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MONTANA SECOND JUDICIAL DISTRICT COURT
BUTTE-SILVER BOW COUNTY

SISTER MARY JO MCDONALD; LORI
MALONEY; FRITZ DAILY; BOB BROWN;
DOROTHY BRADLEY; VERNON
FINLEY; MAE NAN ELLINGSON; and the
LEAGUE OF WOMEN VOTERS OF
MONTANA,

Plaintiffs,

v.

CHRISTI JACOBSEN, Montana Secretary of
State,

Defendant.

Cause No. DV-21-120
Hon. John Brown

Plaintiffs' Reply Brief

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INTRODUCTION

Plaintiffs moved for summary judgment, arguing that, under Rule 56 M.R.Civ.P., there are no disputed issues of material fact and the issues presented are ones of law. Defendant apparently agrees, having recently filed her own cross-motion for summary judgment. Accordingly, this case is appropriate for summary judgment.¹

At-large voting for Justices of the Montana Supreme Court has been a Constitutional principle throughout Montana's history. Montana's first Constitution in 1889 provided in Article VII, Section 8, "The justices of the supreme court shall be elected by the electors of the State at-large, as hereinafter provided." That principle was perpetuated by the 1972 Constitution. *Reichert v. McCulloch*, 2012 MT 111, ¶ 64, 365 Mont. 92, 278 P.3d 455. In *Reichert*, the Court squarely held: "the language and structure of these sections demonstrate that the Constitution intends Supreme Court justices to be elected and serve on a statewide basis...." *Id.* *Reichert* considered a bill very similar to HB 325 and determined it to be unconstitutional.

Not taking the message of *Reichert* seriously, the Montana Legislature, through the vehicle of a statutory amendment procedure, again proposes to change Montana's long-standing constitutional system. HB 325 proposes to amend Section 3-2-101, MCA, by eliminating at-large voting for Supreme Court justices and replace this with seven individual districts, each justice to be elected exclusively in a particular district. The Bill, a referendum measure, directs the placement of the proposal on the general election ballot in 2022.

As made clear below, Montana's practice of at-large elections for Supreme Court justices

¹ Defendant Jacobsen, as any other litigant, is bound to follow the Rules of Civil Procedure. Nonetheless, she has not filed an answer, although one is long overdue.

is a constitutional requirement. *Reichert* determined the 2012 measure was both substantively unconstitutional and also procedurally improper—finding it may not be changed by the mere practice of statutory amendment, even where the amendment is submitted by legislative referendum to the Montana voters.

It goes without saying that this Court is bound to follow *Reichert*. HB 325 must be invalidated as unconstitutional.

ARGUMENT

I. AMENDMENTS TO THE CONSTITUTION MAY NOT BE MADE THROUGH A STATUTORY REFERENDUM.

Reichert made it clear that the statutory referendum in that case, which is virtually the same as the one involved here, constitutes an illegal attempt to amend Montana's Constitution without compliance with Article XIV, Section 8 of the Montana Constitution. As the Court stated in *Reichert*, "these changes constitute amendments to the Constitution, which cannot be achieved by means of a statutory referendum." *Reichert*, ¶ 82. The Court in *Reichert* added: "neither the Legislature nor the people have the power to alter the constitutionally established structure of government by means of a statutory referendum." *Id.*, ¶ 71

Although Plaintiffs address this point in their opening brief, pp. 7–8, it is not addressed by Defendant. The *Reichert* decision is binding on this Court and, on this basis alone, HB 325 is unconstitutional.

II. THIS CASE IS JUSTICIABLE.

Defendant cites several Montana cases standing for the general proposition that pre-election judicial challenges are disfavored. Based on these cases, Defendant argues this case is not justiciable because it is not ripe. As *Reichert* pointed out there are two components to

justiciability. First is a “constitutional” component, stemming from the requirement that the case be sufficiently adverse, and not abstract. *Reichert* squarely found that issues there, which are virtually the same as the issues here, are “definite and concrete, not hypothetical or abstract,” and this case thus presents a controversy in the constitutional sense. *Reichert*, ¶ 58.

A. *Reichert* made it clear that courts have a duty to exercise jurisdiction where a challenged measure is facially defective.

The *Reichert* court faced the same argument now made by Defendant, that, as a general proposition “pre-election judicial review should not be routinely conducted.” *Reichert*, ¶ 59.

Reichert squarely rejected this argument stating:

Such deference and restraint do not apply, however, where a challenged measure is facially defective. In that event, the courts have a duty to exercise jurisdiction and declare the measure invalid.

Id.

Reichert cited *State ex rel. Steen v. Murray*, 144 Mont. 61, 69, 394 P.2d 761, 765 (1964) (Enjoining the Secretary of State from placing on the ballot an initiative that was “unquestionably and palpably unconstitutional on its face”); *State ex rel. Harper v. Waltermire*, 213 Mont. 425, 428, 691 P.2d 826, 828 (1984) (Entertaining a pre-election challenge to an initiative that, on its face, was “beyond the power of initiative granted the people by the Montana Constitution”); and *Cobb v. State*, 278 Mont. 307, 310, 311, 24 P.2d 268, 270 (Affirming an injunction that prohibits the Secretary of State from placing on the ballot a referendum, which, if enacted would leave “an obvious defect in the Constitution”). *Reichert*, ¶ 59.

The proposition that courts are reluctant to consider pre-election challenges does not apply here because HB 325 is facially unconstitutional.

B. Courts have a special duty to act where, as here, there is an attempt to amend the constitution through statutory means.

As made clear in Plaintiffs' opening brief, pp. 7–8, HB 325 amounts to an attempt to amend Montana's Constitution through improper means—through statutory amendment. The Constitution itself in Article XIV, Section 8, sets forth the exclusive procedure that the Constitution may be amended through legislative referendum. The defect in the procedure by which HB 325 proposes to amend the Constitution was directly addressed in *Reichert* which held:

[T]he constitutional infirmity is clear on the face of the measure in that LR-119 attempts to amend the Constitution by means of a statutory referendum.

Reichert, ¶ 60.

Defendant bases her justiciability argument on her premise that the case is not ripe for review, arguing that the Court should wait and see if the measure is passed in the 2022 general election. The procedural defect, however, infects the entire process. This defect cannot be repaired by a subsequent vote by the electorate. Put simply, if the electors vote to change the Constitution by simply amending a statute, it will be constitutionally invalid. It makes no sense to postpone the court review until after an election.

As instructed by *Reichert*, courts have a duty to act when an unconstitutional attempt to amend our Constitution is clearly presented. That is precisely what we have here. HB 325 is procedurally flawed as a statutory attempt to amend Montana's Constitution. Surprisingly, Defendant cites *State ex rel. Livingston v. Murray*, 137 Mont. 557, 354 P.2d 552 (1960), apparently thinking it somehow supports her argument. It is just the opposite. In that case, a legislative referendum proposing to amend the Constitution was about to be submitted to the voters by the Secretary of State. The Court affirmed an injunction because of procedural flaws in the manner

in which the measure was processed. While the measure was passed by both houses of the Legislature with the requisite two-thirds vote in both houses, Article V of the (1889) Constitution required that such a measure “shall be presented to the Governor for his approval.” Because it was not presented to the Governor, the Court affirmed an injunction which prohibited the measure from being placed on the ballot. *Id.* at 565.

Thus, when state officials attempt to place a measure on an election ballot but do not comply with Montana’s Constitution, courts will take action to invalidate the proposed referendum.

C. Prudential considerations militate action by this Court.

Given *Reichert*, there is no doubt that the present case meets the “case or controversy” requirement for justiciability. But even prudential considerations militate in favor of judicial resolution at this time. *Reichert* put it this way:

Where a measure is facially defective, placing it on the ballot does nothing to protect voters’ rights. It instead creates a sham out of the voting process by conveying the false appearance that a vote on the measure counts for something, when in fact the measure is invalid regardless of how the electors vote. Placing it on the ballot would also be a waste of time and money for all involved—putting the Secretary of State, local election officials, and ultimately tax payers to the expense of the election; putting proponents and opponents to the expense of needless campaigning and putting voters to the task of deciding a ballot issue which this Court already knows cannot stand even if passed. Deferring decision to a later date so the measure can go forward is senseless. It consumes resources with no corresponding benefit. Nothing in ripeness doctrine mandates such an approach. Indeed, “the prudential concerns of the ripeness doctrine [are] not implicated” where the possible Constitutional infirmity [is] clear on the face “of the measure.” *Portman*, 995 F.2d at 903.

Reichert, ¶ 59.

D. *Reichert* is controlling on justiciability. Defendant's efforts to avoid *Reichert* are unpersuasive.

Defendant argues that *Reichert* is distinguishable on the justiciability argument, and therefore not applicable here. Defendant, recognizing that the *Reichert* majority opinion is squarely against her position, cites the *Reichert* dissent six times. The term "dissent" means, of course, the dissenting Justice did not prevail in her position.

Defendant also argues that two cases on justiciability, relied on by the *Reichert* opinion, are not truly on point. These cases are *Gryszan v. State*, 283 Mont. 433, 942 P.2d 12 (1987) and *Missoula City-County Air Pollution Control Bd. v. Bd. Of Env't Rev.*, 282 Mont. 255, 937 P.2d 463 (1997). *See Def' Br.*, p. 13. Defendant is wrong in her attempt to distinguish these cases. More important, however, it was the *Reichert* Court which relied on these cases to support and explain its decision that the case was justiciable. Defendant's collateral attack on the merits of the *Reichert* analysis is inappropriate here. This Court is, of course, subject to the decisions of the Montana Supreme Court.

Defendant also argues that the time issues were more pressing in *Reichert*. The bill in *Reichert*, HB 268, called for it to be voted on in the June 2012 primary election and several positions would be at issue in the ensuing general election. This is a distinction without a difference. As the dissent in *Reichert* made clear, there would have been time for the Court to consider and strike down HB 268 after the primary election and before the general. *Reichert*, ¶ 97 (Baker, J., concurring in part and dissenting in part). Despite this, because of the palpable unconstitutionality of the measure in question *Reichert* rejected the State's justiciability argument and proceeded to resolve the case.

In sum, *Reichert* could not be more clear that this case is justiciable. HB 325 is facially

unconstitutional, and it makes no sense to go through the needless expense of an election, as so eloquently stated in *Reichert. Id.*, ¶ 59.

E. Plaintiffs have standing.

Defendant makes a desultory attempt to assert the Plaintiffs lack standing, relegating her argument to a footnote. *See Def's Br.*, pp. 10–11 n. 2. In *Reichert* the Court found standing based on plaintiffs' status: "Plaintiffs are Montana citizens, taxpayers, and electors who have participated in elections for justices of the Montana Supreme Court...." *Reichert*, ¶ 8. Standing has been found by the Court in numerous instances where voters have filed challenges based on the Judiciary Article. The most recent is *Brown v. Gianforte*, which found standing based on Plaintiffs' status as voters—including some of the same voters who are Plaintiffs in this case. 2021 MT 149, ¶¶ 8–24.

Because the Judiciary Article is imbued with the public interest, voters have standing. For example, in interpreting the Judiciary Article, this Court held in *Committee for an Effective Judiciary v. State*, 209 Mont. 105, 679 P.2d 1223 (1984) the framers were "primarily motivated by the public interest":

The concern of the delegates was not to confer benefits on the judiciary nor on individual members of the judiciary. Rather, their concern was for the **health of the judicial system itself—for the public interest.**

Id. at 109 (emphasis added). As a result, the Court found individual standing based solely on voter status:

Where the public and the electorate were so clearly intended to benefit by a constitutional provision, we hold that a registered voter has standing to assert that public interest...We must therefore recognize that a public interest exists...to assert the integrity and supremacy of this constitutional provision voted on and passed by the delegates and later voted on a ratified by the people of this state.

We hold that a registered voter has the standing to make this assertion.

Id. at 110. *Effective Judiciary* relied on *Jones v. Judge*, 176 Mont. 251, 577 P.2d 846 (1978), another case which found the status of registered voter sufficient to establish standing to raise a constitutional challenge under the Judiciary Article.

In *Keller v. Smith*, 170 Mont. 399, 401, 553 P.2d 1002, 1004 (1976), the Court interpreted the Judiciary Article, finding standing on the part of Keller, a “voter, resident and taxpayer of Flathead County, Montana.” In *Yunker v. Murray*, 170 Mont. 427, 554 P.2d 285 (1976), the Court interpreted the judiciary article and entered a declaratory judgment at the behest of Yunker, “a registered voter in precinct 59, Yellowstone County, Montana, within the Thirteenth Judicial District.” *Id.* at 428.

III. DEFENDANT’S MERITS ARGUMENTS, WHICH SHE PURPORTS TO “PRESERVE” FOR APPEAL, ARE UNPERSUASIVE.

Recognizing that *Reichert* is dispositive on the merits, Defendants try to “preserve” their merits arguments for an appeal, stating: “To the extent that this Court determines that *Reichert* requires it to ignore the plain meaning of Article VII, Section 8(1), the State preserves the following arguments for appeal.” This comes close to a **concession** by the Defendant. First, she concedes that this Court is bound to follow rulings of the Montana Supreme Court.² Second, she seems to concede that *Reichert* is indistinguishable. Thus, Defendant is attempting to “preserve” its merits arguments so that she can take another run at the merits of *Reichert* in the Supreme

² This principle is so strongly established in this country’s jurisprudence that such concession would not seem remarkable in any other context. However, in another setting, the so-called “Lieutenant General” in the Attorney General’s office actually notified the Montana Supreme Court by letter that they were not bound by, and did not intend to abide by, a decision of the Montana Supreme Court quashing a subpoena to Court’s Administrator.

Court.

A. Montana's Constitution requires at-large voting for Supreme Court justices.

Montana's first Constitution in 1889 provided in Article VIII, Section 6 that Justices of the Supreme Court "shall be elected by the electors of the State at large...."

Although the 1972 Montana Constitution did not carry over the flat language of the 1889 Montana Constitution, it is clear that all of the framers intended that Supreme Court Justices be elected and that such election be by the voters at-large. The Defendant in *Reichert* latched upon certain language from the Constitutional convention debates. The Framers rejected Delegate Holland's proposal that "the Justices of the Supreme Court shall be elected by the electors of the State at-large...." As the Court in *Reichert* noted, although this amendment failed by a narrow margin, the sole question being debated at the time was whether justices and judges should be elected, appointed, or some combination of the two. The *Reichert* Court stated:

There is no indication in the delegates' discussion that they objected to the "state at-large" portion of Delegate Holland's proposal. To the contrary, **the assumption of all who spoke on the question was that, under whatever system the delegates finally adopted, Supreme Court Justices would be selected on a state-wide basis and district court judges would be selected on a district-specific basis.**

Reichert, ¶ 81 (emphasis added.)

In addition to this, the voter information pamphlet circulated to the voters in 1972 (*Exhibit A*³) made no mention at all that the at-large voting system would be abandoned.⁴ Indeed,

³ Exhibit A, an official document of the State of Montana, is subject to judicial notice under Rule 201 M.R.Ev. So too is Exhibit B, which is an official document of the State of Montana, setting forth history on the 1992 Constitutional Amendment.

⁴ See *Exhibit A*, p. 21 "Deletions" from the 1889 Constitution.

the comment in the voter information pamphlet in Article VII, Section 8, states that the section “revises 1889 Constitution. **Contested election of judges is not changed....**” *Exhibit A*, p. 13 (emphasis added). There was no discussion which would lead the voters to believe that justices of the Supreme Court would either not be elected or would not be elected on a statewide basis or that the Legislature would be allowed to make such change. Indeed, as *Reichert* observed, the assumption of all the Constitution convention delegates who spoke on the Judiciary Article was to the contrary:

[T]he 1972 Constitutional Convention delegates debated whether justices and judges should be elected, appointed, or some combination of the two, but the assumption of all who spoke on the question was that, under whatever system the delegates finally adopted, Supreme Court justices would be selected on a statewide basis and district court judges would be selected on a district specific basis. The Constitutional Convention record thus supports our “structural” analysis of Article VII.

Reichert, ¶ 64.

Moreover, as established in Plaintiffs’ opening brief, the 1972 Constitution provides for “judicial districts” but only for district court judges. The Constitution makes a careful and repeated distinction between “judges” and “justices”. See *Plaintiffs’ Opening Brief*, p. 7. The *Reichert* Court addressed this distinction between “judicial districts,” and district judges, and the function of Supreme Court justices, which is to administer justice throughout the State. The Court observed:

The language and structure of these sections demonstrate that the Constitution intends Supreme Court justices to be elected and serve on a statewide basis, district court judges to be elected and serve on a district-wide basis....

In short, although the 1972 Constitution did not preserve the exact language of the 1889 Constitution, its meaning is clear. Supreme Court justices shall be elected on a statewide basis.

B. The 1992 Constitutional Amendment was not intended to, and did not, alter the long-standing constitutional requirement of at-large voting.

In 1992, the voters considered and adopted a Constitutional initiative which revised the wording of the Judiciary Article. Mont. Const. Art. VII, § 8, *amended by* Mont. Const. amend. No. 22 (approved 1992). Among other changes, Section 8(1) was added, which provides that justices and judges are to be elected, “as provided by law.”

Defendant argues such language delegates the manner of voting for Supreme Court justices to the Montana Legislature. This is not true. Moreover, it is an argument roundly rejected by the Court in *Reichert*. Before examining *Reichert*, it should be noted that there is **nothing** in the voter information pamphlet of 1992 (Exhibit B) which remotely suggests to the voters that they are voting to change the method of at-large voting for Supreme Court justices, or that they were enabling the Legislature to abandon at-large voting. **Nothing.**

Instead, the entire purpose of that Constitutional Amendment was to address a glitch in the language of Article VII regarding the filling of judicial vacancies. *Reichert* made it clear that the purpose of the proposed amendment in 1992 was to “close the perceived ‘loophole’ in Article VII, Section 8.” *Reichert*, ¶ 76. The “loophole,” which concerned the filling of judicial vacancies, was exposed in the decision *State ex rel. Racicot v. First Jud. Dis. Ct.*, 243 Mont. 379, 391, 794 P.2d 1180, 1187 (1990). The *Reichert* Court concluded:

Thus, HB 353 was a *timing* measure. Nothing in the plain language of Article VII, Section 8 (as amended) or in the history of HB 353 indicates that the 1992 amendments were intended—or even contemplated—to grant the Legislature power to convert the Supreme Court from an institution composed of members elected on a statewide basis into a representative body composed of members elected from separate districts. The State is mistaken in its claim that Section 8(1) grants such authority. If anything, the proponents’ views indicate that HB 353 was intended to *strengthen* the right of “all Montanans” to vote for Supreme Court justices, not

take that right away.

Reichert, ¶ 78 (emphasis in original).

In short, the amendment of 1992 does not support Defendant's theory.

CONCLUSION

For the foregoing reasons, this Court must declare HB 325 unconstitutional.

Respectfully submitted this 15th day of December, 2021.

GOETZ, GEDDES & GARDNER, P.C.

By: 

James H. Goetz

and

EDWARDS & CULVER

By: 

A. Clifford Edwards

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the means designated below, this 15th day of December, 2021.

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Courtesy copy: Hon. John C. Brown (via email at jbrown3@mt.gov)



James H. Goetz

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**



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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 16 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 133,482 to 71,643.

The 1971 Legislature passed enabling legislation calling the convention and created a 16 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 3.
 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 attend 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 unicameral 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**Retained 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 re-election 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, and 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 retirement, removal or suspension of the judge in question to the supreme court. Section 11.

Clerk of supreme court no longer a constitutional officer. (No mention in proposed constitution)

Number of justices of peace restricted to one per county. Salaries of justices of peace provided by legislature. Section 5.

Article VIII REVENUE AND FINANCE**Retained From Present Constitution**

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 uses other than those related to highways was retained, but made more flexible by allowing legislature to use the revenue for other purposes upon approval of three-fifths of the membership of each house. Section 6.

New Provisions Added

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

Local debt left 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) a two-thirds vote of each house of the legislature or (b) a majority of the people voting on the issue. Section 8.

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 related 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 disturbed 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 fund, 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 (the 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 alternative forms, however, cannot be adopted without 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.

Unless 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 ordered to provide procedures by which local voters may design their own forms of government—called 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 adopted a 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 6.

Local government units are given broad authority to cooperate and share services and functions in about every way imaginable. Section 7.

Residents of a city or county are assured an opportunity within four years after adoption of the constitution to vote on whether they want to change their form of government. Such voter review of local government will be repeated at 10-year intervals. Section 9.

Article XII DEPARTMENTS AND INSTITUTIONS**Retained From Present Constitution**

Constitutional Status of Department of Agriculture: Special levies 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 stockraising; however, the legislature may redefine that maximum. Section 2.

Public institutions and facilities shall be provided as the public good may require, including veteran's home. Section 3.

New Provisions Added

Primary responsibility for welfare assistance is placed on the legislature, rather than the counties as is now the case. Section 3.

Restoration of rights of persons committed to institutions. Section 3.

Special levies 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 5.

Perpetuities are prohibited, except they may be allowed for charitable purposes. Section 6.

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 4.

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 petitions 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 4.

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 Montanians 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 in civil 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.

* * *

Revises 1889 constitution which allowed the writ of habeas corpus to be suspended in case of rebellion or invasion. Revision provides that the writ (the right to test the lawfulness of a person's being detained) may never be suspended.

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.

Retains method in 1889 constitution of starting criminal actions. Increases grand jury from seven to eleven persons.

Section 21. BAIL

All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Identical to 1889 constitution. Guarantees that all persons are bailable except in case of certain offenses punishable by death.

Section 22. EXCESSIVE SANCTIONS

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

Identical to 1889 constitution.

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.

Deleted provision in 1889 constitution that depositions may be used in a trial if the witness who gave it is dead or out of state. Retained language is identical to 1889 constitution.

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 in his behalf, 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 for which the defendant may obtain the same.

Identical to 1889 constitution. Establishes fundamental procedural rights of a person accused of crime.

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.

Revises 1889 constitution by protecting a person from being tried for the same crime by both this state and the United States or another state.

Section 26. TRIAL BY JURY

The right of trial by jury is secured to all and shall remain inviolate. But upon default 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.

Revises 1889 constitution by permitting a defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases and by requiring all jurors (rather than 2/3) agree before a defendant may be convicted of a misdemeanor.

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.

Identical to 1889 constitution. Safeguards the right of a person in debt to be free from imprisonment.

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.

Revises 1889 constitution by deleting reference to capital punishment and providing that rights a person loses when convicted of a crime are automatically restored when he has served his sentence.

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 to 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.

Retains provisions in 1889 constitution on eminent domain and expands its protection by guaranteeing that a property owner who goes to court and is awarded more money than offered for his property being condemned will be reimbursed for the necessary expenses of the lawsuit (such as appraiser and attorneys fees).

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.

No change except in grammar

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.

Identical to 1889 constitution.

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.

Identical to 1889 constitution.

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.

Identical to 1889 constitution.

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.

Identical to 1889 constitution.

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 provision allowing legislature to give servicemen, servicewomen, and veterans special treatment in the law.

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 20 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.

* * *

Shortened 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 8% in 2/5 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 8% of the electors in 2/5 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.

* * *

Revises 1889 constitution by adding the word "secret".

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

residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall assure 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.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE

Any qualified elector is eligible to any public office except as

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.

Section 5. RESULT OF ELECTIONS

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

No change except in grammar.

Section 6. 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 rewarded Voter is immune from arrest during the voting process unless during such time he commits a felony or breach of peace



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 filling vacancies by election if the present law requiring appointments is ever repeated

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 40 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.

No change except in grammar

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.

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.

* * *

(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. (5) No change except in grammar.

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.

(1) No change except in grammar. (2) Changes 1889 constitution by requiring recorded votes on all actions which affect 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 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 VII

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.

* * *

Revises 1889 constitution. Removes constitutional status of state treasurer, board of examiners, and state examiner. The officers still appear in the law. All officers mentioned must reside at capital. 1889 constitution exempt lieutenant governor from this requirement.

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 run as a team.

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.

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

Only change is subsection (2) which is new provision allowing legislature to make lieutenant governor full time. Deletes provision that lieutenant governor be president of senate.

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.

Revises 1889 constitution. Salaries may be increased or decreased. Public official may not receive more than one salary or hold more than one office but may be candidate for another office without resigning.

Section 6. 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, succession to the respective offices 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, auditor, or superintendent of public instruction 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 1889 constitution by changing method of filling vacancy in office of lieutenant governor. Senate confirmation no longer required for appointments to fill vacancies in offices listed.

Section 7. 20 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) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

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

Section 8. APPOINTING POWER

(1) The departments 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 confirma-

tion by 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 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 its 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 in grammar in subsections (2) and (3). Subsection (4) is new provision prohibiting nomination or appointment of persons previously rejected by senate.

Section 9. BUDGET AND MESSAGES

The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures 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 grammar.

Section 10. VETO POWER

(1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Subsection (1) revises 1889 constitution. Amendments to U.S. and Montana constitutions and legislative resolutions may be passed without governor's signature. Pocket veto after adjournment eliminated. Subsection (2) new provision. "Amendatory veto" enables governor to return bills with suggestions for changes. No change in subsection (3) except for grammar. Provision in subsection (4) for reconvening to consider vetoed bills is new.

Section 11. SPECIAL SESSION

Whenever the governor considers it in the public interest, he

may convene the legislature.

Revises 1889 constitution. Continues power of governor to call special sessions of the legislature but it moves his power to limit subjects to be considered.

Section 12. PARDONS

The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Revises 1889 constitution. Deletes reference to board of pardons (which is provided for by law) and to the board of prison commissioners (which is defunct).

Section 13. MILITIA

(1) The governor is commander-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.

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

Section 14. SUCCESSION

(1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying 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.

New provision based on 25th amendment to U.S. Constitution. If governor dies, is disqualified, or resigns, the lieutenant governor takes his place. If governor is gone from the state more than 45 days or is temporarily disabled the lieutenant governor becomes acting governor. If the lieutenant governor and the attorney general 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.

(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

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.



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 1889 constitution by allowing the legislature to establish "inferior" courts, such as a small claims court, as well as intermediate courts of appeal. Reference in 1889 constitution to senate as court of impeachment is deleted.

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.

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.

* * * *

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. Legislature may veto the rules. (4) No change except in grammar.

(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.

(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 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.

* * * *

Only change, except in grammar, allows legislature to increase number of justices to six should the need

(1) Revises 1889 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 references in 1889 constitution to types of cases which may not be handled by a justice of the peace and provides that legislature may determine this except that they may not try felony cases. (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

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.

(1) Revises 1889 constitution by making residency requirements for candidates for district court judge the same as for supreme court and by deleting age requirements. Requirement for five years of law practice new. (2) 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 out of state for more than 60 days.

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 continues 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) be exempt from taxation. Revision leaves all exemptions at discretion of legislature. Specifically permits taxation of private interests in government-owned property and assessment of special improvement district charges on tax exempt property.

Section 4. EQUAL VALUATION.

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

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 2. TAX POWER INALIENABLE

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

New section which limits the power to tax to government

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

Section 5. 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.

Revises 1955 amendment to the 1889 constitution by removing motor vehicle registration fees from the earmarking provision, by including local government road and street systems, highway safety programs and driver education programs as permissible uses of car

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.

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 appropriating funds.

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.

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 O 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 1889 Constitution. Expresses the goal of the state to educate all of its citizens regardless of their ages. 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 1889 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 1889 constitution by replacing specific language requiring distribution to be made in proportion to the number of children between one of 6 and 2 with general language that the proceeds be equitably apportioned and by allowing distribution of interest and income to money to high school as well as elementary school.

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 1889 constitution by specifying that federal funds may be distributed to private school. Proposed section still prohibits state aid to pay for school.

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 1889 constitution which merely forbade denying any person entrance to a university because of his or her sex by broadening 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 board. Deletes requirement in 1889 constitution that election for school district officers must be separate from state and county election.

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 1889 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 university system. The two boards together form one board (Board of Education) for considering mutual problems. Under 1889 constitution there is just one board to supervise the entire educational system. Each of the two proposed boards consists of 7 persons appointed by the governor (one less than in 1889 constitution). The governor and superintendent are ex officio non-voting members (the attorney general is an ex officio member in 1889 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 of 1889 constitution by deleting the 1889 constitution of the direction of property to public lands, to be agricultural or other lands and stipulating that public lands may be exchanged.

ARTICLE XI

LOCAL GOVERNMENT

Section 1. DEFINITION

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

* * * *

New provision defining the term "local government unit" to include counties, cities and towns

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.

* * * *

Revises 1889 constitution by requiring only majority of those voting to approve county seat or boundary changes. 1889 constitution requires majority of qualified electors.

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 offices 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 directing legislature to provide alternative form of city and county or city-county governments one of which must be the traditional form including the elected officials listed. Two or more counties may agree to elect one official to serve a multi-county area. Offices within counties are subject to consolidation.

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 legislature to grant legislative, administrative and other powers to local government units.

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 directing legislature to pass laws concerning procedures for local voters to design their own forms of government (self-government charters). The charter provisions concerning structure of local governments would take precedence over general laws on such matters.

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. At 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 services 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 give residents 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 studied and evaluated every ten years.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section 1. AGRICULTURE

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

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

(1) Revises 1889 constitution. Provides that a department of agriculture will be one of the 20 departments in the executive branch. Deletes reference to commissioner of agriculture. Directs legislature to provide money for agriculture.

(2) Revises 1889 constitution by extending the special mill levy on livestock to agriculture to be used for the benefit of both. Deletes reference to maximum levy allowed.

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) Revises 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.

(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: 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.

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.

Section 3: 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 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.

Section 5: EXEMPTION LAWS

The legislature shall enact liberal homestead and exemption laws.

Identical to 1889 Constitution.

Section 6: PERPETUITIES

No perpetuities shall be allowed except for charitable purposes.

Identical to 1889 Constitution.



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.

tional 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 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.

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.

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.)

New provision. The question of holding a constitu-

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.

Revises 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 to 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

Sections on size of legislature, election and terms of its members would become effective when the reapportionment plan becomes law. If this is in 1974 then elections would be held in November, 1974 for new members of the legislature to take office January 1, 1975.

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, 1973. It does not create any rights for past events.

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 this provision makes it clear that all judges may serve to the end of the term for which they were elected

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, 1973.

Proposed section on annual legislative sessions and reapportionment of the legislature would be effective January 1, 1973. The reapportionment commission could then be appointed by the 1973 legislature and report its plan to the 1974 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 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 6th 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 1889 constitution by requiring recorded votes on all actions which affect 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 single member districts. (2) and (3) New provision which establishes a five member commission to recommend a reapportionment 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, 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 committees 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 six 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 6 and from section 8. ARTICLE VII. REVENUE AND FINANCE.

* * *

If the one house legislature is adopted the words "of each house" are meaningless 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) unless 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 21 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 25. 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 XVII—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 1-18. 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



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What to do at the polls

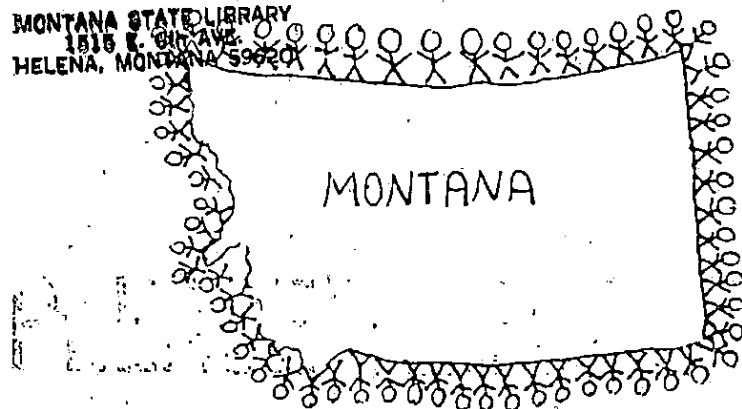
Registering to vote

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LET'S JOIN TOGETHER AND VOTE!

Drawing by Ramie Holmquist
of F.E. Miley School in Big Sandy.

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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.

PROPOSERS' 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.