee” if the applicant “receives a letter of support from at least three adult Montana residents....” SB 140, § 4(2) (Appendix C, “Amendment – 1st Reading”).

Such artful wordplay does not cure the constitutional defect. The entire thrust of the Montana Constitution of 1972 was to replace the Governor’s sole discretion to fill vacancies with a system that provided a list of qualified nominees derived through an independent vetting process.

**3. Legislative implementation in the immediately ensuing Legislative Session of 1973 confirms the plain meaning.**

When the Montana Legislature convened in 1973, it enacted legislation (SB 28) to implement Article VII, § 8. That measure created the Judicial Nomination Commission. SB 28’s title speaks volumes: “An Act Providing for the Filling of Vacancies in the Office of District Court Judge and Supreme Court Justice to **Comply with Article VII, Section 8 of the 1972 Montana Constitution,** Repealing Sections 93-209, 93-220, 93-309, RCM 1947” (emphasis added).

The actions of the Legislature in implementing the new Constitution were found to be persuasive evidence of the framers' intent in *Keller, supra*. The Court said: "Here, the Legislature had no difficulty in determining that the intent of the framers of the 1972 Montana Constitution was that all unopposed incumbent judges and justices were subject to approval or rejection by the voters." 170 Mont. at 407. Noting the implementing legislation, the Court observed:

It is presumed that the Legislature acted with integrity and an honest purpose to keep within constitutional limits. Sutherland Statutory Construction, 4th Ed., Vol. 2A, Sec. 45.11, p. 33, and cases cited therein.

*Id.* The Court then noted, and relied on, the "principle of reasonableness in construction of an ambiguous constitutional provision," finding the law "favors rational and sensible construction." *Id.* (citing 2A Sutherland, *Statutory Construction* § 45.12, p. 37 (4th ed.)).

In the present case, the only reasonable interpretation of the word "nominees" is that it means what it says—and it certainly doesn't mean that any person can self-nominate or that the Governor can make his own "nominees" and then select from his own list of "nominees."

In short, the Commission was specifically designed to limit the choice of the Governor so that the executive would not have unconstrained control of the

nomination process. That is consistent with debate at the Convention and the 1972 Voter Information Pamphlet sent as part of the ratification process.

**4. The Constitutional Convention debates confirm the plain meaning.**

Legislative history may be considered if there is any arguable ambiguity in the language of the constitutional provision. In determining the meaning of provisions of the Montana Constitution of 1972, the framers' intent is controlling. *Keller*, 170 Mont. at 404. Because *Keller* found the term "incumbent" in the text of Article VII, Section 8 arguably ambiguous, it turned to the Constitutional Convention and the legislative history of the provision and the enabling legislation to determine the framers' intent, although advising caution because the framers' intent is not always monolithic. *Id.* at 406, 408-409; *see also Racicot*, 273 Mont. at 386-87.

It is clear from the Constitutional Convention debates on the judiciary article that the framers clearly envisioned such nominees would be made by a separate, independent "committee" or "commission."

At the 1972 Constitutional Convention, there were serious differences of opinion on whether Montana judges should be popularly elected or selected under

what was known as the “Missouri Plan,” with a merit-based selection process.<sup>4</sup>

What emerged was neither the Missouri Plan’s merit-based approach (the minority report) or solely popular election (the majority report), but a hybrid proposal by Delegate Melvin.

The majority proposal supported election of judges. On vacancies, the majority proposal provided that Supreme Court vacancies will be filled by the Governor and district court vacancies by the relevant county commissioners. Const. Con. Tr. Vol. 1, p. 491. Regarding judicial vacancies, the minority disagreed, stating:

The minority is not satisfied with the current process of unlimited gubernatorial appointive power of judges.... Therefore, we have limited the governor’s nomination to those nominees **selected by a committee**, created by and dependent upon the legislature. This system, we believe, accords an effective check and balance.

*Id.* at 521 (emphasis added).

The framers ultimately adopted this minority proposal on filling vacancies.<sup>5</sup> The framers declined to spell out the minutiae of the nomination process because

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<sup>4</sup> See *Racicot*, 243 Mont. at 387–88; see also Anthony Johnstone, *A Past and Future of Judicial Elections: The Case of Montana*, 16 J. App. Prac. and Process 47, 61, 63–67 (2015); Jean M. Bowman, *The Judicial Article: What Went Wrong*, 51 Mont. L. Rev. 492, 497–502 (1990).

<sup>5</sup> The majority proposal on popular elections was ultimately accepted, although its codification into the Constitution was muddled. That confusion was clarified with



they felt this was a matter better left to the Legislature. For that reason, they used the language “a nomination process as established by law.”

Although the Constitution left the details to the Legislature,<sup>6</sup> the transcripts leave no doubt that the framers envisioned a separate “commission” to evaluate and nominate the “nominees.” In describing this approach, Delegate Berg described this proposal as one of “merit election,” stating:

That it would create a committee—that is, committee would be created by the Legislature—which would submit nominees, and that means more than one, to the governor, and the governor would then nominate that one from those names.

Const. Con. Tr. Vol. IV, p. 1085. Delegate Melvin summarized his (successful) amendment as follows:

Actually, the proposal before you would accommodate times when there are vacancies in the office of District Court judges or Supreme Court judges by putting into effect the **nomination by the committee**, then the appointment by the Governor, confirmation by the Senate.

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the 1992 amendment to adopt Article VII, § 8(1), Mont. Const., which provides: “Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.”

<sup>6</sup> When Article VII, § 8 was modified by voter initiative in 1992, the Voter Information Pamphlet stated: “The governor is limited to appointments from a list recommended by a Judicial Nominating Committee which is required by the Constitution, and whose membership and rules are established by the legislature.” “Rebuttal of argument supporting Constitutional Amendment 22,” at p. 6 (Appendix D).

*Id.* at 1112 (emphasis added).

The debates of the framers are replete with references to a nominating “committee” or “commission.” Many delegates opposed the Melvin proposal, and more supported it. It was clear, however, that **all** delegates understood that the proposal envisioned a separate “commission/committee” to be established to select a list of “nominees.” *See, e.g., id.* at 1090 (Hanson, expressing concern about whether a fair committee that was free from outside control could be selected); *id.* at 1090–91 (Holland: “How can we guarantee that this commission—the ones that name the candidates—won’t be dominated by some special interest group?”); *id.* at 1093 (Davis: “You can say what you want, any select committee’s going to be a committee of the establishment. There’s just no other way to get around it...,” but supporting the Melvin compromise.); *id.* at 1094 (Berg: “I suggest to you that that committee, committing two to three or four names to the Governor, is going to get the Governor a fairly wide selection of nominees, and he can select...whom he wants—from that committee.”); *id.* at 1096 (McKeon: “I’m afraid, Mr. Chairman, that any committee, whether it be select, blue ribbon or whatnot, will not be a committee whose interests are the interests of the people....”); *id.* at 1104 (Joyce: “[N]o matter how astute or how brilliant or how able or how fairly the Legislative

Assembly may set up a commission to select these nominees, you cannot take the human element out of the situation.”).

In sum, there were delegates who opposed the “commission” approach, preferring some other means of filling vacancies, and delegates who supported that approach—but there can be no doubt that the system under discussion was one whereby a **commission** would supply the lists of nominees to the Governor. That proposal passed and was enacted into law, thus supporting the plain meaning of Article VII, § 8.

Finally, Delegate Aronow spoke passionately about the vital importance of judicial independence:

[I]t is dreadfully important...that the courts be made independent, be made strong, be made unafraid to act for fear of reprisal from one of the other branches of the government. And it is only in that manner that we can guarantee to our people the liberties that we wish them to have.

\*\*\*\*

The courts should also be made strong enough and independent enough that they have no fear of striking down an unconstitutional legislative act. They should have no fear of saying to the Executive branch of government, “You’ve gone too far: you’ve impugned upon the rights of individuals.”

Const. Con. Tr. Vol. IV, pp. 1069–70.

Because SB 140 is contrary to Article VII of the 1972 Montana Constitution, it must be found unconstitutional.

### CONCLUSION

Petitioners request that this Court accept original jurisdiction, enjoin any acts that might be taken in furtherance of SB 140 pending full consideration by this Court, direct such briefing as the Court deems suitable, and, after due consideration, determine SB 140 to be unconstitutional.

Respectfully submitted this 17th day of March, 2021.

EDWARDS & CULVER

/s/ A. Clifford Edwards  
A. Clifford Edwards

and

GOETZ, BALDWIN & GEDDES, P.C.

/s/ James H. Goetz  
James H. Goetz

*Attorneys for Petitioners*

### **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Equity Text A text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word, excluding the cover page, Certificate of Service, and Certificate of Compliance, is 3,993 words, not in excess of the 4,000-word limit.

By: /s/ James H. Goetz  
James H. Goetz

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served upon the following parties, by the means designated below, this 17th day of March, 2021.

<input checked="" type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Via fax: <input checked="" type="checkbox"/> E-mail: contactdoj@mt.gov	Austin Knudsen Office of the Montana Attorney General P.O. Box 201401 Helena, MT 59620
<input type="checkbox"/> Certified U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Via fax: <input checked="" type="checkbox"/> E-mail: wyatt.lapraim@mt.gov	Greg Gianforte Office of the Governor P.O. Box 200801 Helena, MT 59620

By: /s/ James H. Goetz  
James H. Goetz

# Appendix A

## Senate Bill 140

CHAPTER # \_\_\_\_\_

SENATE BILL NO. 140

INTRODUCED BY K. REGIER, J. ELLSWORTH.

AN ACT GENERALLY REVISING LAWS RELATED TO CERTAIN JUDICIAL APPOINTMENTS; PROVIDING A DIRECT APPOINTMENT PROCESS FOR THE GOVERNOR TO APPOINT DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES TO FILL JUDICIAL VACANCIES; REPEALING THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; REPEALING SECTIONS 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1004, 3-1-1005, 3-1-1006, 3-1-1007, 3-1-1008, 3-1-1009, 3-1-1010, 3-1-1011, 3-1-1012, 3-1-1013, AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATE OF MONTANA

FILED

March 16, 2021

Secretary of State

By Angie McFarlane

This bill was received by the Governor

this 11<sup>th</sup> day

of March, 2021.

By Tony Schibner

Approved March 16, 2021.

[Signature]  
Governor





AN ACT GENERALLY REVISING LAWS RELATED TO CERTAIN JUDICIAL APPOINTMENTS; PROVIDING A DIRECT APPOINTMENT PROCESS FOR THE GOVERNOR TO APPOINT DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES TO FILL JUDICIAL VACANCIES; REPEALING THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; REPEALING SECTIONS 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1004, 3-1-1005, 3-1-1006, 3-1-1007, 3-1-1008, 3-1-1009, 3-1-1010, 3-1-1011, 3-1-1012, 3-1-1013, AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Judicial vacancy -- notice.** (1) (a) Upon receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in [sections 1 through 7], to fill any vacancy on the supreme court or the district court.

(b) The chief justice of the supreme court shall appoint a candidate to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of a judicial resignation has been announced, the governor shall notify the public, including media outlets with general statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

**Section 2. Investigation -- qualifications for appointment.** (1) The governor may authorize investigations concerning the qualifications of eligible persons.

(2) A lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may apply to the governor for consideration, or application may be made by any person on

the lawyer's behalf.

**Section 3. Applications.** An eligible person may apply for the vacant judicial position by completing and submitting to the governor an original signed paper application and an electronic copy of the original application by the deadline date. The deadline date must be within 40 days of the governor's receipt of the notice of vacancy provided by the chief justice.

**Section 4. Public comment.** (1) The governor shall establish a reasonable period for reviewing applications and interviewing applicants that provides at least 30 days for public comment concerning applicants.

(2) Each applicant who has the qualifications set forth by law for holding judicial office and who receives a letter of support from at least three adult Montana residents by the close of the public comment period provided for in subsection (1) must be considered a nominee for the position.

(3) The total time from receipt of notice of a vacancy until appointment may not exceed 100 days.

(4) The application, public comment, and any related documents are open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

**Section 5. Appointments.** (1) The governor, or the chief justice of the supreme court for the office described in 3-7-221, shall make an appointment within 30 days of the close of the public comment period from the list of applicants.

(2) For purposes of Article VII, section 8, of the Montana constitution, the governor must be construed to receive the names of the nominees at the close of the public comment period provided for in [section 4].

(3) If the governor fails to appoint within 30 days of the close of the public comment period provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants within 30 days of the governor's failure to appoint.

**Section 6. Senate confirmation -- exception -- nomination in interim -- appointment contingent on vacancy.** (1) (a) Except as provided in subsection (2):

- (i) each appointment must be confirmed by the senate; and
  - (ii) an appointment made while the senate is not in session is effective until the end of the next special or regular legislative session.
- (b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed, the office is vacant and another selection of nominees and appointment must be made.
- (2) The following appointments are not subject to senate confirmation, and there must be an election for the office at the general election immediately preceding the scheduled expiration of the term or following the appointment, as applicable:
- (a) an appointment made while the senate is not in session if the term to which the appointee is appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to the candidate filing deadlines for the office; and
  - (b) an appointment made while the senate is not in session if a general election will be held prior to the next legislative session and the appointment is made prior to the candidate filing deadline for primary elections under 13-10-201(7), in which case the position is subject to election at the next primary and general elections.
- (3) A nomination is not effective unless a vacancy in office occurs.

**Section 7. Duration of appointment -- election for remainder of term.** (1) If an appointment subject to [section 5] is confirmed by the senate, the appointee shall serve until the appointee or another person elected at the first general election after confirmation is elected and qualified. The candidate elected at that election holds the office for the remainder of the unexpired term.

(2) If an incumbent judge or justice files for election to the office to which the judge or justice was elected or appointed and no other candidate files for election to that office, the name of the incumbent must nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve until the day before the first Monday of January following the election, at which time the office is vacant and another appointment must be made.

**Section 8.** Section 2-15-1707, MCA, is amended to read:

**"2-15-1707. Office of workers' compensation judge -- allocation -- appointment -- salary. (1)**

There is the office of workers' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by ~~Title 3, chapter 1, part 10~~ sections 1 through 7, for the appointment of supreme court justices or district court judges. A vacancy must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but must be accorded retirement benefits under the public employees' retirement system."

**Section 9.** Section 3-7-221, MCA, is amended to read:

**"3-7-221. Appointment of chief water judge and associate water judge -- terms of office. (1)** The chief justice of the Montana supreme court shall appoint a chief water judge as provided in ~~Title 3, chapter 4, part 10~~ sections 1 through 7. The chief justice of the Montana supreme court may appoint an associate water judge ~~as provided in Title 3, chapter 1, part 10.~~

(2) To be eligible for the office of chief water judge or associate water judge, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

(3) The term of office of the chief water judge and the associate water judge is 4 years, subject to continuation of the water divisions by the legislature."

**Section 10.** Section 39-71-2901, MCA, is amended to read:

**"39-71-2901. Location of office -- court powers -- withdrawal -- substitution -- vacancy. (1)** The

principal office of the workers' compensation judge must be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (7).

(4) If the office of the workers' compensation judge becomes vacant and before the vacancy is permanently filled pursuant to ~~Title 3, chapter 1, part 10~~ sections 1 through 7, the chief justice of the Montana supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

(5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90 days after appointment under this subsection. This subsection applies only if the workers' compensation judge is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace the judge under ~~Title 3, chapter 1, part 10~~ sections 1 through 7, may not be instituted.

(6) A substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies. A substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When a substitute judge

has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

(7) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal by the judge or a vacancy and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years."

**Section 11. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 3-1-1001. Creation, composition, and function of commission.
- 3-1-1002. Staggered terms of members.
- 3-1-1003. Vacancies.
- 3-1-1004. No compensation -- travel expenses.
- 3-1-1005. Commission members not eligible for judicial office.
- 3-1-1006. Secretary -- election and duties.
- 3-1-1007. Commission to make rules -- confidentiality of proceedings.
- 3-1-1008. Quorum.
- 3-1-1009. Investigation by commission -- application for consideration.
- 3-1-1010. Lists submitted to governor and chief justice -- report on proceedings.
- 3-1-1011. Governor or chief justice of the supreme court to nominate from list.
- 3-1-1012. When governor fails to nominate.
- 3-1-1013. Senate confirmation -- exception -- nomination in the interim -- appointment contingent on vacancy.
- 3-1-1014. Duration of appointment -- election for remainder of term.

**Section 12. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1 through 7].

**Section 13. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 140, originated in the Senate.

---

Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.



SENATE BILL NO. 140

INTRODUCED BY K. REGIER, J. ELLSWORTH

AN ACT GENERALLY REVISING LAWS RELATED TO CERTAIN JUDICIAL APPOINTMENTS; PROVIDING A DIRECT APPOINTMENT PROCESS FOR THE GOVERNOR TO APPOINT DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES TO FILL JUDICIAL VACANCIES; REPEALING THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; REPEALING SECTIONS 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1004, 3-1-1005, 3-1-1006, 3-1-1007, 3-1-1008, 3-1-1009, 3-1-1010, 3-1-1011, 3-1-1012, 3-1-1013, AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## Appendix B

### Proposed 1972 Constitution Official Text with Explanation

THIS IS THE OFFICIAL PUBLICATION OF THE 1972 CONSTITUTION  
PROPOSED BY THE 1971-1972 MONTANA CONSTITUTIONAL CONVENTION  
AS ADOPTED ON MARCH 22, 1972

ITS PUBLICATION IS REQUIRED BY CHAPTER 296, 1971 LAWS OF MONTANA, AS AMENDED,  
AND MADE POSSIBLE BY AN APPROPRIATION BY THE MONTANA LEGISLATURE

*Proposed*  
**1972 CONSTITUTION**  
*for the*  
**STATE of MONTANA**  
**OFFICIAL TEXT WITH EXPLANATION**

*Submitted by the*  
**Montana Constitutional Convention**

**THIS PROPOSED CONSTITUTION WILL BE  
SUBMITTED TO THE VOTERS OF MONTANA AT A  
SPECIAL ELECTION ON JUNE 6, 1972**



STATE DOCUMENTS COLLECTION

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**TABLE OF CONTENTS**

	PAGE		PAGE
SAMPLE BALLOT	2	ARTICLE IX—ENVIRONMENT AND NATURAL RESOURCES	14
HISTORY AND HIGHLIGHTS	3	ARTICLE X—EDUCATION AND PUBLIC LANDS	15
PROPOSED CONSTITUTION OF 1972 WITH COMMENTS	5	ARTICLE XI—LOCAL GOVERNMENT	16
PREAMBLE	5	ARTICLE XII—DEPARTMENTS AND INSTITUTIONS	16
ARTICLE I—COMPACT WITH THE UNITED STATES	5	ARTICLE XIII—GENERAL PROVISIONS	17
ARTICLE II—DECLARATION OF RIGHTS	6	ARTICLE XIV—CONSTITUTIONAL REVISION	17
ARTICLE III—GENERAL GOVERNMENT	8	TRANSITION SCHEDULE	18
ARTICLE IV—SUFFRAGE AND ELECTIONS	8	ADOPTION SCHEDULE	19
ARTICLE V—THE LEGISLATURE	9	DELEGATES	21
ARTICLE VI—THE EXECUTIVE	10	DELEGATES AND OFFICERS OF THE CONSTITUTIONAL CONVENTION	22
ARTICLE VII—THE JUDICIARY	12		
ARTICLE VIII—REVENUE AND FINANCE	13		

## EXPLANATION OF THE BALLOT

THIS BALLOT HAS FOUR SECTIONS. IN THE FIRST SECTION THE VOTER WILL HAVE THE OPPORTUNITY TO VOTE "FOR" OR "AGAINST" THE PROPOSED 1972 CONSTITUTION.

THEREAFTER FOLLOW THREE SEPARATELY SUBMITTED CONSTITUTIONAL PROPOSITIONS. THE VOTER MAY SELECT EITHER ALTERNATIVE ON PROPOSITION NO. 2, THE VOTER MAY VOTE FOR OR AGAINST EACH OF THE THIRD AND FOURTH PROPOSITIONS.

THE THREE ALTERNATE ISSUES DO NOT AFFECT THE PRESENT CONSTITUTION. IF ADOPTED BY A MAJORITY OF THOSE VOTING AT THE ELECTION THEY WILL BECOME EFFECTIVE ONLY IF THE PROPOSED CONSTITUTION IS ADOPTED.

THE VOTER SHOULD VOTE ON ALL FOUR QUESTIONS REGARDLESS OF WHETHER HE VOTES FOR OR AGAINST THE PROPOSED CONSTITUTION.

## SAMPLE BALLOT

### OFFICIAL BALLOT

(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.)

#### 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.

# HISTORY AND HIGHLIGHTS OF PROPOSED CONSTITUTION

## HISTORY

Montana's first constitutional convention was called in 1886, two years after Montana became a Territory. Fifty-five delegates met for six days and adopted a constitution, the only copy of which was lost, so it was never printed or presented to the voters for ratification.

There were 45 delegates to Montana's second constitutional convention held in 1884 and lasting for 27 days. A constitution, based largely on the California and Colorado Constitutions, was adopted and ratified by the people but Montana's bid for statehood failed.

Montana's present constitution was drafted by the 75 delegates to the third constitutional convention which met in 1889 for 45 days. The constitution was adopted on August 17, 1889 and ratified by the people on October 1, 1889. Montana became a state on November 8, 1889.

The 1889 constitution contains approximately 28,000 words and has been amended 37 times. (The proposed constitution contains approximately 11,200 words.)

In 1967 the Legislature requested the Legislative Council to study the 1889 constitution to determine if it was adequately serving the needs of the people. After two years of study the 16 member council concluded that there was need for substantial revision of the constitution and recommended creation of a constitutional revision commission. The 1969 legislature followed this recommendation and created the 18 member Constitution Revision Commission composed of four members appointed by the Speaker of the House, four appointed by the Senate Committee on Committees, four appointed by the Governor, and four appointed by the Supreme Court. The 1969 Legislature also referred the question of calling a constitutional convention to the people.

After a study of the problem the Constitution Revision Commission concluded that a Constitutional Convention would be the best way to change the 1889 constitution and in November 1970 the Montana voters agreed by approving a convention by a vote of 133,492 to 71,443.

The 1971 Legislature passed enabling legislation calling the convention and created a 18 member Constitutional Convention Commission which was appointed in the same manner as the

Constitution Revision Commission. The new Commission conducted research and compiled information for the Convention delegates.

On November 2, 1971, 100 delegates were elected from 23 districts to the 1971-1972 Constitutional Convention. A three day organizational session was held beginning November 29, 1971, the main session convened on January 17, 1972. After meeting for 54 working days the Convention adjourned sine die on March 24, 1972.

There were ten substantive and four procedural committees appointed by the convention president and all proposals were considered in committee before being debated and voted upon by the Convention. The proposed constitution was adopted by the Convention on March 22, 1972. Although the votes on individual articles of the constitution were not unanimous the vote on the complete constitution was. All 100 delegates signed the proposed constitution.

The following summary briefly outlines some of the more significant provisions of the proposed constitution which will be voted on by the people of Montana on June 6, 1972.



## HIGHLIGHTS

### Article II: DECLARATION OF RIGHTS

#### Retained From Present Constitution

No rights protected by the present Montana Declaration of Rights are deleted or abridged in the proposed Constitution. These include the freedom of speech, assembly and religion; the right of self government; the right to acquire, possess and protect property; the right to suffrage; right to bail, and right to a trial by jury, among others. In addition, the present Montana provision guaranteeing the right to keep and bear arms is retained in total.

#### New Provisions Added

In addition to retention of all rights protected by the present Constitution, the proposed document would protect the:  
Right to a clean and healthful environment, Section 2.  
Right to pursue basic necessities, Section 3.  
Right to know (including the right to attend meetings of public agencies and to examine the agency's records), except when the demand of individual privacy clearly exceeds the merits of public disclosure, Section 9.  
Right of privacy, Section 10.  
Right to sue the state and its subdivisions for injury to person or property, Section 18.  
Right of participation. Governmental agencies must allow citizen access to the decision making institutions of state government, Section 8.  
Right against discrimination in the exercise of civil and political rights, Section 4.  
Rights of persons under the age of majority (lowered to 18), Sections 14 and 15.

### Article III: GENERAL GOVERNMENT

#### Retained From Present Constitution

Rights of the people to the referendum and initiative, Sections 4 and 5.  
The separation of powers principle, Section 1.

#### New Provisions Added

Gambling. People given choice whether to retain a complete constitutional prohibition against all forms of gambling or whether legislature should have power to legalize certain forms of gambling, Section 9.

### Article IV: SUFFRAGE AND ELECTIONS

#### Retained From Present Constitution

Certain election safeguards, such as protecting voters from police harassment, Section 6.

#### New Provisions Added

Voting age lowered to 18, Section 2.  
Right to secret ballot assured, Section 1.  
Legislature, in its discretion, may provide for a system of poll booth registration, Section 3.

### Article V: THE LEGISLATURE

#### Retained From Present Constitution

Voters are given the opportunity to retain a two house (bicameral) legislature, as is now in effect.  
Terms of office remain at four years for senators and (in a bicameral body) two years for house members, Section 3.  
Certain limits on legislative power are retained, such as limitations on special laws and requirements that the title of a bill correctly reflect its contents, Section 11.

#### New Provisions Added

Voters are given the opportunity to adopt a one-house (unicameral) legislature. If they do so, they automatically will vote in 1980 on whether to continue the bicameral system, Section 13.  
Legislators will be elected from single-member districts, Section 14.  
The legislature will be reapportioned by a special commission of five citizens, to whom the legislature may submit recommendations, Section 14.  
The legislature will be a continuous body, meeting in regular annual sessions of not more than 60 legislative days. A legislature may extend the session length for any necessary legislation, Section 6.  
Either the governor or a majority of the legislators may call the legislature into special session, Section 6.  
All sessions of the legislature and of its committees shall be public; all votes on substantive matters shall be recorded and made public, Sections 10 and 11.

Candidate for legislature must be resident of state for one year and resident of county or district for six months preceding date of election, Section 4.

### Article VI: THE EXECUTIVE

#### Retained From Present Constitution

Elective status of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction and auditor, Section 1.  
Number of principal executive departments limited to 20, Section 7.  
Governor's pardon and military powers, Sections 12 and 13.

#### New Provisions Added

Governor and lieutenant governor run as a team in both primary and general election; lieutenant governor freed of duty of presiding over the Senate so that he may take a more active, fulltime role in the executive branch, Section 2.  
Constitutional status of Board of Pardons; Board of Examiners, State Examiner, Board of Prison Commissioners and State Treasurer eliminated. (No mention in proposed constitution).  
Procedures for determining gubernatorial disability outlined, Section 8.  
Changes made in the governor's veto power. He no longer would be able to veto proposed constitutional amendments, on the other hand, he would be granted the "amendatory veto", under which he could return a bill to the legislature with proposed amendments, Section 10.  
Pocket veto eliminated, Section 10.  
Lieutenant governor not to act as governor until the Governor out of state 45 days or unless the Governor authorizes lieutenant governor in writing to act as Acting Governor, Section 14.  
Clarifies method of filling vacancies in executive offices, Section 8.  
Lowers qualification regarding age of Governor, Lieutenant Governor from 30 to 25, Section 3.  
Requires 5 years actual practice for Attorney General, Section 3.

## Article VII THE JUDICIARY

Returned From Present Constitution  
Supreme Court jurisdiction and district court criminal jurisdiction Sections 2 and 4

Judicial districts Section 6

Three-level court system, including justice of the peace courts, Section 1

Election of all judges Section 8

New Provisions Added

Method of filling vacancies: If a district or supreme court judge resigns or dies, the governor must select a replacement from a list of candidates as provided by law who must be confirmed by the senate Section 8

Merit retention of judges: If a judge in office decides to run for reelection but has no opponents for the office, his name is placed on the ballot for the electorate to approve or reject Section 8

Terms of office for supreme court increased from six to eight years; district court terms increased from four to six years; justice of the peace terms increased from two to four years Section 7. The legislature is empowered to increase membership of the supreme court to seven, Section 3

Judicial standards commission: Added to allow citizens to bring complaints about judges to an independent commission to investigate and recommend removal or suspension of the judge in question to the supreme court Section 11

Chief of supreme court no longer a constitutional officer, but mention in proposed constitution

Number of justices of peace restricted to one per county, sales one of justices of peace provided by legislature, Section 5

## Article VIII REVENUE AND FINANCE

Requirement that taxes must be levied by general law for public purpose, Section 1

Provision providing that the state shall never surrender or contract away its taxing power, Section 2

Provision against diversion of gasoline tax and other highway revenue to use for other purposes upon approval of three-fifths of the membership of each house, Section 6

New Provisions Added

Responsibility for systematic property appraisal, assessment and equalization placed at state level, details of the program left to the legislature, Section 3

Local debt limit to legislative determination. The present prohibition against state financial aid to local government units eliminated, Section 10

The legislature is given increased latitude in determining what property should or should not be granted tax-exempt status. State debt may be authorized by either a two-thirds vote of each house of the legislature or by a majority of the people voting on the issue, Section 6

The legislature is charged with strict accountability and proper investment of state funds, with some limitation on investment of public school money, Sections 12 and 13

The legislature must provide for an independent appeal procedure for taxpayer grievances, Section 7

## Article IX ENVIRONMENT AND NATURAL RESOURCES

Retained From Present Constitution  
No provisions retained because this is a new article. Several retained provisions in various articles of present constitution are retained in other articles of the proposed constitution.

## New Provisions Added

The state and each citizen are directed to maintain and improve a clean and healthful environment; the legislature is directed to provide adequate remedies to protect the environment, Section 1

All land divested by the taking of natural resources must be reclaimed as provided by law, Section 2

Water rights are given constitutional recognition; all water is declared to be the property of the state for the use of its people, Section 3

The legislature is directed to provide for identification and preservation of the state's cultural and historical resources, Section 4

## Article X EDUCATION AND PUBLIC LANDS

Retained From Present Constitution  
Prohibition against legislature and other governmental units from spending money for sectarian purposes. (The revision specifies that the prohibition does not apply to federal funds provided expressly for distribution to non-public education, Section 6)

Constitutional protection of investment of public school funds and constitutional status for the Board of Land Commissioners. Constitutional direction for holding and disposing of public lands, Sections 2, 3, 4 and 11

The present provision against discrimination in education retained and substantially broadened, Section 7

New Provisions Added

Two distinct boards: one for higher education and one for public education are created, differing from the present situation where one board is responsible for all education matters. The two boards jointly form a third state board of education, which is responsible for long range planning, policy, and program coordination, and evaluation of the state's educational system, Section 9

The Board of Regents of Higher Education is expressly given full power, responsibility, and authority to control the Montana University System, Section 9

Local school trustees are guaranteed "supervision and control" over local schools, Section 9

The "distinct and unique cultural heritage" of American Indians receives constitutional recognition; one of the state's educational goals is stated to be preservation of Indians' cultural integrity, Section 1

## Article XI LOCAL GOVERNMENT

Retained From Present Constitution  
Counties can be consolidated only with the approval of the residents of each county affected, Section 2

The legislature is directed to provide alternative forms of city and county or city-county consolidated government; such approval of local voters, Section 3

Counties which wish to retain the so-called "traditional" form of county government—three county commissioners and 10 other elected officials—are assured that they may do so, Section 3

It states the local voters wish to adopt a different system in their city or county, local government units will continue to have only those powers given them by the legislature, Section 3

New Provisions Added

Two or more counties may agree to elect one official to serve a multicounty area; in addition, offices within a county continue to be subject to consolidation, Section 3

The legislature is directed to provide procedures by which local self-government charters, Section 5

A new class of self-government powers is provided for those units which, with voter approval, have adopted their own charters or self-government form offered by the legislature. These units may exercise all powers except those prohibited by the constitution, state law or the local charter, Section 5

## Article XII DEPARTMENTS AND INSTITUTIONS

Retained From Present Constitution  
Constitutional Status of Department of Agriculture: Special review for livestock purposes, Section 1

Department of Labor and Industry, Section 2

A maximum of 8 hours is defined as a "regular day's work" in all industries except agriculture and stock raising; however, the legislature may redefine that maximum, Section 2

Public institutions and facilities shall be provided as the public good may require, including veterans' homes, Section 3

Special review on Agricultural Commodities

## Article XIII GENERAL PROVISIONS

Retained From Present Constitution  
Corporate charters shall be granted, modified, or dissolved pursuant to law, Section 1

Legislature is directed to enact liberal homestead and exemption laws, Section 9

Perpetuities are prohibited, except they may be allowed for charitable purposes, Section 9

New Provisions Added

Salary commission created to recommend compensation for judiciary and elected members of the legislative and executive departments, Section 3

The legislature is directed to provide for an office of consumer counsel to represent the public before the Public Service Commission. The office is to be funded by a special tax on the regulated companies, Section 2

The legislature is charged with providing protection and education against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations, Section 1

The legislature must provide for a code of ethics prohibiting conflicts of interest of state and local officers and employees, Section 1

## Article XIV CONSTITUTIONAL REVISION

Retained From Present Constitution

Referendums to amend the Constitution or to call a convention

New Provisions Added

Changing the constitution made easier: Amendments and constitutional conventions could be proposed by initiative petition from the people, as well as by action of the legislature. The present limit on the number of constitutional amendments on any one ballot would be removed. Sections 1, 2, 8, and 9

The question of whether to call a constitutional convention would automatically be submitted to the voters every 20 years, Section 1

## INTRODUCTION

THE PROPOSED 1972 CONSTITUTION OF THE STATE OF MONTANA APPEARS ON THIS AND THE FOLLOWING PAGES. THE OFFICIAL TEXT IS PRINTED IN BLACK. FOLLOWING EACH SECTION PRINTED IN BLUE IS INFORMATION COMPARING THE PROPOSED CONSTITUTION WITH THE CONSTITUTION OF 1889. THE PHRASE "1889 CONSTITUTION" MEANS THE 1889 CONSTITUTION AS AMENDED.



The  
**CONSTITUTION**  
of the  
**STATE OF MONTANA**

*As adopted by the Constitutional Convention March 22, 1972.*



## PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

*Preamble is new. The old Preamble is deleted.*



## ARTICLE I

### COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

*Makes it clear that the new constitution does not affect any agreements made with the United States Government when Montana first became a state.*

## ARTICLE II

# DECLARATION OF RIGHTS

### Section 1. POPULAR SOVEREIGNTY

All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Identical to 1889 constitution. Expresses the philosophy that government is founded on the will of the people and is for their good.

### Section 2. SELF-GOVERNMENT

The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

No change except in grammar. Gives Montanans the right to govern themselves and to determine their form of government.

### Section 3. INALIENABLE RIGHTS

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Revises 1889 constitution by adding three rights relating to environment, basic necessities, and health. The last sentence is also new and provides that in acquiring rights people have obligations.

### Section 4. INDIVIDUAL DIGNITY

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

New provision prohibiting public and private discrimination on race and political rights.

### Section 5. FREEDOM OF RELIGION

The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Revises 1889 constitution by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

### Section 6. FREEDOM OF ASSEMBLY

The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

No change except in grammar. Retains basic rights to assemble and to petition or protest for redress of grievances.

### Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS

No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Revises 1889 constitution by enlarging a citizen's freedom to express himself and allowing the truth to be given in evidence in slander as well as libel cases.

### Section 8. RIGHT OF PARTICIPATION

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

New provision creating a right of the people to participate in the decision making process of state and local government.

### Section 9. RIGHT TO KNOW

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

New provision that government documents and operations be open to public scrutiny except when the right to know is outweighed by the right to individual privacy.

### Section 10. RIGHT OF PRIVACY

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

New provision prohibiting any invasion of privacy unless the good of the state makes it necessary.

### Section 11. SEARCHES AND SEIZURES

The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Identical to 1889 constitution.

### Section 12. RIGHT TO BEAR ARMS

The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Identical to 1889 constitution.

### Section 13. RIGHT OF SUFFRAGE

All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Identical to 1889 constitution.

### Section 14. ADULT RIGHTS

A person 18 years of age or older is an adult for all purposes.

New provision. Self explanatory.

### Section 15. RIGHTS OF PERSONS NOT ADULTS

The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

New provision giving children all of the rights that adults have unless a law meant to protect children prohibits their enjoyment of the right.

### Section 16. THE ADMINISTRATION OF JUSTICE

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Adds to 1889 constitution by specifically granting to a person injured in employment the right to sue a third party causing the injury, except his employer or fellow employee when his employer provides coverage under workmen's compensation laws.

### Section 17. DUE PROCESS OF LAW

No person shall be deprived of life, liberty, or property without due process of law.

Identical to 1889 constitution.

### Section 18. STATE SUBJECT TO SUIT

The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

New provision abolishing the doctrine of sovereign immunity ("the King can do no wrong") and allowing any person to sue the state and local governments for injuries caused by officials and employees thereof.

### Section 19. HABEAS CORPUS

The privilege of the writ of habeas corpus shall never be suspended.



Section 30. TREASON AND DESCENT OF ESTATES  
Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES  
No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY  
The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS  
No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. UNENumerated RIGHTS  
The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS  
The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

New provisions allowed legislative committee to give citizens more responsibility and experience in local government.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY  
No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY  
The right of trial by jury is secured to all and shall remain inviolate. But upon delay of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT  
No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors; or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED  
Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN  
Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made, or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. TREASON AND DESCENT OF ESTATES  
Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 20. INITIATION OF PROCEEDINGS  
(1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave. (2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. HAIL  
All persons shall be liable by subject matter, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS  
Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION  
No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same. If he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. RIGHTS OF THE ACCUSED  
In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face to have process to compel the attendance of witnesses; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes set forth in the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY  
No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

## ARTICLE III

# GENERAL GOVERNMENT

### Section 1. SEPARATION OF POWERS

The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Identical to 1889 constitution except for substitution of the word "branches" for "departments". This distinguishes the three branches of government from the 29 departments in the executive branch.

### Section 2. CONTINUITY OF GOVERNMENT

The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Revises 1889 constitution by removing provision which allowed seat of government to be moved by a vote of 2/3 of the people. No other change except in grammar.

### Section 3. OATH OF OFFICE

Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Quoted version of oath contained in 1889 constitution.

### Section 4. INITIATIVE

(1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Revises 1889 constitution by requiring a petition to be signed by 5% of electors in 1/3 of the legislative districts instead of 1% in 2/3 of the counties.

### Section 5. REFERENDUM

(1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Revises 1889 constitution by allowing people to vote on any act of the legislature except appropriations and by requiring referendum petitions to be signed by 5% of the electors in 1/3 of the legislative districts instead of 1% of the electors in 2/3 of the counties. "1889 Constitution does not allow referendums on laws 'necessary for the immediate preservation of the public peace, health or safety'."

### Section 6. ELECTIONS

The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

No change except in grammar.

### Section 7. NUMBER OF ELECTORS

The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

No change except in grammar.

### Section 8. PROHIBITION

The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

New provision which differentiates the general initiative and referendum requirements from the special initiative and referendum requirements for amending the constitution.

### Section 9. GAMBLING

All forms of gambling, lotteries, and gift enterprises are prohibited.

Adds the word "gambling" to language of 1889 constitution. Makes it clear that all forms of gambling are prohibited.



## ARTICLE IV

# SUFFRAGE AND ELECTIONS

### Section 1. BALLOT

All elections by the people shall be by secret ballot.

### Section 2. QUALIFIED ELECTOR

Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Revises 1889 constitution. Provides legislative rather than constitutional requirements for residence.

and registration. Convicted felon loses voting rights only while incarcerated. 18 is voting age established for ALL elections by 26th amendment to U.S. Constitution, ratified June 30, 1971.

### Section 3. ELECTIONS

The legislature shall provide by law the requirements for

Revises 1889 constitution by adding the word "and registration".

residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Revises 1889 constitution. Provides legislative rather than constitutional establishment of requirements which are often affected by (and sometimes in conflict with) federal law and court decisions. When necessary to comply with federal requirements it is much easier to change the law than to amend the constitution. Second sentence specifically authorizes legislature to provide for voter registration at time and place of voting—rather than in advance of election.

otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Revises 1889 constitution by providing that a felon's right to seek public office is automatically restored after serving sentence.

No change except in grammar

#### Section 5. PRIVILEGE FROM ARREST

A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

1889 constitution provided: Voters immune from arrest during the voting process unless during such time he commits a felony or breach of peace.

#### Section 4. ELIGIBILITY FOR PUBLIC OFFICE

Any qualified elector is eligible to any public office except as

#### Section 3. RESULT OF ELECTIONS

In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

### ARTICLE V

## THE LEGISLATURE

#### Section 1. POWER AND STRUCTURE

The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Revises 1889 constitution by reducing district or county residency requirements from one year to six months and eliminating age requirements.

New provision which would require filing vacancies by election if the present law requiring appointments is not repealed.

No change except in grammar.

#### Section 5. COMPENSATION

Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

#### Section 8. IMMUNITY

A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

#### Section 2. SIZE

The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 30 members and the house shall not have more than 100 or fewer than 80 members.

No change except in grammar.

No change except in grammar

New provision for determining size of legislature

#### Section 6. SESSIONS

The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

#### Section 9. DISQUALIFICATION

No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia under the United States or this state, shall be a member of the legislature during his continuance in office.

#### Section 3. ELECTION AND TERMS

A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

No change except in grammar

Revises 1889 constitution by adding requirement for staggered terms for senators.

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence even when not actually meeting. It will have regular annual sessions of 60 days. A legislature cannot pass a law that it can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session.

#### Section 10. ORGANIZATION AND PROCEDURE

(1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members. keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

#### Section 4. QUALIFICATIONS

A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

#### Section 7. VACANCIES

A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

\* \* \*

Added: No change except in grammar. 2. Deleted: The legislature shall be composed of members from each congressional district. 3. Deleted: The legislature shall be composed of members from each congressional district. 4. Deleted: The legislature shall be composed of members from each congressional district.

#### Section 11. BILLS.

(1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and

judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

\* \* \*

Added: No change except in grammar. 2. Deleted: The legislature shall be composed of members from each congressional district. 3. Deleted: The legislature shall be composed of members from each congressional district. 4. Deleted: The legislature shall be composed of members from each congressional district.

#### Section 12. LOCAL AND SPECIAL LEGISLATION

The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

\* \* \*

No change except in grammar

#### Section 13. IMPEACHMENT

(1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote

of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

\* \* \*

Minor revision. Two-thirds rather than a majority vote necessary to impeach. The legislature may choose the senate or another body to hear the charges.

#### Section 14. DISTRICTING AND APPORTIONMENT

(1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

\* \* \*

1. New provision for single-member house districts. Two house districts constitute a senatorial district. 2. and 3. New provision which establishes a five-member commission to recommend a reapportionment plan after each U.S. census.



## ARTICLE VI THE EXECUTIVE

#### Section 1. OFFICERS

(1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

\* \* \*

Revised 1972 constitution. Remove constitutional oath of office from heads of executive branch and state departments. The above shall appear in the law. All officers shall be elected by the qualified electors of the state.

#### Section 2. ELECTION

(1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

\* \* \*

Only change is subsection (2) which is new requirement that governor and lieutenant governor must file joint tickets.

#### Section 3. QUALIFICATIONS

(1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

\* \* \*

#### Section 4. DUTIES

(1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

#### Section 5. COMPENSATION

(1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

He may be a candidate for any public office during his term. He may be a candidate for any public office during his term.

#### Section 9. BUREAU AND MESSAGES

(1) The governor shall at the beginning of each legislative session, and may at other times, give the legislative information and recommendations he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Makes it mandatory that Governor send budget to legislature. Otherwise no change except in amount.

#### Section 14. SUCCESSION

(1) If the governor-elect is disqualified or dies, the lieutenant governor-elect shall assume office, or until the office becomes vacant, as such shall serve as acting governor until the governor-elect is qualified to assume office. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualification as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor (transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

When the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at his request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Subsection (1) new provision. Unless law provides otherwise governor appoints heads of the 20 departments, subject to senate confirmation. No change except to eliminate subsections (2) and (3), subsection (4) is new provision prohibiting nomination or appointment of persons previously rejected by senate.

may convene the legislature.

Revises 1929 constitution, eliminates power of senate to call special sessions of the legislature. Error in original copy of bill submitted to the legislature.

Section 12. MILITIA

(1) The militia is commanded in chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Law phrase of subsection (1) regarding protection of life and property is new. Subsection (2) removes sex and age qualifications for militia.

#### Section 8. VACANCY IN OFFICE

(1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, the next general election shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, and superior, or of public institution becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Revises 1929 constitution by changing method of filling vacancies in office of lieutenant governor. Senate confirmation no longer required for appointments in all vacancies in offices listed.

#### Section 7. DEPARTMENTS

All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch, except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor, shall be established by law and need not be located within a department.

Only grammar change in 20 department reorganization amendment adopted by the people in November, 1970.

#### Section 6. APPOINTING POWER

(1) The department provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation.

#### Section 11. SPECIAL SESSION

Whenever the governor considers it in the public interest, he

Subsection (1) revises 1929 constitution, amends to U.S. and Montana constitutions and legislative resolutions may be passed without governor's signature. Replaces "Amendmentary" with "Amendatory" and "Amendmentary" with "Amendatory".

Subsection (2) new provision. "Amendatory" and "Amendatory" are changes in subsection (3) except for grammar. Changes in subsection (3) except for grammar. Changes in subsection (3) except for grammar.

considered voided bills in one.

may convene the legislature.



New provision based on 25th amendment to U.S. Constitution. If governor dies, is disqualified, or the lieutenant governor takes his place. If governor dies, the lieutenant governor has 15 days to decide whether to accept the office. If he declines, the governor's successor becomes acting governor. If the lieutenant governor and the acting governor think the governor is unable to perform his duties, they may send notice to the legislature. By a two-thirds vote the legislature can decide that the lie-

tenant governor shall serve as acting governor because the governor is unable to act.

#### Section 15. INFORMATION FOR GOVERNOR

(1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

No change except in grammar



## ARTICLE VII THE JUDICIARY

### Section 1. JUDICIAL POWER

The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Revises 1970 constitution by allowing the legislature to establish "inferior" courts, such as a small claims court, as well as intermediate courts of appeal. Reference in 1970 constitution to create a court of impeachment is deleted.

### Section 2. SUPREME COURT JURISDICTION

(1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

(1) No change except in grammar. (2) No change except in grammar. (3) Allows Supreme Court to make rules governing itself, other courts and lawyers. Large clause may delete the rule. (4) No change except in grammar.

### Section 3. SUPREME COURT ORGANIZATION

(1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

### Section 4. DISTRICT COURT JURISDICTION

(1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

(1) No change except in grammar. (2) New provision providing for appeal from lower courts and state agencies. (3) New provision which allows legislature to create other courts having the same power as district courts.

### Section 5. JUSTICES OF THE PEACE

(1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

(1) Revises 1970 constitution by requiring one justice of the peace in each county instead of two in each township and allows legislature to set qualifications, training standards and salaries. Provision for "dignified surroundings" is new. (2) Deletes reference in 1970 constitution to types of cases which may not be handled by a justice of the peace and provides that the legislature may determine this except that the peace may try misdemeanors. (3) No change except in grammar.

### Section 6. JUDICIAL DISTRICTS

(1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each

district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

(1) (2) No change except in grammar. (3) New provision allowing the chief justice temporarily to assign judges to districts other than their own.

### Section 7. TERMS AND PAY

(1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

(1) No change except in grammar. (2) Supreme Court justice terms increased from six to eight years. District court judges from four to six and justices of the peace from two to four years.

### Section 8. SELECTION

(1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general el-

election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Revises 1889 constitution. Contested election of judges is not changed, however if a judge in office does not have an opponent in an election his name will be put on the ballot anyway and the people asked to approve or reject him. If rejected, the governor appoints another judge. When there is a vacancy such as death or resignation, the governor appoints a replacement but does not have unlimited choice of lawyers as under 1889 constitution. He must choose his appointee from a list of nominees and the appointment must be confirmed by the senate—a new requirement.

### Section 9. QUALIFICATIONS

(1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Revises 1889 constitution by making residence requirements for candidates for district court judgeship the same as for supreme court and by deleting age requirements. Requirement for five years of law practice new. Also revises 1889 constitution by specifically allowing travel expense. (3) Only change specifically prohibits a judge from holding office in a political party. (4) No change except in grammar.

### Section 10. FORFEITURE OF JUDICIAL POSITION

Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

New provision. A judge may not run for any other public office or be elected a judge for more than one term.

### Section 11. REMOVAL AND DISCIPLINE

(1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

New provision. A judicial standards commission may investigate whenever a judge, because of disability or bad habits, does not perform his duties properly. The commission can recommend to the supreme court that the judge be retired, censured, suspended or removed.



## ARTICLE VIII REVENUE AND FINANCE

### Section 1. TAX PURPOSES

Taxes shall be levied by general laws for public purposes.

Revises 1889 constitution by eliminating references to particular kinds of revenue sources such as property taxes, license fees, and income taxes and confining the legislative power to determine tax structures.

Revises 1889 constitution by removing references to county boards of equalization and state board of equalization leaving the legislature free to determine the method of securing property tax equalization.

such improvements and maintenance against tax exempt property directly benefited thereby.

1889 constitution makes it mandatory that all property listed in subsection (1) shall be exempt from taxation. Revises leaves all exemptions at discretion of legislature. Specifically permits creation of private interests in government owned property and assessment of special improvement district charges on tax exempt property.

### Section 2. TAX POWER INALIENABLE

The power to tax shall never be surrendered, suspended, or contracted away.

### Section 4. EQUAL VALUATION

All taxing jurisdictions shall use the assessed valuation of property established by the state.

No change except in grammar. Clarifies the same assessed value will be used by all taxing jurisdictions.

### Section 6. HIGHWAY REVENUE NON-DIVERSION

(1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

### Section 3. PROPERTY TAX ADMINISTRATION

The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

### Section 3. PROPERTY TAX EXEMPTIONS

(1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for

Revises the amendment to the 1889 constitution by removing motor vehicle registration fees from the exempting provisions. The including local educational and industrial districts. Highway safety programs and driver education programs at private schools are not

marked funds and by allowing the legislature by a three-fifths vote to divert the earmarked funds to other purposes.

#### Section 7. TAX APPEALS

The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

New provision requiring the legislature to establish procedures for taxpayer appeals. Appeal procedures must include an opportunity to have the complaint heard at the local level.

#### Section 8. STATE DEBT

No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Revises 1889 constitution by replacing obsolete \$100,000 limit on state debt with provision that only a 2/3 vote of the legislature or majority vote at an election may create state debt.

#### Section 9. BALANCED BUDGET

Appropriations by the legislature shall not exceed anticipated revenue.

No change except in grammar. Requires legislature to stay within estimated revenue limits when appropriations made.

#### Section 10. LOCAL GOVERNMENT DEBT

The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Revises 1889 constitution. Debt limitations for all local governmental entities will be set by law rather than by the constitution.

#### Section 11. USE OF LOAN PROCEEDS

All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

No change except in grammar.

#### Section 12. STRICT ACCOUNTABILITY

The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

No change except in grammar.

Revises 1889 constitution by leaving specific details of accounting procedures, reporting requirements, etc., to the legislature.

#### Section 13. INVESTMENT OF PUBLIC FUNDS

(1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state; or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States; or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Revises 1889 constitution by providing for a unified investment program for all state funds. Allows retirement funds to be invested in private corporate stock, but provides that the public school fund and university system funds may be invested only in interest-bearing securities.

#### Section 14. PROHIBITED PAYMENTS

Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

No change except in grammar.



## ARTICLE IX

# ENVIRONMENT AND NATURAL RESOURCES

#### Section 1. PROTECTION AND IMPROVEMENT

(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

New provision creating a duty of the state and its people to protect and improve the environment.

D. W. R. & C.

#### Section 2. RECLAMATION

All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

New provision requiring restoration of land after removal of natural resources.

#### Section 3. WATER RIGHTS

(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

(1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar.

(3) New provision recognizing state ownership of all water subject to use and appropriation by its people.

(4) New provision requiring legislature to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.

#### Section 4. CULTURAL RESOURCES

The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

New provision. Self-explanatory.



## ARTICLE X

## EDUCATION AND PUBLIC LANDS

## Section 1. EDUCATIONAL GOALS AND DUTIES

(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Revises 1959 Constitution. Expresses the goal of the state to establish a full system of education regardless of race, age, or sex. Creates a right to equal educational opportunity and specifically recognizes unique heritage of Indians.

## Section 2. PUBLIC SCHOOL FUND

The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States.

(2) Lands granted in lieu thereof.

(3) Lands given or granted by any person or corporation under any law or grant of the United States.

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose.

(5) All interests in estates that escheat to the state.

(6) All unclaimed shares and dividends of any corporation incorporated in the state.

(7) All other grants, gifts, devises or bequests made to the state for general education purposes.

No change except in grammar. Gives constitutional recognition to the public school fund.

## Section 3. PUBLIC SCHOOL FUND INVIOLEATE

The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

No change except in grammar.

## Section 4. BOARD OF LAND COMMISSIONERS.

The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Revises 1959 constitution by adding state auditor to board of land commissioners and adding the power to exchange lands.

## Section 5. PUBLIC SCHOOL FUND REVENUE

(1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public

school fund and become and forever remain an inseparable and inviolable part thereof.

Revises 1959 constitution by replacing specific language requiring distribution to be made in proportion to the number of children between ages of 6 and 11 with general language that the income be equitably apportioned and by allowing distribution of interest and income moneys to high schools as well as elementary schools.

## Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS

(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Revises 1959 constitution by specifying that federal funds may be distributed to private schools. Proposed section still prohibits subsidies to private schools.

## Section 7. NON-DISCRIMINATION IN EDUCATION

No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Last sentence revises 1959 constitution which merely forbade denying any person entrance to a university because of his or her sex. By considering the language to include all public educational institutions and to include other kinds of discrimination other changes in grammar only.

## Section 8. SCHOOL DISTRICT TRUSTEES

The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

New provision which guarantees control of schools to local boards. Local requirement in 1959 constitution that election of school district officers must be separate from state and county elections.

## Section 9. BOARDS OF EDUCATION

(1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana University

system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Revises 1959 constitution by creating one board (Board of Public Education) to supervise the public school system and a separate board (Board of Regents of Higher Education) to supervise the tertiary system. The two boards together form the Montana Board of Educational Institutions. Each of the two proposed boards consists of 7 persons appointed by the governor (one less than in 1959 constitution). The governor and superintendent are ex officio non-voting members of the boards. Editorial is an ex officio member in 1959 constitution.

## Section 10. STATE UNIVERSITY FUNDS

The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

No change except in grammar. Section 13 of Article VIII, REVENUE AND FINANCE provides for the investment of university funds.

## Section 11. PUBLIC LAND TRUST; DISPOSITION

(1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Only change in subsections 1, 2 and 3 are in grammar. Subsection 4 revises 1959 constitution by deleting the now unconstitutional classification of property into general, agricultural or city lands and by displacing that public lands may be exchanged.

## ARTICLE XI

# LOCAL GOVERNMENT

### Section 1. DEFINITION

The term "local government unit" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

\* \* \*

New provision allowing local government units to share powers with the state and to have all powers not specifically denied. As present local governments have only those powers specifically granted.

### Section 2. COUNTIES

The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

\* \* \*

New provision allowing local government units to share powers with the state and to have all powers not specifically denied. As present local governments have only those powers specifically granted.

### Section 3. FORMS OF GOVERNMENT

(1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those officers shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such offices in those counties.

\* \* \*

New provision allowing local government units to share powers with the state and to have all powers not specifically denied. As present local governments have only those powers specifically granted.

### Section 4. GENERAL POWERS

(1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

\* \* \*

New provision allowing local government units to share powers with the state and to have all powers not specifically denied. As present local governments have only those powers specifically granted.

### Section 5. SELF-GOVERNMENT CHARTERS

(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

\* \* \*

New provision allowing legislature to pass their own charter procedures for local government units to design their own forms of government or self-government charters. The charter provisions establish the structure of local government units and the powers and duties of those units.

### Section 6. SELF-GOVERNMENT POWERS

A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

\* \* \*

New provision allowing local government units to share powers with the state and to have all powers not specifically denied. As present local governments have only those powers specifically granted.

### Section 7. INTERGOVERNMENTAL COOPERATION

(1) Unless prohibited by law or charter, a local government unit may:

(a) cooperate in the exercise of any function, power, or responsibility with;

(b) share the services of any officer or facilities with;

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

\* \* \*

New provision allowing local governments to share powers and functions with other units of government, the state and the United States.

### Section 8. INITIATIVE AND REFERENDUM

The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

\* \* \*

New provision directing legislature to provide details of the power to initiate local ordinances by petition or to petition to vote on ordinances passed by local governments.

### Section 9. VOTER REVIEW OF LOCAL GOVERNMENT

(1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

\* \* \*

New provision. By 1976 the legislature must give local residents the opportunity to vote on whether or not to change their form of government. Laws must be passed requiring local forms of government to be reviewed and evaluated every ten years.



## ARTICLE XII

# DEPARTMENTS AND INSTITUTIONS

### Section 1. AGRICULTURE

(1) The legislature shall provide for a Department of Agriculture and may provide and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special taxes may be made on livestock and on agricultural commodities for disease control and indemnification, production control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the taxes.

New provision. The legislature shall provide that a department of agriculture shall be established and shall have the authority to regulate and control the production, distribution, and marketing of agricultural products.

New provision. The legislature shall provide that a department of agriculture shall be established and shall have the authority to regulate and control the production, distribution, and marketing of agricultural products.

### Section 2. LABOR

(1) The legislature shall provide for a Department of Labor and Industry, headed by a commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

\* \* \*

2. No change except in grammar. Provides that department of labor will be one of the 20 departments in the executive branch.

#### Section 3. INSTITUTIONS AND ASSISTANCE

(1) The state shall establish and support institutions and facilities as the public good may require, including homes which

may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

(1) No change except in grammar. (Deletes references to specific types of institutions.) (2) New provision that a person in an institution may exercise all rights except those that are impossible because of the confinement and that all rights are automatically restored when the person is released. (3) Reverses 1889 constitution which states that the "several counties" must provide welfare. Revision leaves it up to the legislature to determine whether the state, county or a combination of the two must provide welfare.



### ARTICLE XIII

## GENERAL PROVISIONS

#### Section 1. NON-MUNICIPAL CORPORATIONS

(1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

New provision requiring legislature to create a state office to represent customers at hearings before the public service commission. Utility companies would be taxed to support the office.

New provision. The legislature must enact laws concerning conflict of interest involving legislators and other public officials.

#### Section 5. EXEMPTION LAWS

The legislature shall enact liberal homestead and exemption laws.

Identical to 1889 Constitution.

(1) No change except in grammar. (2) New provision requiring the legislature to pass consumer protection laws. (3) New provision prohibiting laws which would add liabilities to past contracts.

#### Section 2. SALARY COMMISSION

The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

New provision requiring legislature to create a committee which would suggest salary schedules for judges, legislators and executive officials.

#### Section 6. PERPETUITIES

No perpetuities shall be allowed except for charitable purposes.

Identical to 1889 Constitution.

#### Section 2. CONSUMER COUNSEL

The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

#### Section 4. CODE OF ETHICS

The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

### ARTICLE XIV

## CONSTITUTIONAL REVISION

#### Section 1. CONSTITUTIONAL CONVENTION

The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Adds word "unlimited" to 1889 constitution. Makes it clear that the legislature cannot call a constitutional convention for limited purpose.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Constitutional convention must be submitted to vote of the people at least once every 20 years.

New provision. Enables people to petition to call a constitutional convention.

#### Section 4. CALL OF CONVENTION

If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

#### Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION

(1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

#### Section 3. PERIODIC SUBMISSION

If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

New provision. The question of holding a constitutional

Revises 1889 constitution. Legislature shall determine whether constitutional convention delegates be elected on partisan or non-partisan basis. 1889 constitution not explicit on this point. Montana Supreme Court held convention delegates must run on partisan basis.

**Section 5. CONVENTION EXPENSES**

The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

No change except in grammar

**Section 6. OATH, VACANCIES**

Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

No change except in grammar

**Section 7. CONVENTION DUTIES**

The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Only change is removal of requirements in 1889 constitution that a convention meet within a certain time after election and that the election on the proposed constitution be held within six months.

**Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM**

Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Amends 1889 constitution. Legislature may propose constitutional amendment by a vote of two-thirds of total membership rather than two-thirds of each house. Provides for July effective date for amendments.

**Section 9. AMENDMENT BY INITIATIVE**

(1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

New provision. Ten percent of voters may propose constitutional amendments by petition.

**Section 10. PETITION SIGNERS**

The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

No change except in grammar.

**Section 11. SUBMISSION**

If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

New provision. Self-explanatory

## ★

# TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify in the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

**Section 1. Accelerated Effective Date****Section 2. Delayed Effective Date****Section 3. Prospective Operation of Declaration of Rights****Section 4. Terms of Judiciary****Section 5. Terms of Legislators****Section 6. General Transition**

Provides for an orderly change from the 1889 constitution to the 1972 constitution.

**Section 3. PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS**

Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Any new rights created in Article II take effect only after July 1, 1972. It does not create any rights for past events.

which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

(1) If the reapportionment and redistricting plan becomes effective after the 1974 legislative session, the terms of legislators serving in that session would end December 31, 1974. (2) Section 3, Article V provides that senators have four year terms but that one-half are elected every two years. This section provides that one-half of the senators first elected will have only two year terms.

**Section 6. GENERAL TRANSITION**

(1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

**Section 1. ACCELERATED EFFECTIVE DATE**

Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1972.

Proposed section on reapportionment and redistricting of the legislature would be effective January 1, 1972. The reapportionment commission would then be appointed by the 1972 legislature and report its plan to the 1973 legislature.

**Section 2. DELAYED EFFECTIVE DATE**

The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

**Section 4. TERMS OF JUDICIARY**

Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Since the proposed constitution changes the length of terms of office of judges, the question arises as to what happens to judges who serve to the end of the term for which they were elected.

**Section 5. TERMS OF LEGISLATORS**

(1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in

Unless the proposed constitution specifically changes a law it will not affect any rights or duties or the validity of contracts, bonds, etc. All elected officials serve out their present terms.

# ADOPTION SCHEDULE

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this Schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision.

Adoption schedule gives instructions on what effect the results of the June 5th election has on the format of the proposed constitution.

## Section 1.

This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

July 1, 1973 is effective date of proposed constitution except for: (1) sections on annual legislative sessions and districting and reapportionment which are effective January 1, 1973; and (2) sections on size of the legislature and election of members which are effective after the reapportionment and redistricting plan becomes law which could be in March, 1974.

## Section 2.

(1) If separate issue 2A concerning the unicameral form of the legislature is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then:

(a) ARTICLE V, THE LEGISLATURE, shall be deleted and the following substituted therefor:

If the proposed constitution is adopted and a majority of the voters favor a unicameral (one-house) legislature then Article V set forth below will constitute the legislative article of the constitution and the bicameral article now appearing in the body of the proposed constitution (page 9) will be deleted.

## ARTICLE V THE LEGISLATURE

### Section 1. POWER AND STRUCTURE

The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

New provision for one house legislature.

### Section 2. SIZE

The number of senators shall be provided by law, but it shall not be smaller than 90 nor larger than 105.

New provision for determining size of the legislature.

## Section 3. ELECTION AND TERMS

A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

New provision. Self-explanatory.

## Section 4. QUALIFICATIONS

A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Revises 1889 constitution by reducing district or county residency requirements from one year to six months and eliminating age requirements.

## Section 5. COMPENSATION

Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

No change except in grammar.

## Section 6. SESSIONS

The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence even when not actually meeting. It will have regular annual sessions of 60 days. A legislature cannot pass a law that it can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session.

## Section 7. VACANCIES

A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

New provision which would require filling vacancies by election if the present law requiring appointments is ever repealed.

## Section 8. IMMUNITY

A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

No change except in grammar.

## Section 9. DISQUALIFICATION

No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state, and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

No change except in grammar.

## Section 10. ORGANIZATION AND PROCEDURE

(1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrence of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(1) and (2) no change except in grammar. (3) Revises 1889 constitution by preventing the legislature from conducting secret proceedings. (4) New provision specifically allowing the legislature to create committees to work between the annual meetings.

## Section 11. BILLS

(1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by yeas and nays and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of non-compliance.

once with this section only within two years after its effective date.

(1) No change except in grammar. (2) Changes 1899 constitution by requiring retarded voting on all actions which effect passage of a bill. (3), (4), (5) No change except in grammar. (6) New provision. After it is two years old a law cannot be challenged in court because of technical errors in the way it was passed.

## Section 12. LOCAL AND SPECIAL LEGISLATION

The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

No change except in grammar.

## Section 13. IMPEACHMENT

(1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Minor revision. Two-thirds rather than a majority vote necessary to impeach. Since there is only one house, the legislature will have to decide by law what other body will hear the charges.

## Section 14. DISTRICTING AND APPORTIONMENT

(1) The state shall be divided into as many districts as there are senators and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

(1) New provision for unpopulated districts. (2) and (3) New provision which establishes a five member commission to recommend a reapportioning plan after each U.S. Census.

## Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE

(1) In 1980 the secretary of state shall place upon the ballot at the general election the question, "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members. It shall keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

"(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission

shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legislature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

(1) (2) If the voters adopt the unicameral (one-house) legislature in the June, 1972 election they will vote in 1980 on whether or not to keep it. (3) If a majority of the voters prefer a bicameral (two-house) legislature in 1980 then this subsection amends its sections of the constitution to provide for it.

(4) Senators serving in the unicameral legislature would continue until representatives and senators are elected for the bicameral legislature.

(5) If the unicameral legislative form is adopted the members would most likely meet in the present house chambers. This subsection provides that the senate chambers may not be remodeled or otherwise permanently altered until after 1980 when the people vote on whether or not to return to the bicameral legislature.

(6) Self-explanatory.

(b) The words "of each house" are deleted from subsection (2) of section 8 and from section 8. ARTICLE VIII, REVENUE AND FINANCE.

If the one house legislature is adopted the words "of each house" are unnecessary so will be deleted from constitution before it is published.

(c) The word "legislature" is substituted for "senate" in subsections (1), (2), and (4) of section 8, ARTICLE VI, THE EXECUTIVE, in subsections (1) and (2) of section 8, ARTICLE VII, THE JUDICIARY, and in subsection (1) of section 2, ARTICLE XII, DEPARTMENTS AND INSTITUTIONS.

If one-house legislature is adopted the sections of the constitution dealing with confirmation by the senate will be changed to read confirmation by the legislature.

(2) If separate issue 2A concerning the unicameral form of the legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then ARTICLE V, THE LEGISLATURE, shall be retained.

If the proposed constitution is adopted it will contain a provision for a two-house legislature senate and house of representatives until voters adopt one house form.

## Section 3.

(1) If separate issue 3A is not approved by a majority of those voting at the election and if the proposed Constitution is



approved by the electors, then section 9 of ARTICLE III, GENERAL GOVERNMENT shall be retained

(2) If separate issue 3A is approved by the electors and if the proposed Constitution is approved by the electors, then section 9 shall be deleted from ARTICLE III, GENERAL GOVERNMENT and the following substituted therefor: "Section 9. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum."

If adopted the proposed constitution will contain a

prohibition against all gambling unless the people vote to allow the legislature or the people to authorize certain forms of gambling. If the voters approve of this authorization then the proposed constitution will be so worded before publication

#### Section 4.

If separate issue 4B is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE

II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from section 2) of the same ARTICLE the following: "except for capital offenses, when the proof is evident or the presumption great."

\* \* \*

If the proposed constitution is adopted and the people vote against the death penalty then the constitution will contain the language prohibiting the death penalty and the reference to capital offenses meaning punishable by death will be deleted



## DELETIONS

The following provisions appearing in the 1889 constitution are not included in the proposed constitution of 1972:

**PREAMBLE**—The Preamble was completely rewritten.

#### ARTICLE I—BOUNDARIES

Boundaries of all states are determined by the United States Congress

#### ARTICLE II—MILITARY RESERVATIONS

Concerns military posts now abandoned

#### ARTICLE III—A DECLARATION OF RIGHTS

Section 25. Provides that aliens have the same rights as citizens to own mines.

Section 28. Prohibition against slavery.

Section 29. Declaration that constitutional provisions are mandatory.

#### ARTICLE V—LEGISLATIVE DEPARTMENT

Section 3. References to age requirements of 21 for representatives and 24 for senators (Article IV of the proposed constitution makes 18-year olds eligible to run for the legislature.)

Section 5. Obsolete provision on pay of legislators.

Section 20. Prescribes enacting clause of bills.

Section 21. Introduction of bill deadline

Section 22. Requires that bills be considered by committee and be printed

Section 23. Requires that an amendatory bill set out entire law being amended.

Section 27. Requires presiding officer sign bills in presence of legislative members.

Section 28. Requires number, duties and compensation of legislative officers and employees be set by law.

Section 29. Prohibits extra compensation by bill.

Section 30. Legislative printing requirements

Section 31. Prohibits laws changing salaries or extending terms of public officials

Section 32. Requires all revenue bills to be introduced in house

Section 36. Prohibits delegating municipal functions to private organizations.

Section 37. Prohibits investing trust funds in corporate bonds or stock

Section 38. Prohibits state aid to railroads.

Section 39. Prohibits laws diminishing or extinguishing debts owed the state.

Section 41. Bribery of legislators.

Section 42. Bribery of state officials.

Section 43. Corrupt solicitation of legislators.

Section 44. Prohibits legislator from voting on bill in which he has private interest.

#### ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Section 1. Election of representative to Congress—this is provided for in U.S. Constitution

#### ARTICLE VII—EXECUTIVE DEPARTMENT

Section 8. State Examiner.

Section 18. Requires all grants and commissions be sealed and signed by governor and secretary of state

Section 19. Accounting by executive officers and institutions

Section 20. Board of State Prison Commissioners.

#### ARTICLE VIII—JUDICIAL DEPARTMENTS

Section 3. Provision for Supreme Court Jury

Section 4. Requiring 3 terms of Supreme Court each year

Section 8. First election of Justices.

Section 9. Clerk of the Supreme Court.

Section 13. Sets up 8 judicial districts

Section 17. Requires district courts to be open at all times and to hold four terms a year.

Section 18. Clerk of District Court

Section 19. County Attorney

Section 21. Types of cases JP's cannot handle.

Section 22. Requires JP courts to be open at all times

Section 24. Police and municipal courts.

Section 25. Courts of Record

Section 26. Uniform laws and organization of courts

Section 27. Style of process.

Section 28. Law and equity same form of civil action.

Section 32. Publication of Supreme Court decisions.

Section 34. Filling vacancies in offices of county attorney, clerk of district court and JP's.

Section 35. Judges pro tempore of district court

#### ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Section 3. Change of residence because of job or status.

Section 5. Electors exempt from military duty on election day.

Section 6. Military residence not voting residence.

Section 10. Eligibility for school offices.

Section 12. Equal rights for women voters

#### ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Section 2. Provision for vote on first location of capital

Section 3. 2/3 vote to change location of capital

Section 4. No money for building until capital first located.

#### ARTICLE XII—REVENUE AND TAXATION

Section 1. Requires all property to be taxed

Section 1a. Allows taxing incomes.

Section 3. Taxation of mines and proceeds

Section 4. Prohibits state aid to local governments.

Section 8. Prohibits taking private property for corporate debts (This prohibition is covered by the U.S. Constitution.)

Section 9. Two-mill limitation on property taxes.

Section 11. Uniformity clause.

Section 13. Details of State accounting.

Section 14. State Depository Board

Section 15. County and State boards of equalization

Section 16. Specifies assessment and apportionment of railroad property.

Section 17. Defines the word "property."

Section 18. Gives legislature power to pass laws.

#### ARTICLE XIII—PUBLIC INDEBTEDNESS

Section 1. Lending of state's credit.

Section 2. \$100,000 debt limit for state.

Section 4. Prohibits state from assuming debt of local governments.

Section 5. \$10,000 county debt limit.

Section 6. Local government debt limit.

#### ARTICLE XIV—MILITARY AFFAIRS

Section 2. Requires laws concerning the militia

Section 3. Requires appropriations for the militia.

Section 4. Requires safekeeping of public arms and military records

Section 5. Governor commander-in-chief even when out of state.

#### ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Section 1. Invalidates corporate charters not in effect at adoption of 1889 constitution.

Section 3. Power to revoke corporate charters.

Section 4. Cumulative voting for corporate directors

Section 5. Regulation of railroads.

Section 6. Prohibits consolidation of railroads.

Section 7. Discrimination in rail rates.

Section 8. Railroads must file acceptance of constitution

Section 9. Right of eminent domain over public corporations.

Section 10. Restrictions on issuance of corporate stock

Section 11. Authorized agent of foreign corporations—equal privileges for foreign corporations.

Section 12. Consent needed to construct street railroads

Section 13. Prohibits retrospective laws benefiting railroads or individuals

Section 14. Permission to build telegraph and telephone lines—Prohibits consolidation of such lines.

Section 15. State retains jurisdiction of corporate property in state when there is consolidation with foreign corporation

Section 16. Prohibits requiring release-from-liability contracts from employees.

Section 17. Prohibits releasing property from liabilities of a lessor or grantor.

Section 18. Defines the word "corporation"

Section 19. Dues of private corporations.

Section 20. Prohibits price fixing.

#### ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATION AND OFFICES

Section 3. Provision for payment of debts when new county is formed

Section 4. Detailed provision on dividing counties into commission districts.

#### ARTICLE XVIII—LABOR

Section 2. Prohibits contracting for convict labor.

Section 3. Prohibits employing children under 16 in underground mines.

Section 5. Requires legislation to enforce Article.

#### ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Section 3. Directs legislature to pass laws for prevention of grass and forest fires

Section 6. Requires county officers to keep offices at county seat

Section 7. Settlers preferred in disposition of public lands

Section 9. Limit of 3 amendments to Constitution at one election

#### ARTICLE XX—SCHEDULE

Sections 1-17. Provides for transition from territorial to state government

#### ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sections 1-10. Provides for investment of various state funds some of which never existed, investment of public funds covered in Article VIII of proposed Constitution.

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*Proposed*  
**1972 CONSTITUTION**  
*for the*  
**STATE of MONTANA**  
OFFICIAL TEXT WITH EXPLANATION

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Vote at the  
**Special  
Constitutional Election**  
**June 6, 1972**



# Appendix C

Senate Bill 140.1.2

Amendment – 1st Reading

SENATE BILL NO. 140

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CERTAIN JUDICIAL APPOINTMENTS; PROVIDING A DIRECT APPOINTMENT PROCESS FOR THE GOVERNOR TO APPOINT DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES TO FILL JUDICIAL VACANCIES; REPEALING THE JUDICIAL NOMINATION COMMISSION; AMENDING SECTIONS 2-15-1707, 3-7-221, AND 39-71-2901, MCA; REPEALING SECTIONS 3-1-1001, 3-1-1002, 3-1-1003, 3-1-1004, 3-1-1005, 3-1-1006, 3-1-1007, 3-1-1008, 3-1-1009, 3-1-1010, 3-1-1011, 3-1-1012, 3-1-1013, AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Judicial vacancy -- notice.** (1) (a) Upon receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in [sections 1 through 7], to fill any vacancy on the supreme court or the district court.

(b) The chief justice of the supreme court shall appoint a candidate to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of a judicial resignation has been announced, the governor shall notify the public, including media outlets with general statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

**NEW SECTION. Section 2. Investigation -- qualifications for appointment.** (1) The governor may authorize investigations concerning the qualifications of eligible persons.

(2) A lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may apply to the governor for consideration, or application may be made by any person on

1 the lawyer's behalf.

2  
3 **NEW SECTION. Section 3. Applications.** An eligible person may apply for the vacant judicial  
4 position by completing and submitting to the governor an original signed paper application and an electronic  
5 copy of the original application by the deadline date. The deadline date must be within 40 days of the  
6 governor's receipt of the notice of vacancy provided by the chief justice.

7  
8 **NEW SECTION. Section 4. Public comment.** (1) The governor shall establish a reasonable period  
9 for reviewing applications and interviewing applicants that provides at least 30 days for public comment  
10 concerning applicants.

11 (2) ~~At the close of the public comment period provided for in subsection (1), the applicants in~~  
12 ~~subsection (1) Each applicant who has the qualifications set forth by law for holding judicial office and who~~  
13 ~~receives a letter of support from at least three adult Montana residents by the close of the public comment~~  
14 ~~period provided for in subsection (1) must be considered nominees-a nominee~~ for the position.

15 (3) The total time from receipt of notice of a vacancy until appointment may not exceed 100 days.

16 (4) The application, public comment, and any related documents are open to the public except when  
17 the demands of individual privacy clearly exceed the merits of public disclosure.

18  
19 **NEW SECTION. Section 5. Appointments.** (1) The governor, or the chief justice of the supreme  
20 court for the office described in 3-7-221, shall make an appointment within 30 days of the close of the public  
21 comment period from the list of applicants.

22 (2) For purposes of Article VII, section 8, of the Montana constitution, the governor must be construed  
23 to receive the names of the nominees at the close of the public comment period provided for in [section 4].

24 (3) If the governor fails to appoint within 30 days of the close of the public comment period provided  
25 for in subsection (1), the chief justice shall make the appointment from the same list of applicants within 30  
26 days of the governor's failure to appoint.

27  
28 **NEW SECTION. Section 6. Senate confirmation -- exception -- nomination in interim --**

1 appointment contingent on vacancy. (1) (a) Except as provided in subsection (2):

2 (i) each appointment must be confirmed by the senate; and

3 (ii) an appointment made while the senate is not in session is effective until the end of the next special  
4 or regular legislative session.

5 (b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed,  
6 the office is vacant and another selection of nominees and appointment must be made.

7 (2) The following appointments are not subject to senate confirmation, and there must be an election  
8 for the office at the general election immediately preceding the scheduled expiration of the term or following the  
9 appointment, as applicable:

10 (a) an appointment made while the senate is not in session if the term to which the appointee is  
11 appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to  
12 the candidate filing deadlines for the office; and

13 (b) an appointment made while the senate is not in session if a general election will be held prior to  
14 the next legislative session and the appointment is made prior to the candidate filing deadline for primary  
15 elections under 13-10-201(7), in which case the position is subject to election at the next primary and general  
16 elections.

17 (3) A nomination is not effective unless a vacancy in office occurs.

18  
19 **NEW SECTION. Section 7. Duration of appointment -- election for remainder of term.** (1) If an  
20 appointment subject to [section 5] is confirmed by the senate, the appointee shall serve until the appointee or  
21 another person elected at the first general election after confirmation is elected and qualified. The candidate  
22 elected at that election holds the office for the remainder of the unexpired term.

23 (2) If an incumbent judge or justice files for election to the office to which the judge or justice was  
24 elected or appointed and no other candidate files for election to that office, the name of the incumbent must  
25 nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject  
26 the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve  
27 until the day before the first Monday of January following the election, at which time the office is vacant and  
28 another appointment must be made.

**Amendment - 1st Reading - Requested by: Keith Regier**

67th Legislature

Drafter: Julianne Burkhardt, 406-444-4025

SB 140.1.2

1

2       **Section 8.** Section 2-15-1707, MCA, is amended to read:

3       **"2-15-1707. Office of workers' compensation judge -- allocation -- appointment -- salary. (1)**

4       There is the office of workers' compensation judge. The office is allocated to the department of labor and  
5       industry for administrative purposes only as prescribed in 2-15-121.

6       (2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same  
7       manner provided by ~~Title 3, chapter 1, part 10~~ sections 1 through 7, for the appointment of supreme court  
8       justices or district court judges. A vacancy must be filled in the same manner as the original appointment.

9       (3) To be eligible for workers' compensation judge, a person must:

10       (a) have the qualifications necessary for district court judges found in Article VII, section 9, of the  
11       Montana constitution;

12       (b) devote full time to the duties of workers' compensation judge and not engage in the private  
13       practice of law.

14       (4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a  
15       district judge but must be accorded retirement benefits under the public employees' retirement system."

16  
17       **Section 9.** Section 3-7-221, MCA, is amended to read:

18       **"3-7-221. Appointment of chief water judge and associate water judge -- terms of office. (1)** The  
19       chief justice of the Montana supreme court shall appoint a chief water judge as provided in ~~Title 3, chapter 1,~~  
20       ~~part 10~~ sections 1 through 7. The chief justice of the Montana supreme court may appoint an associate water  
21       judge as provided in ~~Title 3, chapter 1, part 10.~~

22       (2) To be eligible for the office of chief water judge or associate water judge, a person shall have the  
23       qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana  
24       constitution.

25       (3) The term of office of the chief water judge and the associate water judge is 4 years, subject to  
26       continuation of the water divisions by the legislature."

27

28       **Section 10.** Section 39-71-2901, MCA, is amended to read:

1 "39-71-2901. Location of office -- court powers -- withdrawal -- substitution -- vacancy. (1) The  
2 principal office of the workers' compensation judge must be in the city of Helena.

3 (2) The workers' compensation court has power to:

4 (a) preserve and enforce order in its immediate presence;

5 (b) provide for the orderly conduct of proceedings before it and its officers;

6 (c) compel obedience to its judgments, orders, and process in the same manner and by the same  
7 procedures as in civil actions in district court;

8 (d) compel the attendance of persons to testify; and

9 (e) punish for contempt in the same manner and by the same procedures as in district court.

10 (3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes  
11 the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation  
12 judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding  
13 from the list provided for in subsection (7).

14 (4) If the office of the workers' compensation judge becomes vacant and before the vacancy is  
15 permanently filled pursuant to ~~Title 3, chapter 1, part 40~~ sections 1 through 7, the chief justice of the Montana  
16 supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief  
17 justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state  
18 district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire  
19 duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.

20 (5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a  
21 disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a  
22 substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current  
23 judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90  
24 days after appointment under this subsection. This subsection applies only if the workers' compensation judge  
25 is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace  
26 the judge under ~~Title 3, chapter 1, part 40~~ sections 1 through 7, may not be instituted.

27 (6) A substitute judge must be compensated at the same hourly rate charged by the department of  
28 justice agency legal services bureau for the provision of legal services to state agencies. A substitute judge



1 must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When a substitute judge  
2 has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of  
3 jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of  
4 jurisdiction form in the court file.

5 (7) The workers' compensation judge shall maintain a list of persons who are interested in serving as  
6 a substitute workers' compensation judge in the event of a recusal by the judge or a vacancy and who prior to  
7 being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5  
8 years, currently reside in Montana, and have resided in the state for 2 years."

9  
10 **NEW SECTION. Section 11. Repealer.** The following sections of the Montana Code Annotated are  
11 repealed:

- 12 3-1-1001. Creation, composition, and function of commission.  
13 3-1-1002. Staggered terms of members.  
14 3-1-1003. Vacancies.  
15 3-1-1004. No compensation -- travel expenses.  
16 3-1-1005. Commission members not eligible for judicial office.  
17 3-1-1006. Secretary -- election and duties.  
18 3-1-1007. Commission to make rules -- confidentiality of proceedings.  
19 3-1-1008. Quorum.  
20 3-1-1009. Investigation by commission -- application for consideration.  
21 3-1-1010. Lists submitted to governor and chief justice -- report on proceedings.  
22 3-1-1011. Governor or chief justice of the supreme court to nominate from list.  
23 3-1-1012. When governor fails to nominate.  
24 3-1-1013. Senate confirmation -- exception -- nomination in the interim -- appointment contingent on  
25 vacancy.  
26 3-1-1014. Duration of appointment -- election for remainder of term.

27  
28 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 7] are intended to be

1 codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1  
2 through 7].

3

4 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

5

- END -

DRAFT

## Appendix D

1992 Voter Information Pamphlet  
on Constitutional Amendment 22  
(extraneous pages excised)

# MONTANA STATE LIBRARY

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# Montana Voter's Guide to the 1992 General Election

## Inside

### Page 2

Message from the Secretary of  
State

### Page 3

Explanation of the Voter  
Information Pamphlet

### Page 4

Summary of ballot measures

### Page 20

Complete text of ballot  
measures

## Back Cover

What to do at the polls

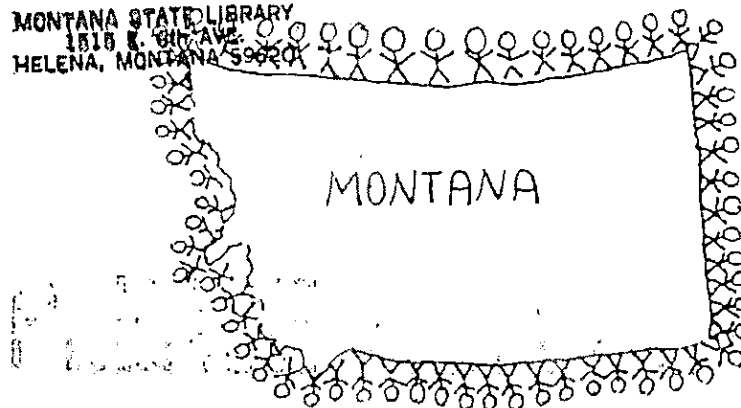
Registering to vote

VOTING IN THE ELECTION IN  
1992,  
IS WHAT MAKES MONTANA RED, WHITE, AND  
BLUE!

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LET'S JOIN TOGETHER AND VOTE!

Drawing by Ramie Holmquist  
of F.E. Miley School in Big Sandy.

*Published by Secretary of State Mike Cooney*  
State Capitol - Helena, Montana 59620

## ***Constitutional Amendment 22***

### **HOW THE ISSUE APPEARS ON THE BALLOT**

#### **Constitutional Amendment 22**

An amendment to the Constitution referred by the Legislature

**AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.**

The Legislature submitted this proposal for a vote. It would amend the Montana Constitution to clarify procedures for election of supreme court justices and district court judges and for the filling of vacancies. Judges appointed to fill a vacancy would be confirmed by the senate and serve until the expiration of the term of the judge whose position is being filled. No appointee could serve past the term of his or her predecessor without standing for election. Incumbent judges unopposed for re-election would be placed on the ballot to allow voters to approve or reject them for another term.

**FISCAL NOTE:** This measure will have no material fiscal impact.

- ☐ **FOR** amending the constitution to mandate the election of justices and judges as provided by law.
- ☐ **AGAINST** amending the constitution to mandate the election of justices and judges as provided by law.

### **Argument FOR Constitutional Amendment 22**

Montanans expect and deserve to have their judges elected on a timely basis. A recent Montana Supreme Court interpretation of Montana Constitution permits newly appointed judges to carry past the term of their predecessor without facing an election. Without changing the constitution, it would be possible to have judges avoid facing election if a succession of resignations and appointments occurred. This proposed amendment to the constitution prevents this from happening.

It is clear that the present process for appointment of district and supreme court justice positions flies in the face of the intent of the framers of the Montana Constitution. The current practice has thwarted the electoral process by allowing judges and justices to resign in the off-year which permits their appointed successors to serve a full three years before they have

to stand for election.

In part, this loophole was created in 1987, when the Attorney General issued an opinion holding that appointed judges don't have to run for election until after confirmation by the Montana Senate which was never the intention of the framers of our Constitution.

The 1972 constitutional language was written under the assumption that Montana would have annual legislative sessions. With annual sessions a yearly confirmation process could have been conducted. When annual sessions were abolished in 1974, a legal situation was created allowing judges and justices the luxury of avoiding election for three years before standing for election.

## Argument FOR Constitutional Amendment 22 (continued)

The Montana Constitution is clear in providing for the electoral selection of judges. 28% of our current Supreme Court Justices and 41% of our current District Court Judges were first appointed. This amendment seeks to bolster the constitution in guaranteeing the right of all Montanans to vote and participate in the electoral system while maintaining the balance of powers between the three branches of government by eliminating the potential for improper use of the appointment process.

If you subscribe to the notion that the Montana voter has a right to have executive judicial appointments face elections in a timely fashion, vote FOR Constitutional Amendment 22.

This measure's PROPONENTS' argument and rebuttal were prepared by Senator Chet Blaylock, Representative Bill Strizich, and Representative Vicki Cocchiarella.

## Argument AGAINST Constitutional Amendment 22

The proposed amendment creates more problems and uncertainties than it cures. Adoption of this Constitutional wording will result in additional litigation to resolve ambiguities it creates. The proposal unconditionally requires judges to be elected prior to assuming the duties of the office. This precludes temporary appointments to ease court caseloads, could require repetitive nominations, and minimizes the need but retains the requirement for expensive Senate confirmation hearings.

The current Constitution requires judges to face election when the term of office expires or after Senate confirmation of an appointee. However, proposed Section 8(1) requires that Supreme Court justices and district court judges shall be elected. It makes no provision for the appointment of judges to fill vacancies before an election. Although the intention is to allow for the appointment and the subsequent submission of the appointed judge to the electorate, the proposed language precludes appointees from acting until after an election. Furthermore, the proposed amendment does not address the appointment of temporary judges, without election, which is specifically provided for in Section 3-5-201 Montana Codes Annotated. This practice of appointing retired judges to assist with large caseloads is frequent and helpful. It expedites rulings and actions in cases for less expense and often saves the State money. The proposed language will eliminate this benefit.

conflict. The first section requires all judges to be elected while the second section provides for the appointment of judges who are not elected.

Since the current Constitutional language requires the election of judges, the only objection left is the time delay between a judicial appointment and the date of the election. Delays are caused by Senate confirmation and state election laws. If an appointment is made after the legislature adjourns, confirmation must wait until the next session, approximately two years. This proposal makes no change in the confirmation procedures. Existing state laws require that a person wishing to be included on the statewide general election ballot must file for the office 75 days prior to the primary election date. Changes to these laws instead of a Constitutional amendment would decrease the potential delays.

The appointment procedure is further complicated by the new requirement that no appointee shall serve past the term of his predecessor without standing for election. As an example of the problem which could arise, one should consider an appointment made in

Sections (1) and (2) of the proposed amendment

## Argument AGAINST Constitutional Amendment 22 (continued)

1992 to fill a position vacated by a judge whose term of office would expire in January 1993. If this proposed amendment were in effect now, the position would again be vacated in January and lengthy nomination procedures re-initiated. This could postpone Senate confirmation hearings until the 1995 legislative session.

Amending our Constitution is not something which should be undertaken lightly, and should not be

considered if existing laws could be changed by the legislature to resolve the concerns of the proponents.

For these reasons, the proposed amendment should be rejected.

This measure's **OPPONENTS'** argument and rebuttal were prepared by Senator James Burnett, Representative Dick Simpkins, and Ward E. Taleff.

## PROPONENTS' rebuttal of the argument opposing Constitutional Amendment 22

The opposition to C-22 relies on raising confusion rather than substantive issues. A common language reading of C-22 reveals that with this change, judges will be appointed as in the past, but must stand election as soon as possible. C-22 does not raise costs. No additional workload is created by C-22 other than what exists under the current procedure. Confirmation hearings have no effect on the cost of Senate operations.

The opponents have chosen to read Section 8, sub. 1 in the absence of sub. 2 of that same section and vice-versa. This confuses and does nothing to speak to the issues they portend to raise.

The diversity of legal opinion on current Constitutional language, demonstrates that this language is far from sufficient as implied by the

opponents. The opponent's attempt to shift blame to election laws and confirmation procedures is also baseless as these laws have no effect on misuse of the appointment process.

The opponents further insist that limiting a judge's term to that of his predecessor complicates matters. To the contrary, it simplifies them by placing the requirement in plain language.

The proponents of C-22 do agree that the Constitution is not something to be amended frivolously. We feel that this most serious step must be taken to preserve a basic precept of democracy - our right to elect public officials while maintaining the integrity of Montana's three branches of government.

## OPPONENTS' rebuttal of the argument supporting Constitutional Amendment 22

Concern for speedy elections of judges is understandable. However, this proposed amendment could cause a judicial impasse and does not reduce election delays. Anyone dissatisfied with a decision by a Judge appointed after amending the Constitution could appeal the ruling because the judge had not been elected and lacked jurisdiction. This could jeopardize past decisions.

The amendment does not adequately address the causes of time delays between appointments and

elections -- Senate confirmation and state laws.

The requirement for Senate confirmation prior to election is retained. The intent of the framers of our Montana Constitution is clear. During the convention, election requirements similar to the proposed amendment were rejected and the existing language requiring confirmation prior to the general election was unanimously adopted.

The Attorney General's opinions upholding the



## Rebuttal of the argument supporting Constitutional Amendment 22 (continued)

delays were based upon state laws establishing filing deadlines for judicial elections. The solution is to change the laws.

Safeguards addressing proponent concerns are already in place. The Governor is limited to appointments from a list recommended by a Judicial Nominating Committee which is required by the Constitution, and whose membership and rules are established by the legislature.

If the people want judges elected before they serve, the Constitution should be changed to the wording rejected by its framers. If the desire is to reduce the time delays between appointments and elections, then laws should be changed. Legislators who overwhelmingly supported this referendum during the session should willingly support changing the laws. In any case, this proposed amendment should be rejected.

# Complete text of proposed ballot issues

## The Complete Text of Constitutional Amendment 22

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"Section 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.

(2) The For any vacancy in the office of supreme court justice or district court judge, the governor shall nominate appoint a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the

~~incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.~~

~~(3) If an incumbent does not run, there shall be an election for the office. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.~~

~~(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."~~

Section 2. Effective date. This amendment is effective on approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1992 by printing on the ballot the full title of this act and the following:

- ☐ FOR amending the constitution to mandate the election of justices and judges as provided by law.
- ☐ AGAINST amending the constitution to mandate the election of justices and judges as provided by law.

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0125

---

BOB BROWN, DOROTHY BRADLEY, MAE NAN ELLINGSON,  
VERNON FINLEY, and the LEAGUE OF WOMEN VOTERS OF  
MONTANA,

Petitioners,

v.

GREG GIANFORTE, Governor of the State of Montana,

Respondent.

---

RESPONSE TO PETITION FOR ORIGINAL JURISDICTION

---

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TURE

The Governor hereby responds to the Petition for Original Jurisdiction.

### **BACKGROUND**

Petitioners ask this Court to exercise original jurisdiction and declare that the Legislature lacks authority to determine how judicial nominees are presented to the Governor under Article VII, § 8(2) of the Montana Constitution. Specifically, Petitioners challenge Senate Bill (SB) 140, which allows the governor to fill judicial vacancies by selecting from nominees who have submitted applications and who received at least three letters of support during the public comment period.<sup>1</sup> Nominees must then be confirmed by the Montana Senate. SB 140, § 6.

### **ARGUMENT**

As a threshold matter, Petitioners lack standing. Petitioners additionally have failed to demonstrate urgency or emergency factors rendering the normal adjudicatory process inadequate. And finally, even absent these barriers, this Court should reject jurisdiction because Petitioners cannot establish that SB 140 violates the Montana Constitution's plain language, which unambiguously grants authority to the Legislature to

---

<sup>1</sup> Available at <https://leg.mt.gov/bills/2021/billpdf/SB0140.pdf> (last accessed March 28, 2020).

determine—in its discretion—how judicial nominees are selected. *See* Mont. Const. art. VII, § 8(2) (“[T]he governor shall appoint a replacement from nominees selected *in a manner provided by law.*”) (emphasis added).

### **I. Petitioners lack standing.**

“The rule is well-established in Montana that only those who are adversely affected by a statute will be heard to question its validity.” *Jones v. Judge*, 176 Mont. 251, 253, 577 P.2d 846, 847–48 (1978) (citation omitted). “Standing is a threshold jurisdictional requirement that limits Montana courts to deciding only cases or controversies (case-or-controversy standing) within judicially created prudential limitations (prudential standing).” *Bullock v. Fox*, 2019 MT 50, ¶ 28, 395 Mont. 35, 435 P.3d 1187 (citations omitted).

#### ***A. Petitioners lack case-or-controversy standing.***

Petitioners must demonstrate “a past, present, or threatened injury to a property or civil right, and that the injury would be alleviated by successfully maintaining the action.” *Id.* ¶ 31 (citation and internal quotation marks omitted). Further, “[t]he alleged injury must be concrete, meaning actual or imminent, and not abstract, conjectural, or

hypothetical; redressable; and distinguishable from injury to the public generally.” *Id.* (citations omitted).

Individual Petitioners’ status as “residents of Montana and voters and taxpayers” misses the mark. Petition at 5. No right to vote is in jeopardy here. *See Jones*, 176 Mont. at 254, 577 P.2d at 848 (mere “stat-ure as an elector will generally not allow an individual to ... invok[e] the judicial power”). SB 140 has nothing to do with judicial elections, unlike those challenges to judicial election laws where this Court has accepted original jurisdiction. *See Id.* (challenging statutes permitting judges nominated while Senate is out of session to act as appointments until the following session ends); *Keller v. Smith*, 170 Mont. 399, 401, 553 P.2d 1002, 1004 (1976) (challenging statutes “provid[ing] for a general election ballot on retention or rejection of all unopposed incumbent district court judges and supreme court justices”); *Yunker v. Murray*, 170 Mont. 427, 428, 554 P.2d 285, 286 (1976) (seeking declaratory judgment that sitting district judges are required to run on “retain or reject ballot[s]”).

Similarly, Petitioners Brown, Bradley, and Ellingson have no particularized injury based on their participation in the 1972 Montana Constitutional Convention (1972 Convention) or 1973 Montana Legislature.

*See Raines v. Byrd*, 521 U.S. 811, 829, 117 S. Ct. 2312, 2322 (1997) (six members of Congress lacked standing to challenge constitutionality of congressional act because the injury alleged was “wholly abstract and widely dispersed”).

Finally, Petitioner League of Women Voters of Montana has not shown that it—or any of its members—has suffered any concrete, particularized, redressable injury. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 42, 360 Mont. 207, 255 P.3d 80 (holding an organization may demonstrate standing by filing “suit on its own behalf to seek judicial relief from injury to itself” and vindicate its “rights and immunities” or “assert[ing] the rights of its members” if “at least one of its members would have standing”).

Petitioners’ interest and participation in Montana politics cannot transform their abstract, conjectural, and hypothetical harms into concrete redressable injuries. Petitioners fail the requirements of case-or-controversy standing.

***B. This Court should reject jurisdiction under the doctrine of prudential standing.***

“Prudential standing is a form of ‘judicial self-governance’ that discretionarily limits the exercise of judicial authority consistent with the



separation of powers.” *Bullock*, ¶ 43 (quoting *Heffernan*, ¶ 32). It “embodies the notion that courts generally should not adjudicate matters more appropriately in the domain of the legislative or executive branches or the reserved political power of the people.” *Id.* (citation and internal quotation marks omitted). So “where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department[,] ... the issue is not properly before the judiciary.” *Id.* ¶ 44 (cleaned up).

As discussed in Section III, the Montana Constitution unambiguously grants authority to *the Legislature* to determine how nominees for a judicial vacancy are presented to the Governor. Mont. Const. art. VII, § 8(2). It would violate the separation of powers for this Court to second-guess those determinations. The Petition should be dismissed for lack of prudential standing.

**II. No “urgency or emergency factors” exist here to justify original proceedings under Rule 14(4).**

This Court will only accept original jurisdiction “when urgency or emergency factors exist making litigation in the trial courts and the normal appeal process inadequate and when the case involves purely legal questions of statutory or constitutional interpretation which are of state-

wide importance.” Mont. R. App. P. 14(4). Original proceedings are accordingly appropriate only where: “(1) constitutional issues of major statewide importance are involved; (2) the case involves purely legal questions of statutory and constitutional construction; and (3) urgency and emergency factors exist making the normal appeal process inadequate.” *Hernandez v. Bd. of Cnty. Comm’rs*, 2008 MT 251, ¶ 9, 345 Mont. 1, 189 P.3d 638 (citation omitted). These factors are disjunctive; absent one, the petition fails.

No urgency or emergency exists here because Petitioners’ alleged concerns are entirely speculative and hopelessly attenuated. They cite the pending confirmation of three appointed judges to support the urgency of their Petition. But the decision whether to confirm these judges rests solely with the Montana Senate. Mont. Const. art. VII, § 8(2). SB 140 neither disturbs nor bears on that confirmation process. In fact Petitioners’ true concerns arise only if the Senate rejects those appointments, and the Governor *then* appoints individuals who were not among those forwarded by the Judicial Nomination Commission (Commission). Petitioners muse: “Imagine if a Justice of the Montana Supreme Court resigns and the Governor appoints a replacement.” Petition at 9. Yet

unless they know something the Governor doesn't, it is purely speculative to suggest any Justice will resign before a district court could consider the case.<sup>2</sup>

“Courts do not function, even under the Declaratory Judgments Act, to determine speculative matters, to enter anticipatory judgments, to declare social status, to give advisory opinions or to give abstract opinions.” *In re Mont. Trial Lawyers Ass’n*, 2020 Mont. LEXIS 1627, \*3–4, 400 Mont. 560, 466 P.3d 494 (citation omitted). Yet by failing to identify any urgency or emergency factors, that is precisely what Petitioners ask this Court to do.

Attempting to overcome this hurdle, Petitioners analogize to *Hernandez*, an original proceeding addressing whether the creation of justice’s courts of record was constitutional. But *Hernandez* is nothing like this case. There, the Court concluded normal appellate processes were inadequate because:

---

<sup>2</sup> Petitioners additionally opine that putting the constitutionality of SB 140 to a district judge could place them in “an impossible position, having to rule on whether a fellow judicial officer had been appointed in a constitutional manner.” Petition at 11. Such are the burdens of high office. Montana’s judiciary is a branch of government, not a social club, and judges have been making decisions regarding the legitimacy of government appointments for a very, very long time. *See generally Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

Before an appeal from a justice court judgment presenting this issue could reach this Court, potentially hundreds of misdemeanor criminal cases would be resolved in the justice's courts of record throughout Montana. If Petitioner's claims were ultimately sustained, any judgments of conviction would be undermined and the prosecutions likely lost due to the running of the statute of limitations in those cases.

*Hernandez*, ¶ 10. Here by contrast, there is no indication a judicial appointment will be made under SB 140 before Petitioners can bring their case in district court. Petitioners thus ask this Court to provide a substitute for regular procedure where no emergency or urgency exists. See *Brisendine v. Dep't of Commerce*, 253 Mont. 361, 366, 833 P.2d 1019, 1021 (1992) (“[I]t is not the true purpose of the declaratory judgment to provide a substitute for other regular actions.”) (citation omitted).

This Court should reject jurisdiction under Mont. R. App. P. 14(4).<sup>3</sup>

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<sup>3</sup> Petitioners' attempts to paint this action “urgent” likewise demonstrate their lack of standing. In fact the glaring lack of any evidence (or argument) supporting Petitioners' standing demonstrates that this case involves more than “purely legal questions.” The Petition begs factual questions—including about standing—that must be addressed in a district court. See *Hernandez*, ¶ 9.

### **III. Petitioners cannot demonstrate that SB 140 is unconstitutional.**

Even if Petitioners had standing and met the requirements of Rule 14(4), their Petition fails because SB 140 is constitutional. Petitioners focus heavily on the drafting history of the Constitution and what certain delegates to the 1972 Convention said. But they never address the bellwether question: may this Court even consider this history? They avoid that question because the answer is obviously no. Petitioners don't even bother identifying textual ambiguities that might justify recourse to Convention history; because of course the text is unambiguous.

This Court should therefore begin and end its analysis by reviewing the plain language of Article VII, § 8, which grants the Legislature authority to determine how judicial vacancies are filled.

#### ***A. SB 140 complies with the Montana Constitution's plain language.***

"Statutes are presumed to be constitutional, and it is the duty of this Court to avoid an unconstitutional interpretation if possible." *Hernandez*, ¶ 15 (citation omitted). Moreover, "[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act." *Id.* (citations omitted). Petitioners "bear[] the burden of proving that [SB

140] is unconstitutional beyond reasonable doubt and, if any doubt exists, it must be resolved in favor of the statute.” *Id.* (cleaned up).

This Court interprets the Montana Constitution the same way it interprets statutes. *Shockley v. Cascade Cnty.*, 2014 MT 281, ¶ 19, 376 Mont. 493, 336 P.3d 375. The Court’s role is “to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Mont. Code Ann. § 1-2-101. Montana courts consider constitutional provisions holistically, “without isolating specific terms from the context in which they are used,” *City of Missoula v. Pope*, 2021 MT 4, ¶ 9, 402 Mont. 416, 478 P.3d 815, and “giv[e] words their usual and ordinary meaning.” *Contreras v. Fitzgerald*, 2002 MT 208, ¶ 14, 311 Mont. 257, 54 P.3d 983. When constitutional language is unambiguous, courts must discern the framers’ intent “from the plain meaning of the language used without further resort to means of statutory construction.” *Larson v. State*, 2019 MT 28, ¶ 28, 394 Mont. 167, 434 P.3d 241; *accord Jones*, 176 Mont. at 254, 577 P.2d at 848 (“When the words of a statute are plain, unambiguous, direct and certain, it speaks for itself and there is nothing for the court to construe.”) (citations omitted).

Article VII, § 8(2) provides: “For any vacancy in the office of supreme court justice or district court judge, the governor shall appoint a replacement from nominees selected in the manner provided by law.” This unambiguous language delegates to the Legislature the method of identifying judicial nominees. *See State ex rel. Strandberg v. State Bd. of Land Comm’rs*, 131 Mont. 65, 68, 307 P.2d 234, 236 (1957) (“The words ‘as may be prescribed by law’ means as may be provided by the Legislature.”) (citing Mont. Const. art. XI, § 4 and XVII, § 1). “Because the language is unambiguous there is nothing for the Court to construe.” *See Jones*, 176 Mont. at 255, 577 P.2d 846 at 848.

Petitioners extrapolate from the word “nominees” that Article VII, § 8 dictates “the Governor [must] receive a list of ‘nominees’ from some other source.” Petition at 12. “List” and that last prepositional phrase—“from some other source”—is where the mischief resides; both insert words and conditions that don’t exist.<sup>4</sup> As for the actual text, “nominees” simply means that the Governor must select from at least two otherwise-qualified lawyers. But even Petitioners admit that SB 140 satisfies that requirement: “Each applicant who has the qualifications set forth by law

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<sup>4</sup> Even if these terms existed, “other source” would include self-nomination.

for holding judicial office and who receives a letter of support from at least three adult Montana residents [during the comment period] must be considered a nominee ....” Petition at 14 (citing SB 140, § 4(2)).

Article VII, § 8 does not reference a “commission,” or provide *any* direction as to how nominees are selected. Elsewhere by contrast, the Constitution unambiguously calls for the creation of judicial commissions. *E.g.*, Mont. Const. art. VII, § 11 (“The legislature shall create a judicial standards commission.”). So the framers certainly knew how to create commissions; the fact that they did in Article VII, § 11 but declined to do so in Article VII, § 8 means the two provisions cannot impose the same requirements. *See Gregg v. Whitefish City Council*, 2004 MT 262, ¶ 38, 323 Mont. 109, 99 P.3d 151 (“Different language is to be given different construction.”). Article VII, § 11’s plain language requires the Legislature to create a commission; Article VII, § 8 requires the Legislature to create a process.

Petitioners cannot prove “beyond a reasonable doubt” that SB 140 is unconstitutional. *Hernandez*, ¶ 15. Rather, the plain language of Article VII, § 8 demands the conclusion that SB 140—providing a process for presenting judicial nominees to the governor—is constitutional. This



ends the inquiry. *Larson*, ¶ 28, *Keller*, 170 Mont. at 405, 553 P.2d at 1006.

**IV. Article VII, § 8's history confirms the framers' desire to give the Legislature discretion to determine how nominees are presented to the Governor.**

Because Article VII, § 8's plain language unambiguously grants the Legislature authority to determine how judicial nominees are selected, this Court need not—and should not—delve into the framers' intent. See *Larson*, ¶ 28. But contrary to Petitioners' arguments, the drafters of Article VII, § 8 specifically and intentionally vested the Legislature with authority to determine how judicial nominees are presented to the Governor.

Despite its absence from the text, Petitioners argue that the framers nonetheless meant to include “committee” or “commission” in Article VII, § 8. Petition at 14. They do so principally by curating stray remarks from delegates' speeches. History, however, demonstrates the omission was intentional. Between 1945 and 1967, five proposed constitutional amendments specifically calling for a judicial nomination commission

failed to pass.<sup>5</sup> Observing these defeated amendments, the framers of the Montana Constitution chose a middle path: to allow for, but not require, a judicial nominating commission, leaving the specific method to the Legislature's discretion.<sup>6</sup>

Prior to the 1972 Convention, the Judicial Subcommittee suggesting revisions recommended that the delegates “vest[] the legislature with authority to provide for the election o[r] other method of selection of justices and judges.” See Montana Constitutional Convention Commission, Report No. 7: Constitutional Provisions Proposed by Constitution Revision Subcommittees, 15–16 (1972) (noting the Legislature could adopt, “*if it sees fit*,” a selection method relying on a commission) (emphasis added). During the full Convention, Chairman Leo Graybill noted the proposed article would “have a commission set up by the Legislature that would

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<sup>5</sup> See SB 153 (1967) (“Providing for the selection of justices and judges by the governor from a list of nominees presented by the nominating commissions.”); House Bill (HB) 104 (1963); HB 230 (1959); HB 48 (1957); HB 145 (1945).

<sup>6</sup> See Anthony Johnstone, *A Past and Future of Judicial Elections: The Case of Montana*, 16 J. App. Prac. & Process 47, 65 (2015) (noting the modified selection plan adopted by the delegates reflected elements of Professors Mason and Crowley’s proposal); see also David R. Mason and William F. Crowley, *Montana’s Judicial System—A Blueprint for Modernization*, 29 Mont. L. Rev. 1, 11 (1967) (proposing an amendment that judges be “elected by the electors of the state at large, as hereafter provided, unless the legislative assembly shall provide by law another method of selection,” which would “make possible, but not require” a judicial selection commission).

give the Governor nominees, and the Governor would nominate from the commission, *or from whatever method the Legislature has determined, I should say.*" IV Montana Constitutional Convention, Verbatim Transcript 1088 (1979) (hereinafter Convention Transcript) (emphasis added).

Article VII, § 8's history—like its plain language—repudiates Petitioners' argument that a Commission is constitutionally required.

**V. The history of SB 140's predecessor statute does not bear on SB 140's constitutionality.**

The Constitution didn't create the Commission; the Legislature did. See Petition, ¶ 4 (admitting the Commission was created by SB 28 (1973)). Contrary to Petitioners' argument, the Legislature's decision to enact SB 28 in 1973 does not support the conclusion that the Constitution mandated—or that the Legislature understood it to mandate—the Commission.

SB 28 actually highlighted the deference afforded the Legislature by the Constitution. The delegates to the 1972 Convention had discussed the potential for a commission that would be "bi-partisan," "geographically distributed," "with at least one member from each judicial district," and with members "elected by the Legislature." I Montana Constitutional Convention, Proceedings 520-21 (1972). But SB 28 instead created

a Commission dominated by the partisan interests of the legislative and executive branch at the time. See Johnstone, *supra* note 6, at 72–73; Montana Constitutional Society of 1972, “100 Delegates: Montana Constitutional Convention of 1972” 31 (1989) (Delegate Melvin, stating: “Sadly, the Legislature tossed the mechanics of the appointment of judges right into the political kettle.”). SB 28 was not unconstitutional because its process was contrary to the desires of some delegates; the same is true for SB 140.

Petitioners also argue that because the Commission operated “for almost fifty years,” Petition at 2–3, the Legislature cannot change it. They reason that the Commission’s long life essentially transforms it from a constitutionally copacetic method to a constitutionally mandated one. But “legislative bodies cannot bind future legislative bodies in this way.” *Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 59, 384 Mont. 503, 380 P.3d 771. Petitioners’ argument is also historically unsound; the statute governing the nominations process has been amended numerous times since 1972.<sup>7</sup>

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<sup>7</sup> Mont. Code Ann. § 3-1-1001 alone was amended four times after its enactment. See En. Sec. 1, Ch. 470, L. 1973; amd. Sec. 30, Ch. 344, L. 1977; R.C.M. 1947, 93-705; amd. Sec. 6, Ch. 21, L. 1979; amd. Sec. 1, Ch. 651, L. 1987; amd. Sec. 1, Ch. 810, L. 1991; amd. Sec. 1, Ch. 12, L. 2009; amd. Sec. 1, Ch. 335, L. 2011.

Petitioners repeatedly impugn as unacceptably political any process but the old Commission's. But their reasoning undermines their concerns. While barring the elimination of the Commission, Petitioners' argument would nevertheless allow the Legislature to reconstitute the Commission's membership to, for example, a committee comprised of the Lieutenant Governor and other gubernatorial appointees; or the Speaker of the House and Senate President; or the directors of the Republican and Democratic Parties. This curious result underscores the silliness of Petitioners' argument.

The Legislature's enactment of SB 28 simply does not bear on the constitutionality of SB 140, nor does it reflect the framers' intent.

**VI. The language of the Voter Information Pamphlet does not support a conclusion that SB 140 is unconstitutional.**

As a threshold matter, this Court should decline Petitioners' invitation to consider whether the Voter Information Pamphlet supports the "plain language" of Article VII, § 8 because the language is unambiguous. *Larson*, ¶ 28. For this same reason, Petitioners' reliance on *Keller* is misplaced. *See Jones*, 176 Mont. at 254, 577 P.2d at 848 (rejecting reliance on *Keller* where "[t]he language of the Constitution is unequivocally clear"). In *Keller*, the Court recognized legislative intent is "determined

from the plain meaning of the words used, if possible, and if the intent can be so determined, the courts may not go further and apply any other means of interpretation.” *Keller*, 170 Mont. at 405, 553 P.2d at 1006 (determining that “incumbent” in a previous version of Article VII, § 8 was ambiguous). Here the language is unambiguous; had the framers desired to control how nominees were presented to the Governor, they would have said so plainly.

Similarly, Petitioners cite but find no support in *State ex rel. Mont. Citizens for Pres. of Citizen’s Rights v. Waltermire*, 227 Mont. 85, 738 P.2d 1255 (1987). There, the Court found that the language of the constitutional amendment as filed and certified by the Secretary of State was materially different from the language submitted to Montana voters in the voter information pamphlet, which purported to set forth the full text of the amendment. *Id.* . Here, however, the exact language of Article VII, § 8 was presented to the voters. Petition at Appendix B, p. 13. Petitioners don’t even argue that Article VII, § 8 was misrepresented to the voters; *Waltermire* is inapplicable.

The Voter Information Pamphlet is irrelevant to interpreting the plain language of Article VII, § 8 and does not support a conclusion that SB 140 is unconstitutional.

**VII. Petitioners' descriptions of the Commission process are misplaced.**

Finally, Petitioners repeatedly warn that SB 140 “threatens to politicize an otherwise-nonpartisan, independent, and effective means of filling judicial vacancies.” Petition at 2–3 (the Commission “has worked effectively to facilitate the independence and competency of the Montana Judiciary”), 6 (“independent judicial selection”), 9 (“politically-neutralizing impact of the [Commission]”), 12 (“independent vetting process”). But these chimerical depictions defy reality; just ask Montana’s judges. Earlier this year, several judges explained how the Commission process was overtly partisan, abusive, and sexist. One judge’s experience taught her the Commission “certainly is political,” and should be reformed to be “less political and more objective.” Decl. Oestreicher (Apr. 1, 2021), Ex. A at 13 (E-mail from Judge Yvonne Laird (Jan. 29, 2021)). Another judge remarked that the Commission “does not conduct an independent investigation into the qualifications of the candidates .... I was grilled by certain commission members about my religion and little else.” *Id.* at 6 (E-mail

from Judge Howard Recht (Jan. 29, 2021)). A third explained that when she encountered the Commission she was asked “inappropriate ... questions ... such as did my husband at the time approve of my application, and did I really think it was in the best interest of my children to move schools.” *Id.* at 9 (E-mail from Judge Amy Eddy (Jan. 29, 2021)). The Commission moreover is demonstrably partisan based on members’ political contributions.<sup>8</sup>

*This* is the process Petitioners hope to save?

Petitioners’ halcyon depictions of the Commission are apparently as groundless as their legal arguments.

### CONCLUSION

This Court should reject the Petition for three separate reasons: (1) Petitioners lack standing; (2) Petitioners have failed to demonstrate the factors necessary to obtain original jurisdiction; and (3) Petitioners have failed to establish that SB 140 violates Article VII, § 8’s plain language or is otherwise unconstitutional “beyond a reasonable doubt.” *Hernandez*, ¶ 15.

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<sup>8</sup> Senate Judiciary, Ex. 2, Comments of Lt. Gov. Kristen Juras in Support of SB 140 at 4 (Feb. 9, 2021), *available at* <https://leg.mt.gov/bills/2021/Minutes/Senate/Exhibits/jus27a02.pdf> (citing Mont. Comm. of Political Practices Campaign Electronic Reporting System for years 2000 through 2020).



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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this pleading is printed in a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,981 words, excluding certificate of service and certificate of compliance.

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