No. 13-634

In The
Supreme Court of the United States

MONTANA SHOOTING SPORTS ASSOCIATION, SECOND AMENDMENT FOUNDATION, INC., AND GARY MARBUT,

Petitioners,

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* WEAPONS COLLECTORS SOCIETY OF MONTANA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Weapons Collectors Society of Montana respectfully submits its *Amicus Curiae* brief in support of the Petitioners.[1]

INTEREST OF *AMICUS CURIAE*

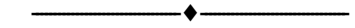
Weapons Collectors Society of Montana (hereinafter WCSM) is a non-profit corporation formed under the laws of the State of Montana. Specifically, WCSM is an association of approximately 1,136 Montana hobbyists who have a special interest in collecting and making firearms (ancient and modern), ammunition, weapon accoutrements, and other weaponry gathered and collected for public display and sale. WCSM sponsors most of the gun shows in Montana.

WCSM members have an interest in making guns and ammunition for sale within the State of Montana. These activities are at the heart of the present litigation, and subject WCSM members to regulation by federal authorities. As such, WCSM is dedicated to

[1] Pursuant to Rule 37.6 of the Rules of the Supreme Court, counsel of record for all parties received notice at least ten days prior to the due date of the *Amicus Curiae*'s intention to file this brief. All parties have consented to the filing of this brief. The consent of the Solicitor General is lodged herewith. A blanket permission was filed by counsel for the Petitioners. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

implementing a proper understanding of their Compact/Contract rights and their rights and responsibilities conferred under the United States and Montana Constitutions. WCSM is particularly interested in the jurisdictional limits of federal authority over Montana citizens and protecting its members from overly burdensome federal regulation of the collection, manufacture, and sale of firearms and ammunition. Consequently, WCSM and its membership have a significant interest in upholding the Montana Firearms Freedom Act ("MFFA"), Mont. Code. Ann. § 30-20-101, et seq. (2009), because the MFFA is important to the liberty interests of Montana citizens who make, collect, keep, and bear arms by protecting them from federal fines, forfeitures, and prosecution. WCSM and its membership have participated in this action in the lower court proceedings, both in the District Court and the Ninth Circuit, and thus cite to that participation as further authority for participating in the present Appeal.

WCSM therefore submits its *Amicus Curiae* brief in Support of the Petitioner as follows.



SUMMARY OF THE ARGUMENT

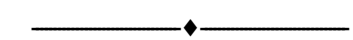
The Enabling Act of 1889 offered a mechanism by which the Montana Territory could become a full-fledged member of the Union. Montana accepted this offer to become a State in 1889 by complying with each of the requirements imposed by Congress. As a

result of Montana meeting these conditions, President Harrison declared that Montana was admitted to the Union on November 8, 1889. This mechanism for entry created a Compact/Contract between the United States and Montana, which governs the relationship between the two sovereigns.

It is a general rule that treaties and contracts must be interpreted to give effect to the intent of the parties at the time they entered into the contract. In 1889, the U.S. Constitution and the first fifteen amendments were ratified, and the Court interpreted the Commerce Clause narrowly. Upon this backdrop, Montana elected to fulfill the requirements to enter the Union.

Additionally, Montanans reserved their fundamental right to bear arms. This fundamental right is incorporated by reference into the Compact/Contract between Montana and the United States through Montana's Constitution. Under the contractually reserved right to regulate intrastate commerce, and the contractual right to bear arms, the State of Montana passed the Montana Firearms Freedom Act. WCSM submits this brief in support of the MFFA on the grounds that the Bureau of Alcohol, Tobacco, Explosives & Firearms (hereinafter "ATF") has exceeded its authority by asserting federal control to regulate the wholly intrastate manufacture of firearms and ammunition in Montana, in compliance with the MFFA, because Montanans enjoy different and superior rights as guaranteed by the Compact/Contract between Montana and the United States.

The WCSM advanced this argument of Compact/Contract in the proceeding before the Ninth Circuit. The Ninth Circuit failed to address the Compact/Contract rights of the State of Montana, and as such, failed to properly follow this Court's precedent regarding the Compact/Contract between the parties and the general principles of contract law. Therefore, WCSM respectfully requests that the Court grant Certiorari to address the terms of the Compact/Contract between Montana and the United States, or remand to the Ninth Circuit for an opinion in line with precedent.



ARGUMENT

I. MONTANA ENTERED THE UNION BY A COMPACT/CONTRACT WITH THE UNITED STATES.

The Enabling Act of 1889, 25 Stat. 676 (Feb. 22, 1889) (hereinafter "Enabling Act"), offered a mechanism by which the Montana Territory could become a full-fledged State in the Union (App. 1-23). The Territory of Montana accepted this offer of statehood by completing the requirements set forth in the Enabling Act of 1889. *See* 26 Stat. 1551, No. 7 (Nov. 8, 1889) (hereinafter "Proclamation") (President Harrison's Statehood Proclamation, declaring that all conditions had been met by Montana) (App. 28-31). The United States recognized Montana's acceptance of these terms by proclaiming Montana satisfied the necessary elements for entrance to the Union. *Id.*

This is the Compact/Contract which illustrates the terms of the agreement between Montana and the United States. *See Mont. ex rel. Haire v. Rice*, 204 U.S. 291 (1907) (Montana's acceptance of the land grant in the Enabling Act created a contract), *McGee v. Mathis*, 71 U.S. 143, 155 (1866) ("[i]t is not doubted that the grant by the United States to the State upon conditions and acceptance of the grant by the state, constituted a contract.")

On February 22, 1889 Montana amended its constitution to include Ordinance 1, in accordance with the Enabling Act to be admitted to the Union. Mont. Const. of 1889, Ordinance 1 (amended 1972) (App. 25-27). Ordinance 1 Paragraph five, declared "[t]hat on behalf of the people of Montana, we in convention assembled, do adopt the constitution of the United States."[2] *Id.* Ordinance 1 memorializes the Compact/Contract between the United States and Montana and also demonstrates Montana's acceptance of the terms and conditions set forth in the Enabling Act. *Id.* at Preamble (App. 24). *Id.* at Ordinance 1 (App. 25-28), *see also* Enabling Act (App. 1-23).

The term "compact" is defined as "[a]n agreement or contract." Black's Law Dictionary, 236 (1st ed.,

[2] The Preamble to the Montana Constitution of 1889 states "We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a State government, do, in accordance with the provisions of the Enabling Act of Congress, approved the twenty-second day of February, A.D. 1889, ordain and establish this constitution."

West 1891), *Green v. Biddle*, 21 U.S. 1, 40 (1823) ("'Any agreement or compact' are the words, and all contracts . . . are interdicted.") (internal citations omitted.) The Compact/Contract is a bilateral agreement between the United States and Montana binding the parties to the terms of the Compact/Contract. *See* 25 Stat. at 676-677 (App. 4-5), Mont. Const. Ordinance 1, § 6 (App. 27), and 26 Stat. 1551, No. 7 (App. 30-31).

This Compact/Contract also shares characteristics of a bilateral contract and a treaty. The common contract elements are demonstrated: an offer of statehood was made, Montana accepted that offer, consideration was given, there was a mutual agreement of the citizens of Montana and Congress, and there was a mutual obligation of both the territory of Montana and the Union to uphold this Compact/Contract. *See McGee*, 71 U.S. at 155. Similarly, treaty is defined by Black's Law Dictionary as "[a]n agreement between two or more independent states . . . An agreement, league, or contract between two or more nations or sovereigns. . . ." Black's Law Dictionary, 1186 (1st ed., West 1891). This Compact/Contract is similar to a treaty in that it determines the rights of each sovereign.

II. CONTRACTS AND TREATIES ARE INTERPRETED AS UNDERSTOOD WHEN THEY ARE ENTERED.

As with any contract, compact, or treaty, the rights and obligations created by this Compact/Contract may be enforced by the Parties. To enforce a contract the terms must be interpreted. "One of the first elementary principles of all contracts is to interpret them according to the intentions and objects of the parties at the time of the making." Joseph Story, *Commentaries on the Constitution of the U.S., Nature of the Constitution – Whether A Compact*, Bk. 3, Ch. 3, § 331. *See also Union Pac. R.R. Co. v. Clopper*, 131 U.S. 192 (1881) (" . . . a contract must be construed in the light of surrounding circumstances, as the parties understood it at the time it was made"). In this instance, the parties are the citizens of Montana and the federal government.

Treaties are also subject to rules of construction and are to be liberally construed so "as to carry out the apparent intention of the parties to secure equality and reciprocity between them." *DeGofroy v. Riggs*, 133 U.S. 258, 271 (1890). Treaties, "[l]ike other contracts, . . . are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view to effecting the objects and purposes of the States thereby contracting." *Rocca v. Thompson*, 223 U.S. 317, 331 (1912), *citing In re: Ross,* 140 U.S. 453, 475 (1891).

III. THE INTENT OF THE CONTRACTING PARTIES DEMONSTRATES THAT MONTANA DID NOT CEDE ITS RIGHT TO MANUFACTURE ARMS AND AMMUNITION FOR INTRASTATE USE.

A. In 1889, the Federal Government did not regulate the manufacture or sales of firearms and ammunition occurring wholly within Montana.

At the time Montana entered the Union, residents and citizens of Montana were engaged in the manufacture and intrastate sale of firearms and ammunition. One known example is Walter Cooper, an early settler and businessman. In 1868, Mr. Cooper established a rifle manufacturing and sporting goods business. *See Walter Cooper and Eugene F. Bunker Papers*, 1886-1956 (on file with Montana State University Library, Collection 1250). Alexander D. McAusland also operated the Creedmor Armory, a gunsmithing business, after moving to Montana Territory in 1879. *See* Samuel Gordon, *Recollections of Old Milestown* (1918).

These gunsmiths were not regulated by the Federal government. The passage of the National Firearms Act of 1934, over forty years later, is the first time the Federal Government began to regulate the manufacture and interstate transfer of firearms through taxation. *See* 73rd Cong., Sess. 2, ch. 757, 48 Stat. 1236, presently codified, as amended, 26 U.S.C. ch. 53. Thirty years after asserting the right to regulate firearms through taxation, Congress passed the

Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44, § 921, et seq.) under its commerce power to regulate the manufacture of firearms and ammunition.

B. Montana Citizens retained the fundamental right to bear arms upon statehood.

When Montana entered the Union, the Enabling Act required Montana to adopt a Constitution that was not repugnant to the Federal Constitution. Enabling Act, 25 Stat. at 676-677 (App. 4). The resulting Montana Constitution of 1889 became a part of the Compact/Contract between the parties, and Congress had the right to review the proposed Montana Constitution, before allowing admission, as a result of the Enabling Act. *Id.* Article III Section 13 of the 1889 Montana Constitution includes a provision on the right to bear arms to "any person." Mont. Const. of 1889, Art. III, Sec. 13 (App. 25). By allowing Montana to enter the Union, Congress agreed that Montanans had reserved their right to bear arms and that it was not inconsistent with the Federal Constitution as it existed in 1889. *Id. See* Enabling Act, 25 Stat. at 676-677 (App. 4), Proclamation (" . . . a constitution for the proposed State of Montana has been adopted and that the same . . . has been ratified . . . in accordance with the conditions prescribed in [the Enabling Act]." (App. 30).

The reservation of the right to bear arms by Montanans is an individual right that was reserved by the people of Montana for the people of Montana, and is a fundamental right under the Montana Constitution.[3] *Id.* This fundamental right to bear arms is stronger under the Montana Constitution than the right guaranteed by the Second Amendment to the U.S. Constitution.[4]

Under the Montana Constitution, fundamental rights are given a higher standard of review, and the government must show a compelling state interest for its action. *Mont. Envtl. Info. Ctr. v. Dep't. of Envtl. Quality*, 1999 MT 248, ¶56, 99 P.2d 1236 (Mont. 1999). This is further elaborated upon in *Wadsworth v. State*, 911 P.2d 1165, 1172 (Mont. 1996). "[T]he most stringent standard, strict scrutiny, is imposed when the action complained of interferes with the exercise of a fundamental right . . . " *Id.* When strict

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[3] In *Wadsworth v. State*, 911 P.2d 1165, 1172 (Mont. 1996), the Montana Supreme Court held that in Montana's Constitution, "the inalienable right to pursue life's basic necessities is stated in the Declaration of Rights and is therefore a fundamental right." *Id.*

[4] Article III Section 13 of the Montana Constitution of 1889 guarantees: "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 into question, but nothing herein contained shall be held to permit the carrying of concealed weapons." Whereas the Second Amendment to the U.S. Constitution states "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

scrutiny applies, the government carries the burden of showing that the law is narrowly tailored to serve a compelling government interest. *Mont. Envt's Info. Ctr.*, 1999 MT 248 at ¶61, *citing Wadsworth*, 911 P.2d at 1174.

The Ninth Circuit Court of Appeals issued its Opinion in this case on August 23, 2013. In that Opinion, the Ninth Circuit Court of Appeals applied the rational basis test under the United States Constitution, but failed to acknowledge or address the additional scrutiny that must be applied when addressing the fundamental rights of Montana residents, as reserved in 1889 by the Compact/Contract. Therefore, certiorari is proper to require the appropriate standard of review be applied to fundamental rights guaranteed to Montana citizens under the Montana Constitution as contracted for in the Compact/Contract at statehood.

C. The Commerce Clause was narrowly tailored in 1889 and would not have applied to the intrastate manufacture of firearms and ammunition.

The United States Constitution delegates specific powers to the federal government and all powers not specifically delegated are reserved to the states. *See U.S. v. Lopez*, 514 U.S. 549, 552 (1995). One of the federally delegated powers, as granted by the Commerce Clause, is the authority to "regulate Commerce . . . ***among*** the several states." U.S. Const. art. I, § 8,

cl. 3; *see also Lopez*, 514 U.S. at 552-559 (*emphasis added*). This specific delegation is broad, but not unlimited. *Id.* The Commerce Clause is self-limiting, and does not extend Congressional authority to regulate wholly intrastate activities. *See Lopez*, 514 U.S. at 563-568, *U.S. v. Morrison*, 529 U.S. 598, 612-613 (2000). As this Court has recognized in *Lopez* and *Morrison*, the U.S. Constitution requires a balance of power between the federal government and the States. Allowing Congressional power to extend into all intrastate activity upsets this balance and violates the powers reserved by and to the State of Montana in the U.S. Constitution and under the Compact/ Contract.

Congress has not been granted a general power to regulate all activities conducted within the United States, because each state retains authority to regulate what are, in essence, local matters. *Id.* Justice Kennedy stated in his concurrence in *Lopez*, that "it was the insight of the Framers that freedom was enhanced by creation of two governments, not one." 514 U.S. at 576. Justice Kennedy continued, stating:

> "a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." The Federalist No. 51, p. 323 (J. Madison) (C. Rossiter ed. 1961). *See also Gregory v. Ashcroft*, 501 U.S. 452, 458-459, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991) ("Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the

> accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. . . . In the tension between federal and state power lies the promise of liberty"); *New York v. United States*, [514 U.S.] at 181 ("The Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power' ") (quoting *Coleman v. Thompson*, 501 U.S. 722, 759, 115 L. Ed. 2d 640, 111 S. Ct. 2546 (1991) (Blackmun, J., dissenting)).

Lopez, 514 U.S. at 576-577.

Thus, while the Court determined that the Commerce Clause grants Congress broad power to regulate interstate commerce, the Commerce Clause and other provisions of the U.S. Constitution expressly limit Congressional power. This limitation on the federal government is to ensure the Framer's intent that each state retains its sovereign powers to regulate and protect the individual freedom, public health, and welfare of its citizens.[5] *See Printz v. U.S.*, 521 U.S.

[5] "Hence a double security arises as to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." Federalist 51 (J. Madison).

898 (1997); Federalist No. 32 (A. Hamilton) (C. Rossiter ed. 1961).[6]

When the Compact/Contract between the United States and Montana was entered in 1889, commerce clause jurisprudence was limited in scope, and the reservation of rights to the states under the 10th Amendment to the U.S. Constitution was understood to exclude all but the specifically enumerated powers.

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[6] "The theory that two governments accord more liberty than one requires for its realization two distinct and discernible lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. If, as Madison expected, the Federal and State Governments are to control each other, *see* The Federalist No. 51, and hold each other in check by competing for the affections of the people, *see* The Federalist No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function. "Federalism serves to assign political responsibility, not to obscure it." *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636, 119 L. Ed. 2d 410, 112 S. Ct. 2169 (1992). Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory. *Cf. New York v. United States*, supra, at 155-169; *FERC v. Mississippi*, 456 U.S. 742, 787, 72 L. Ed. 2d 532, 102 S. Ct. 2126 (1982) (O'CONNOR, J., concurring in judgment in part and dissenting in part). The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power." *Lopez*, 514 U.S. at 577 (Kennedy, J., concurring).

At the time Montana entered the Union, no federal regulation of firearms and ammunition existed, so it would be impossible for the parties to intend that the wholly intrastate manufacture of firearms or ammunition would be subject to federal regulation. This impossibility also extends to the parties being able to see fifty years into the future to intend that the unforeseen change in commerce clause jurisprudence would limit the ability of Montana citizens from these activities. Further, the Compact/Contract was entered into just under fifty years before the Court expanded Congressional Commerce Clause authority in three cases.

NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); *U.S. v. Darby*, 312 U.S. 100 (1941); and *Wickard v. Filburn*, 317 U.S. 111 (1942), overruled earlier decisions by the Court and expansively defined the scope of Congress's Commerce powers. Before these three cases, Congressional power under the Commerce Clause was extremely limited, and laws were frequently found unconstitutional. For example, in *Hamer v. Dagenhart*, 247 U.S. 251 (1918), the Court declared a federal law prohibiting the shipment of goods in interstate commerce that were produced in factories employing children outside the allowed number of working hours unconstitutional for regulating the means of production. In *Hamer*, the Court declared that "[t]he grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and *not* to give it authority to control the States in their exercise of the police

power over local trade and manufacture." *Id*. at 273-274 (*emphasis added*). Since the Court had not yet expanded Congressional Commerce Clause power, it would have been impossible for the parties to intend this expansive view of the Commerce Clause when they entered the Compact/Contract, and the pre-1937 Commerce Clause jurisprudence should be evidence of the parties' intentions for interpretation.

Based upon the intent of the parties, as demonstrated by the state of the law at the time that Montana and the United States entered the Compact/Contract, Montanans have reserved the right to manufacture firearms and ammunition wholly intrastate without federal regulation or oversight. Therefore, as limited to the State of Montana, the wholly intrastate manufacture of firearms and ammunition is a legitimate exercise of Montana's authority because of the rights reserved under the Compact/Contract, as was understood when it was entered in 1889.

WCSM respectfully requests that this Court grant Certiorari based on the Compact/Contract remedies as more fully explained in Section IV.

IV. THE CONTRACT REMEDY OF SPECIFIC PERFORMANCE ALLOWS MONTANANS, UNDER THE MONTANA FIREARMS FREEDOM ACT, TO MANUFACTURE FIREARMS AND AMMUNITION WITHOUT FEDERAL OVERSIGHT.

The United States has breached its Compact/Contract with Montana by regulating the intrastate manufacture of firearms without the authority to do so under the Compact/Contract between Montana and the United States. The judicial remedies available for breach of contract are money damages (for monies owing, to prevent unjust enrichment, or as damages), specific performance or enjoining the non-performance, restoration of a specific thing, declaring the rights of parties, or enforcing an arbitration award. Restatement (Second) of Contracts, § 345.

Based upon the Compact/Contract relationship of Montana and the United States, WCSM respectfully requests that this Court grant Certiorari to declare what rights each party contracted/compacted. Namely, WCSM seeks (1) a judicial declaration that a person or persons complying with the Montana Firearms Freedom Act is not in violation of Federal law; and (2) ordering specific performance of the federal government, acting through its agency the ATF, to allow intrastate manufacturing of firearms and ammunition in compliance with the MFFA without fear of criminal or civil prosecution by the ATF.

CONCLUSION

Respectfully, *Amicus Curiae* Weapons Collectors Society of Montana requests that this Court grant Certiorari to determine the rights of Montanans pursuant to the Compact/Contract entered between Montana and the United States.

Respectfully Submitted,

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THE

STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA,

FROM

DECEMBER, 1887, TO MARCH, 1889,

AND

RECENT TREATIES, POSTAL CONVENTIONS, AND EXECUTIVE PROCLAMATIONS.

EDITED, PRINTED, AND PUBLISHED BY
AUTHORITY OF CONGRESS, UNDER THE
DIRECTION OF THE SECRETARY OF STATE.

VOL. XXV.

WASHINGTON:
GOVERNMENT PRINTING OFFICE
1889.

[676] Chap. 180 – An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted to the Union on an equal footing with the original States, and to make donations of public lands to such States.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismark; and the delegates elected in the districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

SEC. 3. That all persons who are qualified by the laws of said Territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed States; and the qualifications for delegates to such conventions shall be such as by the laws of said Territories respectively persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the

population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, chief-justice, and the secretary of said Territories; and the governors of said Territories shall, but proclamation, order an election of the delegates aforesaid in each of said proposed States to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as prescribed by the laws of the said Territories regulating elections therein for Delegates to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident in said proposed States, who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively. The constitution shall be republican in form, and make no distinction in civil or [677] political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said States shall ever be molested in person or property on account of his or her mode or religious worship.

Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian Tribes; and that until the title thereto shall have been extinguished by the United

States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States that the lands belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to the residents thereof that no taxes shall be imposed by the States on lands or property therein belonging to or which may be hereafter purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said States from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision *exempting* the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territories shall be assumed and paid for by said States, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control.

SEC. 5. That the convention which shall assemble at Bismarck shall form a constitution and State government for a State to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and a State government for a State to be known as South Dakota: *Provided,* That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words "For the Sioux Falls constitution," or the words "against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State, to the re-apportionment of the judicial and legislative district, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the

articles separately submitted, the State of South Dakota [678] shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records, and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said States. But if at the election for the delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution", then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and State government as provided in this act the same if that question had not been submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each conventions, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated into the respective constitutions

and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively.

SEC. 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the Territorial government of the present Territory of Dakota, but shall after the State adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: *Provided*, That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor or the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said

convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State.

SEC. 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday of October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said [679] proposed State on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana, and Washington shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed States on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed States shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to

the secretary of each of said Territories, who, with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed States are republican in form, and if all the provisions of the act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the Fifty-first Congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said State officers are elected and qualified under the provisions of each constitution

and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.

SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to the said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and the thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands to be restored to, and become a part of the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school-fund,

the interest of which shall only be expended in support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person [680] or company and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 12. That upon the admission of each of said States into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said States, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said States for the purpose of erecting public buildings at the capital of said States for legislative, executive, and judicial purposes.

SEC. 13. That five per centum of the proceeds of the sales of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same, shall be paid to said States, to be used as a permanent fund, the interest which shall only be expended for the support of common schools within said States, respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the union, as provided in this act, to the extent of the full quantity of the seventy-two sections to each of said States, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective States aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said States severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the Territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the State of Washington for the purposes of a university in said State. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided

in section eleven of this act. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said States, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted to the Territory of Dakota, for an asylum for the insane shall, upon the admission of said State of South Dakota into the Union, become the property of said State.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designates and the States of North Dakota and Washington shall, respectively, have like grants for the [681] same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the Territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

SEC. 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this

act, are hereby granted to each of said States, except to the State of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said States, as provided in the acts of Congress making donations of land for such purpose.

SEC. 17. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the States provided for by this act, and in lieu of any claim or demand by the said States, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it us hereby declared is not extended to the States provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to wit:

To the State of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for State normal schools, eighty thousand acres; for public buildings at the capital of said State, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said

State may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the State of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for State normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a State reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the State, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the State of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for public buildings at the State capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the States provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the

purposes herein mentioned, and in such manner as the legislatures of the respective States may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands [682] in said States, in lieu thereof, for the use and benefit of the common schools of said States.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects.

SEC. 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said Territories for defraying the expenses of said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for

South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.

SEC. 21. That each of said States, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the States, respectively; and the circuit and district courts therefor shall be held at the capital of such State for the time being, and each of said districts, shall for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit

and district courts for each of the said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The Marshal, district attorney and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ or error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of either of the Territories mentioned in this act, or that may be hereafter lawfully prosecuted upon any record from either of said courts may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the State succeeding the Territory from [683] which such record is or may be pending, or to the supreme court of such State, as the nature of the case may require:

Provided, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be directed to the Supreme Court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the State of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the supreme court of the Territory of North Dakota, as the nature of the case may require. And each of the circuit, district, and State courts, herein named, shall, respectively, be the successor of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the Territories mentioned in this act, in any case arising within the limits of any of the proposed States prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the Territories mentioned in this act at the time of the admission into the Union of either of the States mentioned in this act, and arising within the limits of any such State, whereof the

circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the Territories mentioned in this act at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such state shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases, shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the States mentioned in this act, shall be pending in any Territorial court in any of the Territories mentioned in this act, shall abate by the admission of any such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district or State court, as the case may be: *Provided, however,* That in all civil actions, causes, and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of

such request such cases shall be proceeded with in the proper State courts.

SEC. 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full State governments, including members of the legislatures and Representatives in the Fifty-first Congress; but said State governments shall remain in abeyance until States shall be admitted into the Union, respectively, as provided in this act. In the case the constitution of any said proposed States shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two Senators of the United States; and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representatives in the manner required by law; and when such State is admitted [684] into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State governments formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such State officers; and all laws in force made by said Territories, at the time of their admission into the Union, shall be in force in said States, except as modified or changed by this act or by the constitutions of the States, respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by legislatures of said Territories or by Congress, are hereby repealed.

Approved, February 22, 1889.

*** CONSTITUTION ***

– OF THE –

State of Montana,

AS ADOPTED BY THE

CONSTITUTIONAL * CONVENTION

– HELD AT –

HELENA, MONTANA, JULY 4, A. D. 1889.

AND ENDING AUGUST 17, A. D. 1889.

AND ALSO AN ADDRESS TO THE PEOPLE.

PUBLISHED BY AUTHORITY
BY THE
INDEPENDENT PUBLISHING CO.,
HELENA, MONTANA.

PREAMBLE.

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a State government, do, in accordance with the provisions of the Enabling Act of Congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution.

CONSTITUTION.

* * *

ARTICLE III.

A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

SECTION I. 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.

* * *

SEC. 13. 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.

* * *

ORDINANCE NO. I.

FEDERAL RELATIONS.

BE IT ORDAINED: *First.* That perfect toleration of religious sentiment shall be secured and that no inhabitant of the State of Montana shall ever be molested in person or property, on account of his or her mode of religious worship.

Second. That the people inhabiting the said proposed State of Montana, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries

thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, that the lands belonging to citizens of the United States, residing without the said State of Montana, shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said State of Montana on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said State of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said State of Montana so long and to such extent as such act of congress may prescribe

Third. That the debts and liabilities of said Territory of Montana shall be assumed and paid by the said State of Montana.

Fourth. That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said State of Montana and free from sectarian control.

Fifth. That on behalf of the people of Montana, we in convention assembled, do adopt the Constitution of the United States.

Sixth. That the Ordinances in this Article shall be irrevocable without the consent of the United States and the people of said State of Montana.

Seventh. The State hereby accepts the several grants of land from the United States to the State of Montana, mentioned in an act of congress, entitled "An act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States." Approved February 22d, 1889, upon the terms and conditions therein provided.

THE

STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA,

FROM

DECEMBER, 1889, TO MARCH, 1891,

AND

RECENT TREATIES, CONVENTIONS, AND EXECUTIVE PROCLAMATIONS.

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS, UNDER THE DIRECTION OF THE SECRETARY OF STATE.

VOL. XXVI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE,
1891.

[No. 7.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION

Whereas the Congress of the United States did by an act approved on the twenty-second day of February one thousand eight hundred and eighty-nine, provide that the inhabitants of the Territory of

Montana might, upon the conditions prescribed in said act, become the State of Montana;

And whereas it was provided by said act that delegates elected as therein provided, to a Constitutional convention in the Territory of Montana, should meet at the seat of government of said Territory; and that, after they had met and organized they should declare on behalf of the people of Montana that they adopt the Constitution of the United States; whereupon the said convention should be authorized to form a State Government for the proposed State of Montana;

And whereas it was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence; and that the Convention should by an ordinance irrevocable without the consent of the United States and the people of said State make certain provisions prescribed in said act;

And whereas it was provided by said act that the Constitution thus formed for the people of Montana should, by an ordinance of the Convention forming the same, be submitted to the people of Montana at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine, for ratification or rejection by the qualified voters of said proposed State; and that the returns of said election

should be made to the Secretary of said Territory, who, with the Governor and Chief Justice thereof, or any two of them, should canvass the same; and if a majority of the legal votes cast should be for the Constitution, the Governor should certify the result to the President of the United States, together with a statement of the votes cast thereon, and upon separate articles or propositions and a copy of said Constitution, articles, propositions and ordinances;

And whereas it has been certified to me by the Governor of said Territory that within the time prescribed by said act of Congress a Constitution for the proposed State of Montana has been adopted and that the same, together with two ordinances connected therewith, has been ratified by a majority of the qualified voters of said proposed State in accordance with the conditions prescribed in said act;

And whereas a duly authenticated copy of said Constitution and ordinances, as required by said act, has been received by me;

Now, therefore, I, Benjamin Harrison, President of the United States of America, do, in accordance with the provisions of the act of Congress aforesaid, declare and proclaim the fact that the conditions imposed by Congress on the State of Montana to entitle that State to admission to the Union have been ratified and accepted and that the admission of the said State into the Union is now complete.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eighth (8th) day of November, in the year of our Lord one thousand
[SEAL.] eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and fourteenth.

BENJ. HARRISON.

By the President:
JAMES G. BLAINE,
Secretary of State.