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**VOTER  
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CONSTITUTIONAL  
AMENDMENTS  
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**General Election  
November 4, 1980**

Prepared by FRANK MURRAY, Secretary of State,  
pursuant to Section 13-27-401,  
Montana Code Annotated

*Livingston Enterprise, Livingston, Mont.*

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General Election Ballot, November 4, 1980

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CONSTITUTIONAL AMENDMENT NO. 9

The following is a copy of the title and text of the proposed Constitutional Amendment as it appears in the official files of the Secretary of State:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW STATUTORY EXCEPTIONS TO THE CONFIDENTIALITY OF THE DOCUMENTS OF THE JUDICIAL STANDARDS COMMISSION.

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

Section 1. Article VII, section 11 of the Montana constitution is amended to read:

"Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

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

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

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

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

(4) The proceedings of the commission are confidential except as provided by statute."

Section 2. Effective date. If approved by the electorate, this amendment is effective January 1, 1981.

Section 3. Submission to electors. This amendment shall be submitted to the electors of the state of Montana at the general election to be held in November, 1980, by printing on the ballot the full title of this act and the following:

- FOR allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.
- AGAINST allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.

ARGUMENT ADVOCATING APPROVAL OF THE ISSUE

The Judicial Standards Commission investigates charges of misconduct by judges. The Commission may hold hearings and recommend to the Montana Supreme Court that a judge be censored, suspended, removed or retired. Montana's Constitution now states that all proceedings of the Judicial Standards Commission are confidential. Constitutional Amendment 9 would allow the Legislature to open the proceedings of the Commission to public scrutiny. This change in Montana's Constitution is consistent with the public's right to know about the actions of public bodies.

At present, the Commission only reveals the number of complaints filed with it each year. No other information is available to evaluate the Commission's performance. Neither the public nor the Legislature know the general nature of the complaints handled by the Commission, how long complaints have been pending or the Commission's final decision on each complaint. This lack of information makes it impossible for the public or the Legislature to monitor the performance of the Commission and engenders distrust of the judicial disciplinary process.

Constitutional Amendment 9 is also necessary to give the Judicial Standards Commission the authority to release information to the public. The present Constitutional language totally prohibits the Commission from releasing any information to the public or the Legislature. The Commission should have the flexibility to release certain information. That is the only way the Commission can instill public confidence in the judicial disciplinary process.

Constitutional Amendment 9 will not result in all proceedings of the Judicial Standards Commission being opened to the public. Judges, like other persons, must be protected

against unfounded and unsubstantiated charges. Constitutional Amendment 9 will enable the Montana Legislature to strike a balance between the privacy of judges who have been wrongly accused and the right of Montana's citizens to know about the operations of their government.

The judicial branch of government has long been the most secretive branch of government. Much of the secrecy surrounding the judicial process is justified. However, when it comes to disciplining judges, total secrecy cannot be tolerated. Judges exercise vast powers which affect the lives and property of Montana's citizens. A judge who acts improperly must be disciplined or our system of justice will crumble. Limited public scrutiny of the disciplining of judges is necessary to insure confidence in our legal system.

Constitutional Amendment 9 should be passed.

S/ Steve Brown, Chairman  
Daniel Kemmis  
Harold G. Stearns

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#### ARGUMENT ADVOCATING REJECTION OF THE ISSUE

The Judicial Standards Commission is established by Article VII, Sec. 11, of the Montana Constitution. The duties of the Commission are to investigate complaints relative to disabilities or conduct of judges. Recommendations are made to the Montana Supreme Court, who in turn make the decision to remove or censure a judge.

Under the Constitution, the Commission may hold hearings, subpoena witnesses and documents, and keep its proceedings confidential. This amendment would permit the Legislature to enact statutes making certain of the Commission proceedings public.

In order to obtain a free flow of information for its investigations of judges, it is necessary for the Commission to keep certain of its proceedings confidential, including the names of informants and witnesses. This amendment could adversely affect deliberations of the Commission where sensitive matters are involved. The Commission is only advisory, and there is nothing in the law that precludes the Supreme Court, when acting on recommendations made by the Commission, to make its own findings and decisions public. It is therefore apparent that the proposed amendment is unnecessary, and does little to benefit the public in its right to know.

S/ Sen. Pat M. Goodover, Chairman  
Rep. Dan Yardley  
Rep. Jack K. Moore

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#### ARGUMENT REBUTTING THE ARGUMENT ADVOCATING APPROVAL OF THE ISSUE

The Judicial Standards Commission must retain its constitutional right to keep its proceedings confidential. To be effective in its investigation of complaints relative to judicial performance, disability, or conduct, the Commission must fully protect the judge and the complainant(s) or witness(es).

Publicizing any part of the proceedings could deny to the Commission the co-operation of the people best able to provide testimony during investigations resulting from complaints. The Montana Constitution now requires that the Commission keep secret all complaints by informants or witnesses. This is beneficial to the Commission in obtaining more freely from those testifying, the information and documents necessary for a complete, fair and impartial investigation.

Constitutional Amendment 9 could adversely affect the proceedings of the Judicial Standards Commission. It is basic human nature that persons speak more freely under the safeguards of confidentiality. To protect the rights and privacy of judges, complainants, informants or witnesses, we must retain the constitutional secrecy provided in existing law.

Lawyers in particular, who can provide testimony affecting the performance of a judge, would hesitate to appear before the Commission if the Legislature could, through this amendment, decide to publicize the Commissions proceedings.

The Judicial Standards Commission is an investigative and advisory body which makes its recommendation to the Montana Supreme Court. The court makes its own findings and decisions. The performance of the Commission is monitored by the Supreme Court and the Constitution now allows the court to publicize the findings of the Commission, and any of its proceedings.

Constitutional Amendment 9 should not be passed.

S/ Sen. Pat M. Goodover, Chairman  
Rep. Dan Yardley  
Rep. Jack K. Moore

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ARGUMENT REBUTTING THE ARGUMENT  
ADVOCATING REJECTION OF THE ISSUE

The need for Constitutional Amendment 9 arises out of the total lack of information now available to the public about the activities of the Judicial Standards Commission. No public body should be permitted to operate without some public scrutiny. Constitutional Amendment 9 will permit the Legislature to specify when the Commission's proceedings will be open to public review.

The opponents argue that Constitutional Amendment 9 could jeopardize the activities of the Judicial Standards Commission by requiring the release of sensitive information. The Legislature has passed numerous laws authorizing various professions to discipline their members. None of these laws require a professional licensing board to release sensitive information that should remain confidential. Doctors, dentists, plumbers, and other professions are required to provide limited information to the public and the Legislature. Constitutional Amendment 9 will enable the Legislature to require similar information about the Judicial Standards Commission to be disclosed.

Constitutional Amendment 9 should be passed.

S/ Steve Brown, Chairman  
Daniel Kemmis  
Harold G. Stearns

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The form in which the issue will be printed on the Official Ballot at the General Election, November 4, 1980, is as follows:

CONSTITUTIONAL AMENDMENT NO. 9

AN AMENDMENT TO THE CONSTITUTION PROPOSED BY THE LEGISLATURE

Attorney General's Explanatory Statement

The constitution requires the judicial standards commission to keep its proceedings confidential. This proposed constitutional amendment would allow the legislature to pass laws to make the proceedings of the judicial standards commission public. The judicial standards commission has the responsibility to investigate complaints about the conduct of all judges within the State of Montana. This amendment has been proposed by the legislature.

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AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW STATUTORY EXCEPTIONS TO THE CONFIDENTIALITY OF THE DOCUMENTS OF THE JUDICIAL STANDARDS COMMISSION.

- FOR allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.
  - AGAINST allowing statutory exceptions to the confidentiality of the documents of the judicial standards commission.
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