

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 19, 1985

The fifty-second meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 19, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 613: Representative Tom Hannah, sponsor of HB 613, testified this bill was caused by a recent supreme court decision that took the balanced budget amendment off the November ballot. The timing of that event concerned him. He feels the legislature should address that so we can deal with the initiative process in a timely manner. This bill says any ruling needs to happen within a certain timeframe. or after the election. It created real havoc because ballots had to be reprinted and absentee ballots were late. The bill deals with just the certification of printing.

PROPOSERS: Larry Akey, Chief Deputy to the Secretary of State, testified this bill was requested by his office. This gives local election officers a green light to proceed with the election process at the time the ballot is certified. What we are trying to do is give the local election officers a green light to proceed with printing and distribution of voter distribution pamphlets. It does not prohibit anyone from challenging a ballot issue in the courts. It is certified between mid-July and mid-September. It does not prohibit the court from hearing a challenge after ballot certification. What they are asking is that there be some balance of the administration process with the citizens' right to challenge that process in court. Would HB 613 stand up to a constitutional test? What our system of government has is a system of checks and balances. The check the court has on the legislature is to declare laws unconstitutional. The check the legislature has is declaring jurisdictional limits. Mark Mackin, on behalf of the Citizens Legislative Coalition, testified this bill would require them to bring any challenges within a timely manner.

OPPOSERS: Robert Anderson, lobbyist from Montana Common Cause, presented written testimony in opposition to the bill (Exhibit 1). Don Judge, representing Montana State AFL-CIO, opposed the bill because it is improper to limit the court to applying improper remedies. He had a question about the way the bill was drafted. What if a ballot issue is an issue that is not clear to the voters? There has been a certification

of ballot language and someone decides it is inappropriate and files a case and the court doesn't make a determination prior to the time the printers begin. Can the law stop the printers from printing? What's the court's jurisdiction? If the court determines that the language is clearly inappropriate, does this mean the court can ask for that language to be changed and reprinted? Is that fair to those that are pushing for the initiative and did not like what the court did? He thinks it is a bad bill that has come about because of one incident, and he thinks it will work against both sides.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Mr. Anderson why you couldn't ask someone to act in a timely manner. He replied it would seem reasonable to request that. Mr. Judge stated John Motl testified in the House that this happened at about the same time as the California courts issued a decision, which arguments were used in the Montana court case.

CLOSING STATEMENT: Representative Hannah stated it is important that you try not to confuse what this bill is trying to do with your opposition to the initiative. They were not here because they still have strong opposition to the initiative. The people he is familiar with and works with are becoming disenfranchised with the initiative process. It is losing its credibility in the state of Montana. This is a single problem, and it can be solved without any great harm to anyone.

Hearing on HB 613 was closed.

CONSIDERATION OF HB 846: Representative Ted Schye, sponsor of HB 846, testified this bill deals with the Milk River and some of the problems on the Milk River with the shortage of water. Under present law, they cannot get water commissioners unless it is adjudicated. There was no way to change the water laws so they could get water commissioners. This puts the Milk River on the high priority list for a temporary preliminary decree. Northeast Montana has been in extreme draught. Their irrigation districts were shut off on June 8, 1984. They have tried to do a lot of conservation things. They are trying to conserve water on their own irrigation districts. These are some of the oldest irrigation districts in the state. One of the biggest problems up there is no one can shut an illegal pumper off. Tensions are very high up there. This is by the request of those eight irrigation districts so they can get these water marshals in there and have someone that has the authority to regulate illegal usage.

PROPONENTS: Senator Swede Hammond stated his district includes the eight irrigation districts with the exception of those in Blaine County. Eight out of the last 12 years the Milk River Basin has been short of water. Last session they got a bill through which gave the Department

of Natural Resources and Conservation the right to deny pumping privileges on the river, but they have too many pumpers there now. They need this to keep some security and peace there. Ted Doney, representing the Montana Water Development Association, supported the bill. Why is the Milk River the most important river to be adjudicated? It is the most hotly contested river in the state on water rights. Parts are adjudicated, but the entire river needs to be. The water marketing committee recommended the Missouri River Basin have the top priority, and this is part of that basin.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Galt addressed Representative Schye and stated apparently the Milk River has never been adjudicated. He asked him to clarify if it must be adjudicated before they get the water marshals. Representative Schye stated the original intent was to try to change the law to say they didn't have to have the adjudication before they got the marshals. Senator Galt stated a bill passed the Senate which would change the dates. Even if we pass this legislation, you are changing the date on Section 85-2-702, MCA, so you would still be pushed two years or six months down the road. Representative Schye responded right now Milk River is not even on the schedule. They realize it will not take place this summer or even next summer, but something has to be done. Senator Galt asked what a temporary preliminary decree was. Mr. Doney replied it is a concoction of Judge Lessley's. He wants a decree to come out that eliminates the Indian water rights and the federal water rights. This temporary decree adjudicates all of the water rights except the Indian and federal rights and then you come out with a preliminary decree when you have those. Senator Pinsoneault asked if this bill had Judge Lessley's blessings. Representative Schye responded yes. Senator Mazurek asked why they proposed this in the form of a bill rather than a resolution. Mr. Doney replied a resolution could have done it, but it is not binding on the water courts. This bill gives them some legal direction in this situation. He didn't oppose this concept. Senator Mazurek asked if this were the first statute where we made reference to the temporary preliminary decree. Mr. Doney replied yes, although the water marketing committee bill also refers to it.

CLOSING STATEMENT: Representative Schye stated this is an important bill to those people that live along that river. We need to get this process done as fast as we can.

Hearing on HB 846 was closed.

CONSIDERATION OF HB 713: Representative Norm Wallin, sponsor of HB 713, testified volunteer fire departments need to protect themselves. He

testified this bill arose out of a situation where a volunteer fire department responded to a call and found out the home was not owned by a member of the district. They reeled in their hoses and let the home burn in order to protect themselves. These people fighting the fires are volunteers and they don't get paid. The agreement is they only fight those fires for members who belong.

PROPOSERS: Lyle Nagel, representing the Montana State Volunteer Firemen's Association, testified a lot of firemen wear two hats. They are also emergency medical personnel. If they respond as EMTs, they are covered, but if they respond as a volunteer fireman, they are not. They support this bill (see witness sheet attached as Exhibit 2).

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 713 was closed.

ACTION ON HB 713: Senator Brown moved HB 713 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 517: Representative Stella Jean Hansen, sponsor of HB 517, testified this is a simple bill that allows for a charge in addition to a payment a payor makes when they pay a support payment. What that does is just cover the costs of the handling fee. They ask that it be paid in addition to the payment so it does not come out of the money the person gets. There are many counties who hire someone full time to handle these support payments. It does cost time and money.

PROPOSERS: Clara Gilreath, Lewis and Clark County Clerk of Court, testified she is in favor of the bill, but \$2 is not enough. In her county, a real conservative estimate of costs for handling this is \$20,000 a year. If they got \$2 a payment, they would get back \$12,000. If they received \$3 per payment, it would get them back \$18,000, which would be closer to the actual expenses. She felt \$3 would be a better figure than \$2. Gordon Morris, representing the Montana Association of Counties, testified these are administrative duties performed by the clerk of court on a routine basis. He conducted a survey to determine how many child support payments are processed each month by the counties. The results of his survey are attached as Exhibit 3. He does not think it is unreasonable to suppose the non-custodial parent could be assessed the processing costs. It was not intended the property tax would continue to subsidize the distribution of child support payments. The

non-custodial parent submits cash. The clerk gives a receipt. She puts that in her books. She writes a warrant. They put that into an envelope and mail it to the custodial parent. Washington charges \$5 and Idaho charges \$7.50.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if what we are really talking about is it must be paid in addition to the payment. Representative Hansen responded yes, that was the idea. Senator Towe stated the information on Exhibit 3 indicates Lewis and Clark County is keeping track of 509 payments. He asked why that costs \$20,000. Mrs. Gilreath stated a full-time person handles this. For each payment and disbursement, a real conservative estimate shows it costs 60¢ for each payment and disbursement. There are balance sheets and bookkeeping duties and making the deposits. Her figure of \$20,000 includes one person plus the supplies and the cost of postage. That figure does not include the cost of the check protector or its maintenance. Senator Shaw asked why so many go through the clerk of court. Mrs. Gilreath replied the judge orders this. Senator Mazurek asked how the bulk of the payments came to their office--through the mail or personally. Mrs. Gilreath replied half and half. Senator Mazurek asked how they proposed to handle this. What if someone refuses to pay it? Would they send out a notice? Mrs. Gilreath responded it wouldn't be retroactive. It would only be for court orders signed after the bill went into effect. Senator Mazurek asked if it were their intention no existing child support payment would be affected. Representative Hansen replied yes. Senator Towe asked how they would handle the situation where the payment came in and the fee weren't there. Mrs. Gilreath responded notice would have to go out to all of the people who do pay, then if they submit it without the fee, they would reject it. Senator Towe asked what they did now. Mrs. Gilreath replied they accept it. Senator Towe asked what their intention was if the payment were \$2 short. Would the clerk take the first \$2 and send the balance to the individual or should it be the other way around? Representative Hansen replied it was their intent that the recipient not have to pay any of it. Those cases would have to be handled at the discretion of the clerk unless the committee wanted to write it into the bill. Mrs. Gilreath replied they wouldn't want to take money out of the mouths of babes. Representative Hansen stated she wouldn't have a problem with an enforcement procedure, but they had not envisioned what that would be.

CLOSING STATEMENT: Representative Hansen encouraged the committee to pass the bill with at least the \$2 or a higher figure.

Hearing on HB 517 was closed.

ACTION ON HB 846: Senator Galt stated even if we pass the bill, it will be July 1987 before it helps them out. Mr. Petesch stated that's the problem with this temporary preliminary decree; it's outside the compact commission. It is not defined in the statute, but because Judge Lessley created it, he is the water judge, and he knows what it means. Senator Yellowtail commented it seems a little useless to issue a preliminary temporary something or other when the judge will have to go back and redo it. Senator Mazurek pointed out all we are doing is giving some legislative sanction to this. Senator Galt moved HB 846 be recommended **BE CONCURRED IN**. Senator Yellowtail stated there is already a section of law that deals with the Milk River. Senator Pinsoneault replied this allows the judge to go ahead. The motion carried unanimously.

CONSIDERATION OF HB 426: Representative Gary Spaeth, sponsor of HB 426, stated this bill was introduced at the request of the Public Service Commission and addresses a problem that arises when there is an appeal from an administrative agency. If there is a request for a stay, it establishes a procedure for getting an appeal or a stay upon notice to the affected parties and how a stay may be issued. It does not address itself to a permanent injunction. It was the preferable way to go as it was originally drafted. Because of the problems they ran into in the House, there has been some controversy whether we should ask this committee to go back to the original language. It addresses how to get a preliminary stay. We have not addressed how to get a permanent injunction.

PROPOSERS: Opal Winebrenner, representing the Public Service Commission, testified they requested the bill because they experienced a problem where one agency's final decisions were stayed pending appeal without notice. They tried to provide for specific criteria and to provide for a procedure for that stay to be issued upon. The way it has been amended provides an agency decision can be stayed if notice and an opportunity for hearing are granted by the agency itself or the court. They would like an amendment to Section 27-19-316, MCA, to remove subsection 4 and have the entire statute apply. Karla Gray, representing The Montana Power Company, testified they support this bill for the reasons that have been explained. The bill provides some standard procedural fairness elements. It provides them in an even-handed fashion so everyone will be treated the same. Gene Phillips, representing the Pacific Power and Light Company, testified they support the bill.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked John Lahr, of The Montana Power Company, if he had anything to say about this bill. Mr. Lahr responded he felt everything had been wonderfully and well said.

Senator Shaw asked if the committee were to take the House amendments off, would they kill the bill. Representative Spaeth replied he was not sure. He moved the House reconsider this bill on second reading to come up with the amendments presently before the Senate committee.

CLOSING STATEMENT: Representative Spaeth supported the amendment. He commented he would prefer the bill in its original state, but this is the best we can do and it does address a very serious problem.

Hearing on HB 426 was closed.

CONSIDERATION OF HB 714: Representative Gary Spaeth, sponsor of HB 714, testified this bill is a response to the Karla White case. As a result of legislation you passed, page 3 says \$300,000 for each claimant and \$1 million for each occurrence. Each claimant has been changed to each claim. If there were one injury, it would be \$300,000; if two injuries, \$600,000. That was the thinking at that time. Through creative thinking by members of the bar, that one injury was expanded to other people in the family who are affected, so they are trying to double and treble that so we eliminate the \$300,000 cap and the only cap we have is \$1 million. Is the \$300,000 or \$1 million a reasonable cap? Those caps affect local governments, school districts, etc. We don't know what those impacts will be, but we should take a look at it and study it. Before we change those caps, we have to tighten those caps up.

PROPOSERS: Mike Young, Administrator for the Department of Administration, testified they defend all of the claims against the state of Montana for bodily injury. They are trying to plug a loophole in this cap. They believe that has been the legislature's intent. This issue has been raised in about six district court cases. No judge has ruled on it either at the district court level or at the supreme court level. The case of Dawson v. Hill and Hill Trucking created another right--If a member of the immediate family witnesses another family member's being killed, they now have a right to a claim. If we are going to have these caps, let's have meaningful claims; and if not, let's get rid of them. Chip Erdmann, representing the Montana School Board Association, felt this bill clarified what the original intent of the law is and clarified what the exposure was for the insurance rates.

OPPOSERS: Karl Englund, representing the Montana Trial Lawyers Association, stated he does not know the intent of the legislature last session, so he cannot speak to the issue of this bill's doing what the legislature thought last time, but he can speak to the issue of one limit for one injury when you can have multiple parties that are affected by that injury. The \$300,000 limit could potentially just pay for the hospitalization and not compensate for loss of earnings. We are not saying you left a little loophole and we want to drive a Mack truck

through it. However, this law greatly affects the bread winner of a family. They feel the statute is fine the way it is.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Spaeth stated it was the intent of the legislature to have \$300,000 per claim, not per claimant. He questioned some of our whole realm of sovereign immunity, but we should not overturn it without knowing some of its ramifications.

Hearing on HB 714 was closed.

ACTION ON HB 426: Senator Blaylock moved HB 426 be amended as follows:

Page 3, line 8.

Following: "27-19-316"

Strike: "(4)"

The motion carried unanimously. Senator Blaylock moved HB 426 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 200: Proposed amendments were distributed to the committee (Exhibit 4). Mr. Petesch explained what these amendments do is repeal the termination date which is section 1 in the bill and then the other changes are you go to the effective date section and say section 2 (the repealer) would be effective on passage and approval, and section 1 (the new number for overcrowding) would then be effective 30 days after the occupancy. Senator Towe commented that is a cleaner way of doing it. Senator Mazurek stated we are saying what the bill currently says in a cleaner way. Senator Towe explained we were amending a section and then repealing it. He approved. Senator Towe moved the amendments be adopted. The motion carried unanimously. Senator Blaylock moved HB 200 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 44: Senator Towe moved HB 44 be amended (as indicated by the standing committee report). The motion carried unanimously. Senator Blaylock moved HB 44 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

FURTHER CONSIDERATION OF HB 310: Senator Crippen presented proposed amendments to the committee (Exhibit 5) and moved their adoption. This just provides another forum so the person involved can show he cannot pay the costs. It would not do any good to allow any relief if he cannot pay the costs. Mr. Petesch pointed out you need to make some amendments to page 7, lines 6-8, because there is still reference to justice and municipal courts. The motion to amend carried unanimously. Senator Shaw moved allowing the justice of the peace to file a restraining

order be reinserted on page 7, line 12, through page 8, line 6. Mr. Petesch pointed out you also need to reinsert the stricken language on page 8, lines 8-9. Senator Towe asked what his reasoning was. Just because there is no judge in Wibaux doesn't mean you can't get one. The telephone doesn't take any longer. Senator Shaw replied if you were asking for a restraining order, you wouldn't need to take the time to go after a district judge. You can get the justice of the peace out of bed at those times. Senator Towe suggested stating it must be a municipal judge or justice of the peace with a law degree. Senator Shaw replied no. Senator Crippen asked if that situation did happen, what's the right of the person who the restraining order is against? The district judge can come in and overturn the restraining order. Can't a district court overturn any restraining order? Senator Towe replied there is no limitation on it or you have to do it ex parte on a justice of the peace's issuing a temporary restraining order (TRO). Senator Mazurek stated TROs should only be granted in the rarest of circumstances because you are letting one party to a dispute go to court and get an order against another party who has never said a word. In fact, district judges should only do it in rarest of circumstances. We have only recently allowed them in marital disputes. Senator Yellowtail pointed out the concern was for matters of immediacy in issues of domestic violence. They feel a strong need for ready access to TROs. They need quick access. Senator Towe commented Senator Yellowtail is correct, and there are occasions when you need quick and immediate action, but there are a lot of others when people think they need quick action, and they do not at all. If you violate that restraining order, it is a criminal offense, and you can be put in jail. It doesn't matter now whether it is correct; it is whether or not you violated it. He doesn't trust district judges or federal judges with TROs, but, there is more legal understanding. There just might be another side to the story. Senator Daniels stated he thinks Senator Yellowtail has made the remark that they need it immediately. Their judge is not available all of the time. That is the only good thing about this bill is that a justice of the peace can issue a TRC. A judge with common sense is just as capable of making a TRO as a judge with a degree. The immediate thing is the thing he is concerned about. Senator Pinsoneault stated he thinks the parameters need to be defined, and it is in the title of the bill. The justice of the peace knows the participants better than the judge. The bill has merit, and it will accomplish what it is intended to do. Senator Yellowtail stated there is potential for error and abuse, but if we were to error, let's error in the direction of providing protection. Senator Crippen agreed. He asked if we could draft another bill that a district judge may lift a TRO issued by a justice of the peace. Senator Towe commented if you are going to allow the justices of the peace and municipal court justices access to restraining orders, they should be governed by the limitations of a district judge and appealed to the district judge. Senator Mazurek stated you need the same protections to

apply in the justice court as in the district court. Senator Blaylock stated he agrees with Senator Towe that the caveat is a powerful tool. He felt Mr. Petesch should make them go through the same procedure. Mr. Petesch stated he felt the committee should look at subsections 3 and 4 on page 8 separately as they are not directly related to the justice courts. Senator Towe thought we better keep it to the county where the physical abuse was committed. Mr. Petesch pointed out both of those address the fleeing spouse issue. Senator Towe asked Mr. Petesch to carefully go through this bill to be sure this is very clearly limited to the physical abuse situation and that the justice of the peace does not have the opportunity to get into ordering the child support payments.

ACTION ON HB 681: Representative Hannah stated his son was involved in an accident over transmittal break. In the trauma of that, the press were monitoring the reports. His brother came running in after being to several hospitals because he heard his nephew had been struck by a car. He also heard that his son had serious internal injuries and was seriously hurt. He didn't think it was appropriate for his brother to find out via the radio erroneous information about his sone. It wouldn't make any difference to the people's right to know to delay that information by a couple hours. Because we are public officials, it got more press than it had to have. It was his view he didn't like the bill when it came through. If we are going to give this information out, it is up to you. That isn't information that the people have to have. Even though we are talking about the standards of critical, serious, etc., there are circumstances where the wrong information is going out. Senator Shaw stated it wouldn't make any difference what we have done outside you would have the opportunity to sue the newspaper reporter. You can't stop them. Representative Hannah responded that is true. Senator Crippen stated if this law where in effect, couldn't the reverse be true. The hospital could release information the newspaper would contact the hospital and get the information rather than relying on word of mouth? Representative Hannah stated he thinks it is an area of abuse and is not sure this will solve it. He thinks it is an area that needs more review. Senator Towe moved HB 681 be amended as follows:

Page 3, line 13.

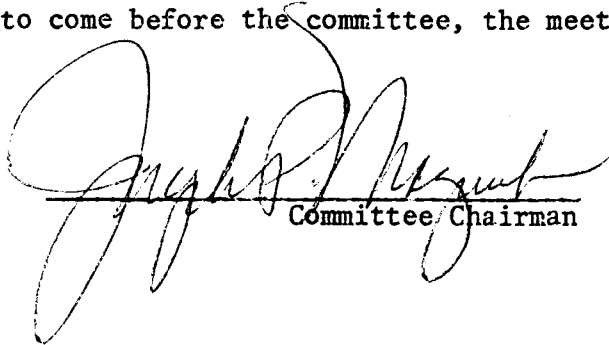
Following: "FACILITY"

Insert: ", provided the existence of the hospitalization is publicly known, or involves a public figure and release of the information would not violate his right of privacy"

Senator Towe commented this language was reviewed by both the hospitals and Mike Meloy, and these are words they are used to dealing with. In addition to having to allow for the fact when the governor checks into the hospital, that is a newsworthy event and you cannot eliminate that

or you run into constitutional problems. Senator Mazurek stated the only thing about that is we are essentially creating an exception to the right of privacy. Senator Towe responded the right of privacy is compelling unless there is a state interest. We don't want to say just because he is a public figure in all events the hospitalization is a public matter. There may be instances where his right of privacy may override this. Senator Blaylock felt that threw quite a burden on the hospital. Senator Towe commented it is better than they have now. Senator Crippen asked what information they could give out. Senator Towe replied it was limited to satisfactory, serious, or critical, but that confirms he is there and confirms his existence. Under those circumstances, you may want to say that is a matter of a right of privacy. The motion to amend carried unanimously. Senator Yellowtail asked if it would be reasonable to address a timeframe or a delay. Senator Towe responded the right of privacy does address that. Senator Towe moved HB 681 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Crippen, Daniels, and Mazurek voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 12:10 p.m.



Committee Chairman

Mar 19, 1985

VISITORS' REGISTER.

HB 426, 517, 613, 713, 714, 846

[illegible]

(Please leave prepared statement with Secretary)

TESTIMONY BEFORE THE JUDICIARY COMMITTEE
OF THE MONTANA SENATE

March 19, 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/19/85
BILL NO. HB 613

Good morning, Mr. Chairman and members of the committee. For the record my name is Robert Anderson and I am a lobbyist for Montana Common Cause. I am here today to speak in opposition to HB613.

Montana Common Cause believes that the passage of this bill would cause harm to an initiative process that is presently working very well. We feel that its introduction was motivated partly as a backlash after the removal of a clearly unconstitutional item from the November 1984 ballot; and partly out of a desire for clear administrative control by those who prepare, and last fall had to change, those ballots.

HB613 was precipitated by the controversy surrounding CI-23, an initiative which the state Supreme Court ruled last fall was unconstitutional on its face and ordered removed from the ballot. Montana Common Cause was a party to that action. Our Board of Directors, after long discussion, voted unanimously to get involved in the suit because, as one of the groups which has always championed an open avenue for citizen involvement in government through the initiative process, we recognize that every process can be weakened if stretched beyond its proper limitations. Although very few limits currently exist regarding what citizens can and cannot do via the initiative process in this state, one very definite restriction is that any action taken through this process must be

unconstitutional. CI-23 was removed as an improper or unconstitutional use of the initiative process.

One of the things that the U.S. Constitution says must be accomplished only by legislative action is ratification of an amendment to that Constitution. In the case of Montana's action on the call for a constitutional convention, this meant passage of a joint resolution by this legislature. The backers of CI-23 sought to get around this restriction, however, by proposing an initiative that would have forced the state legislature to stay in session this year until calling for a constitutional convention for the purpose of balancing the federal budget. In other words, what the backers of CI-23 could not do directly they proposed to force the legislature to do. Although expressly warned by the Legislative Counsel about the probable illegality of their initiative, they proposed to put before the voters of Montana a law that the U.S. Constitution says must be passed by the legislature. Montana Common Cause viewed this persistence as a deliberate misuse of the initiative process that could only have damaged the process in the long run. With that in mind, Common Cause saw the complete removal of the initiative from the ballot as a necessary way to protect the initiative process.

In closing, Montana Common Cause believes approving a change in Montana's initiative process because of one instance in which an item was removed from the ballot to the dismay of its supporters and the discomfort of administrators is simply unreasonable. We believe Montanans are protective of their initiative process and wish that changes in the process only take place when a clear need has been established. We submit that there is not such need in this case. I hope you will kill this measure.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 03/9/85
BILL NO. HB 613

BOZEMAN DAILY CHRONICLE

Bozeman, MT 59715

(D-2.403. S-10.278)

SEP 2 1984

Support initiative process

96 Montanans should speak up to protect a good system — the initiative process.

Common Cause, a public interest lobbying group, expects challenges to the initiative process in the coming legislative session. Common Cause is arming to defend the process.

Opponents of the initiative process think they have Common Cause in a weak position because the group successfully opposed placing the balanced budget amendment on the November ballot in initiative form. But Common Cause is touring the state reaffirming its support for the process.

The initiative process has been used well and responsibly in Montana. In just the most recent election, voters were given a fair choice to decontrol milk and to recognize the practice of denturism. In both cases, the issues were decided after a fair and vigorous campaign.

The initiative process is a vital part of democracy in this state. The process allows citizens to petition to have a proposed law placed on the ballot for voters to decide. It is the closest thing we have to pure democracy.

The initiative process should not be weakened.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 031985

BILL NO. HB 613

BILLINGS GAZETTE
Billings, MT 59103
(D-59,401, S-61,414)

NOV 30 1982
SUPERIOR CLIPPING SERVICE
SUPERIOR, MONT. 59872

Simple label can't make initiative constitutional

91
HELENA (AP) — Labeling a document a constitutional amendment does not make it one, the Montana Supreme Court said Wednesday in formal opinion explaining its reasons for having tossed Constitutional Initiative 23 off the Nov. 6 ballot.

The court took emergency action on Oct. 1 declaring the initiative calling for balanced federal budgets unconstitutional and ordering it expunged from the statewide ballot. The U.S. Supreme Court refused to interfere with that ruling on Oct. 10.

The initiative proposed a state constitutional amendment that would have directed the 1985 Legislature to petition Congress for a national constitutional convention to consider a federal constitutional amendment requiring balanced national budgets.

In Wednesday's opinion, the court expanded on the reasoning it gave briefly in its earlier action.

The court said the initiative was unconstitutional for two reasons.

The court said that, while the initiative claimed to be a constitutional amendment, it was nothing but a legislative resolution and that the state Constitution does not permit the people to enact legislative resolutions.

"The only attribute that the balanced budget initiative shares with a bona fide constitutional amendment initiative is its form and label," Chief Justice Frank Haswell said for the court.

"The subject matter of the initiative reveals its true nature Its import and purpose is to create (a) resolution."

The court said it recognizes that the power of the people to act by initiative is broad in Montana.

"However, we cannot fail to recognize the independent legislative power vested in the Legislature," Haswell said.

He said the initiative sought to accomplish its objectives by threatening lawmakers with "confinement" and no pay. (It required the Legislature to remain in session until it adopted the convention-call resolution.)

"Such coercion is repugnant to the basic tenets of our representative form of government guaranteed by the Montana Constitution," Haswell said.

The fact that Americans are governed through a representative form of government was also the key to the second reason the court invalidated the initiative.

The court said the U.S. Constitution allows only deliberative legislative assemblies to take the requisite actions leading to federal constitutional amendments, including petitioning and ratification.

It noted that the U.S. Supreme Court had struck down popular-vote involvements in the 18th and 19th Amendments establishing prohibition and giving women the right to vote.

"The deliberative process must be unfettered by any limitations imposed by the people of the state," the court said.

"Initiative No. 23 is facially unconstitutional for precisely this reason. The measure attempts to direct and orchestrate the legislative application process in contravention of the plain language of Article 5 (of the U.S. Constitution)," the court said.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 03/985

BILL NO. HB 613

NAME Lyle P. Nagel BILL NO. 713
ADDRESS Simms Mt. DATE 3-19-85
WHOM DO YOU REPRESENT Mt. State Vol Firemen's Assn
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Some fire fighters are also emergency medical personnel. When responding on a medical call that person is covered under the Good Samaritan Act. If that person is responding to the same incident as a firefighter no coverage is afforded.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 031985
BILL NO. HB 713

**MONTANA
ASSOCIATION OF
COUNTIES**

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

HOUSE BILL 517

CHILD SUPPORT HANDLING FEE

SENATE JUDICIARY COMMITTEE

March 19, 1985

COUNTY	# OF MONTHLY SUPPORT PAYMENTS (ESTIMATE)
BLAINE	11
CASCADE	750
DANIELS	20
DAWSON	30
GALLATIN	350
JEFFERSON	40
MADISON	30
MISSOULA	800
PHILLIPS	15
ROSEBUD	125
SHERIDAN	20
STILLWATER	25
TREASURE	1
YELLOWSTONE	375
LEWIS AND CLARK	509

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SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/19/85

BILL NO. HB 517

PROPOSED AMENDMENTS TO HB 200:

1. Title, lines 5 and 6.

Following: "TO" on line 5

Strike: remainder of line 5 through "TO" on line 6

2. Title, lines 13 and 14.

Following: "REPEALING"

Strike: remainder of line 13 through line 14 in its entirety

3. Page 1, lines 19 through 25.

Strike: section 1 in its entirety

Renumber: subsequent sections

4. Page 3, line 23.

Following: Line 22

Strike: "1"

Insert: "2"

5. Page 3, line 24.

Following: "(2)"

Strike: "SECTIONS 2 AND 3 ARE"

Insert: "section 1 is"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 03/9/85
BILL NO. HB 200

PROPOSED AMENDMENTS - HB 310

1. Page 7, line 4.

Following: "40-4-106"

Strike: "."

Insert: ", and uniform sample affidavit and orders of inability to pay filing fees or other costs."

2. Page 7, line 5.

Following: "restraining order"

Insert: "and the inability to pay filing fees order"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 03/985
BILL NO. HB 310

STANDING COMMITTEE REPORT

Page 1 of 2

March 19

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE BILL

having had under consideration

No. 44

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(Senator Pinsonesult)

REQUIRE PAYMENT OF VICTIM COUNSELING BY OFFENDER; RAPE OR INCEST

HOUSE BILL

Respectfully report as follows: That

No. 44

be amended as follows:

1. Title, line 4.

Following: "ACT"

Strike: "DIRECTING"

Insert: "AUTHORIZING"

2. Title, line 6.

Following: "DEPENDANT"

Insert: "WHO IS FINANCIALLY ABLE AND WHO IS"

3. Page 2, line 10.

Following: "court"

Strike: "shall"

Insert: "may"

4. Page 2, line 11.

Following: "offender"

Insert: ", if able."

Following: "victim's"

Insert: "reasonable"

XXXXXX

XXXXXXXXXX

CONTINUED

Senator Joe Mazurek

Chairman.

Page 2 of 2

HOUSE BILL NO. 44

5. Page 4, line 1.

Following: "court"

Strike: "shall"

Insert: "may"

6. Page 4, line 2.

Following: line 1

Insert: ", if able,"

Following: "victim's"

Insert: "reasonable"

AND AS AMENDED

BE CONCURRED IN

.....
Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

March 19

19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 200

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color

(Senator Crippen)

EXTENDING EARLY PAROLE AUTHORITY TO RELIEVE PRISON OVERCROWDING

Respectfully report as follows: That HOUSE BILL No. 200

be amended as follows:

1. Title, lines 5 and 6.
Following: "TO" on line 5
Strike: remainder of line 5 through "TO" on line 6
2. Title, lines 13 and 14.
Following: "REPEALING" on line 13
Strike: remainder of line 13 through line 14
3. Page 1, lines 19 through 25.
Strike: section 1 in its entirety
Remember: subsequent sections
4. Page 3, line 23.
Following: line 22
Strike: "1 IS"
Insert: "2 and this section are"
5. Page 3, line 24.
Following: "(2)"
Strike: "SECTIONS 2 AND 3 ARE"
Insert: "Section 1 is"

AND AS AMENDED

BE CONCURRED IN

~~EXHIBIT~~

~~EXHIBIT~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 426

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(Senator Mazurek)

REQUIRE PRELIMINARY INJUNCTION SHOWING FOR COURT TO STAY AGENCY DECISION

Respectfully report as follows: That HOUSE BILL No. 426

be amended as follows:

Page 3, line 8.

Following: "27-19-516"

Strike: "(4)"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 681

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(Senator Towe)

ALLOW RELEASE OF CONFIDENTIAL HEALTH INFORMATION TO MEDIA & LAW ENFORCEMENT

Respectfully report as follows: That HOUSE BILL No. 681

be amended as follows:

Page 3, line 13.

Following: "FACILITY"

Insert: ", provided the existence of the hospitalization is publicly known, or involves a public figure and release of the information would not violate his right of privacy"

AND AS AMENDED

BE CONCURRED IN

DOEAKS

DOXOLPASE

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 713

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(Senator Blaylock)

INCLUDE VOLUNTEER FIREFIGHTERS IN GOOD SAMARITAN LAW LIMITING LIABILITY

Respectfully report as follows: That HOUSE BILL No. 713

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

STANDING COMMITTEE REPORT

March 19

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

having had under consideration

HOUSE BILL

No. 346

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color

(Senator Hammond)

ADJUDICATION OF WATER RIGHTS IN MILE RIVER BASIN

Respectfully report as follows: That

HOUSE BILL

No. 346

BE CONCURRED IN

~~DOORSE~~

~~DOORSE~~

Senator Joe Mazurek

Chairman.