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Transcript for Episode 24: For Future Generations: Preamble & Environmental Provisions of 1972 Montana Constitution

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**[Begin For This & Future Generations-Preamble & Environmental Protection Provisions of 1972
Constitution]**

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[Music]

00:00:03

Narrator: From the beginning of Montana's distinctive yet troubled history, the Treasure State was dominated both economically and politically by powerful outside interests who shipped in capital and bought control of the State.

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Historians tell us that as the Anaconda Company and its friends ran Montana, economic and political power flowed out into the hands of distant capitalists and corporations.

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Policy was determined in far off New York City and control of the press was rigid. Anaconda's corporate dominance in Montana's political affairs was unique in American history. For its first 75 years, Montana was a one-company State. But then big winds of change roared across the Treasure State; between 1965 and 1980 Montanans ripped off their copper collar, transforming Montana from a corporate colony into a free modern State.

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The people finally controlled their own destiny. The pitched battle between the people and the established power structure was not easily won but fired In a Crucible of Change a new Montana was born. Join Evan Barrett and real history makers of the time as they shine the light on this remarkable era.

00:01:20

Evan Barrett: Welcome back to *In the Crucible of Change*. This program is a very unique one about the Montana Constitution and as we've said many times during our series, when you think of the period of progressive change in Montana, the Constitution, and the development of our Constitution and its adoptions stand out as a beacon of progressive thought and progressive action, the passage of that Constitution.

00:01:49

And today we're going to look at it and we're going to look at two particular things in the Constitution. First we're going to spend some time later in the show on the environmental aspects of the Constitution, the environmental protections that are embodied in the New Constitution. But before we get at that we're going to get at the Preamble of the Constitution. And interestingly enough, our guests today are the two principal authors of the wonderful Preamble of the Montana Constitution. So we are joined today by Bob Campbell. Bob was a Delegate from Missoula at the Constitutional Convention, originally from Sydney, Montana, passed through Red Lodge for a few years, ended up at the University of Montana where he got a degree in Pharmacy and then went back to UM Law School and had a degree in Law. And in 1967, after becoming an attorney, he stayed in practice as a lawyer for all the time up until today, but he ran for Delegate to the Constitutional Convention and was successful and was on the Bill of Rights Committee of the Constitutional Convention.

00:03:11

He as an attorney by the way, you spent 22 years with the Labor Department being a principal attorney for the Labor Department in Helena. But probably nobody more epitomizes the--the term *citizen activist* than Bob Campbell. You've been an activist politically and governmentally all these years and remain so. So thank you for joining us.

00:03:37

And also joining us is Mae Nan Ellingson. She was Mae Nan Robinson at the time of the Convention. Mae Nan was the youngest Delegate at the Constitutional Convention. We've known each other since graduate--I was in Graduate School and you were just finishing your undergraduate work. But after being in Graduate School, one of your mentors, Ellis Waldron mentored for many of us--persuaded you that you should run for the Constitutional Convention and you did. And low and behold I think at the age of 24 you were able to be elected to the Constitutional Convention. And interestingly enough you were not an attorney at the time but the--being in the Convention was the major stimulus for you to go to Law School and become an attorney. You graduated in 1976 from the University of Montana Law School and after six years with the City Attorney's Office you went with the Dorsey Whitney Law Firm where you stayed until actually what is it--

00:04:40

Mae Nan Ellingson: About 30 years.

00:04:40

Evan Barrett: --30--29 years until 2012. And Mae Nan was the--probably the most preeminent public finance attorney in the State of Montana, many, many years as State Bond Counsel so we--I had opportunity and we had opportunity to work together for many years on public finance issues.

00:05:00

But you know it's a pleasure to have both of you here because of this Preamble particularly. Most of us are struck when we look at this wonderful Constitution and we're able to--to read this opening. And I'm just going to take the liberty of reading your words, predominantly your words because they're so wonderful.

00:05:25

The Preamble leading into the Constitution says *we the people of Montana grateful to God for the quiet beauty of our State, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity, and to secure the blessings of liberty for this and future generations, do ordain and establish this Constitution.*

00:05:55

I mean wow; those are just stunningly beautiful and meaningful words. Every time I read them it stops me. And I want to start off by--before we get into the process of how did we come up with these words, maybe Mae Nan your reflections, because it's--it seems to speak to Montana and not to the law; what--what's your take on the basic nature of our Preamble as say compared to others?

00:06:23

Mae Nan Ellingson: Well it's different in that it does recognize the importance of the physical environment of Montana from which many of us really felt like we took on this mission. It was--we were inspired I think by the beauty of our State and I think as we get into the rest of our discussion today about our impetus for natural resources and the environment, there was a--it was a compelling time for us to want to protect our environment.

00:07:02

And I think that whole notion of protecting the environment gets reflected not only in that Article but presupposing it as part of why we were writing this Constitution and the strong grounding that everybody had in the beauty of our State. So I think that is what makes our Preamble so unique is that it goes on to state the principles for which we are doing this Constitution, improving the quality of life and equality of opportunity but a strong recognition of the place, Montana, the place.

00:07:45

Evan Barrett: Now if you think of Montana, we call it the last best place a lot of times, besides a lot of other nicknames, but the reality is the people of Montana are very tied to the land, the uniqueness of the land; the resources have been an economic boon to the State for many, many years. But when we think of a quality of life it's related to this grandeur of Montana you spoke of, I think it resonates with every Montanan, whether you're a native of Montana or whether you're a newcomer. It speaks to the uniqueness of Montana. It's about this huge, huge piece of property, the fourth largest State, 144,000 square miles of just unique land and the recognition of that is like recognizing a little bit of the essential nature of Montana and Montanans it seems to me. I don't know what led you to that, although you were telling me you did have some inspirations for your starting words.

00:08:42

Bob Campbell: Well right. We all watched as the Legislature finally voted two-thirds to put the question to the people; do you want a Constitutional Convention? The reason that they voted to have it is because they took a study from the Legislative Council in 1969 and they found out that 52-percent of the Old Constitution was absolutely obsolete and should be replaced.

00:09:04

So they did a study. They passed it by two-thirds. The people agreed. The League of Women Voters was very influential. And they set it up so Delegates could get elected. When they did that some Legislators tried to file and they were told by the Supreme Court that all elected public officials were ineligible to run to write the Constitution. So Mae Nan and I, and I didn't know her then but we were in the Primary there in September of 1971. We ran; we made it through the Primary.

00:09:35

Evan Barrett: You were both running in Missoula?

00:09:36

Bob Campbell: Right and we had eight--because it was based on the Legislature's--

00:09:42

Evan Barrett: Reapportionment, yeah.

00:09:43

Bob Campbell: Well it was eight at large; it wasn't single member districts. So she and I were running and she got I think the most votes out of the eight. I had number seven. And so then we came to Helena. But as I was going door-to-door for this I was thinking, I'd really like to get on the Bill of Rights Committee and I'd like to write the Preamble. And I said if I was writing the Preamble I'd want to describe it first as we have the beauty of our State, the--the nature, the geographical--just describe the--what we have and then put the political reasons as why it needs a Constitution to protect those values.

00:10:25

Now we didn't know at the time, but later, a Supreme Court of Montana decision said those words are enacted to be part of the law.

00:10:35

Evan Barrett: For a reason.

00:10:35

Bob Campbell: Yeah; they're in there for a reason and they should be relied on. When people say it they look at it and then it--it has an effect.

00:10:43

Evan Barrett: Did you find any inspiration in that gigantic painting behind the Speaker's--the podium?

00:10:49

Bob Campbell: Yes; in fact that was one of the four things that Mae Nan and I on January 27th, they had a--a meeting over at the Historical Society, but anyway we took the Indians' issues and we had a Historical Society party that night, January 27, 1972, so we went to that and I told her that we wanted to take the Indians' influence, the Charlie Russell influence; we wanted to get the book *Travels with Charlie*, how he describes Montana--

00:11:20

Evan Barrett: That was a different Charlie, right? That wasn't Charlie Russell?

00:11:23

Bob Campbell: No; that was [*Laughs*]--no. That was the dog Charlie Steinbeck, the dog.

00:11:28

Evan Barrett: The poodle of John Steinbeck, right?

00:11:30

Bob Campbell: Yes and he loved Butte, Montana for some reason. He thought it was a unique place.

00:11:33

Evan Barrett: Now that's not hard to understand. [*Laughs*]

00:11:37

Bob Campbell: If it had a sea coast he would move here immediately but he did say it was the richness of our rolling grasslands that he praised Eastern Montana, which some people didn't see it that way. So we used that; we-- after this meeting we had at the Historical Society, I asked Mae Nan if we could write it. She lived with Dr. Moore,

so after the Historical Society meeting we used the Indian influence, the Charlie Russell paintings, John Steinbeck's, and we just wanted to put this all into one Preamble.

00:12:11

Evan Barrett: When you go to put the words together I mean it is a creative act.

00:12:19

Bob Campbell: Right; we're sitting there--yeah.

00:12:20

Evan Barrett: It's got to come out of you. These words had to have meanings more than just they reflected somebody else's thoughts. These were coming out of both of you about--I mean you can see the love of Montana inherent in the words. And you--how long did you--how long did you work that night?

00:12:40

Bob Campbell: I was thinking--oh okay it was six months--

00:12:43

Mae Nan Ellingson: A couple of hours.

00:12:43

Evan Barrett: No, no; how long did you work that night, the 27th?

00:12:44

Bob Campbell: Oh that night?

00:12:45

Mae Nan Ellingson: A couple of hours.

00:12:45

Bob Campbell: We probably got there about two hours maybe, two and a half. So we went to the Historical Society and we got the materials and we sat on the couch and we started from the beginning. We the people of Montana, and then we said instead of the Old Constitution Preamble that says--recognizing almighty God, we would recognize the Native Americans by saying instilled with the spirit of our creator, gathering our strength from the grandeur of our mountains and the richness of our rolling grasslands with a reverence for the quiet beauty of our State with the desire to live in peace in order to improve the quality of life and the quality of opportunity for this and succeeding generations do hereby ordain, establish this Constitution. We put it in the next morning and it was Delegate Proposal 59 and went to the Bill of Rights Committee. And we were so proud of it that we were sure that was going to be adopted.

00:13:45

Evan Barrett: Every word?

00:13:46

Bob Campbell: Every word.

00:13:47

Evan Barrett: Every word. *[Laughs]*

00:13:48

Bob Campbell: We thought it was perfect. It was perfect; nobody could improve upon that.

00:13:51

Evan Barrett: You know it is really true about the creative act of writing. When I took freshmen writing in--at Montana State University, then Montana State College, many years ago, I remember my instructor saying to me, editing your own work is like murdering your baby. You know because you have to leave it up to somebody else to

do the editing because we love our own work. But those were marvelous words but there was some change that occurred in them. But were--let me ask the question; were--did other people--did other people submit alternative visions of these words?

00:14:27

Bob Campbell: Yeah; there was four other proposed Bill of Rights, Preambles that were sent to our Committee, the Bill of Rights Committee and we considered those and we had a public hearing but we--we liked ours the best and we had the best response to it. And we didn't want to change a word of it.

00:14:42

Evan Barrett: Now the Committee didn't want to change a word of it but in fact, did they inside the Committee--?

00:14:47

Bob Campbell: Well the first thing we had was a public hearing on this and we thought everybody would just be you know ecstatic over the whole thing. But we had four witnesses that said you have removed God from the Preamble of the Montana Constitution.

00:15:01

Evan Barrett: Ah God was there before.

00:15:02

Bob Campbell: And if you don't put Him in there, He will punish the State of Montana. And it is in the 1889 Constitution. So I could tell--

00:15:10

Evan Barrett: Now you had the creator and you played off of that from a Native American perspective, right?

00:15:15

Bob Campbell: Sure and we explained that to the people that were against it.

00:15:17

Evan Barrett: But?

00:15:17

Bob Campbell: But they said no, no; God will still punish you. One of our members on the Bill of Rights Committee George [Inaudible] said well you know God isn't in the US Preamble Constitution either. Do you think He's punishing the United States for overlooking that, too? Well yeah. But anyway it was clear I had to take that out. If we wanted to get a Constitution--

00:15:37

Evan Barrett: So caution being the note that you don't want to have a big battle over something like that you changed creator to God?

00:15:41

Bob Campbell: Well if there's one thing in the Constitution the people don't like they're going to vote against the whole document. So we had to get everything out that someone could use to kill the Constitution on one single item.

00:15:50

Evan Barrett: Well particularly emotional issues like that, huh?

00:15:52

Bob Campbell: Because this was a Constitution that had to go to the voters on June 6th.

00:15:56

Evan Barrett: So--so what happened to creator?

00:15:58

Bob Campbell: Well we--I just took it out right then. I knew we were dead if I left it in, so it would fail. So I took it out and put in as it is now, grateful to God.

00:16:07

Mae Nan Ellingson: In the Committee.

00:16:09

Bob Campbell: In the Committee; yeah.

00:16:10

Evan Barrett: Inside--in the Committee?

00:16:11

Bob Campbell: Yeah and I had another Delegate tell me--

00:16:13

Evan Barrett: Now it looks like, did they add secure the blessings of liberty in that? Was that added or was that in your original--?

00:16:20

Bob Campbell: They--they put that. We put--we had Style and Drafting Committee. We had to put everything through there. So some of this they--they looked and they made some changes but the--the major ones held up until just at the end. And then the night before it had to go into effect and Chet Blaylock on our Committee was Vice Chairman--

00:16:43

Evan Barrett: Well now--now I was going to ask you about that because if any Delegate were to bring forth language that's fine, but if you're on the Committee you have a little more stroke. And yet there was alternative language suggested by Don Foster?

00:16:59

Bob Campbell: Yes; he was a Committee member and we were at loggerheads over this. The night before it had to go to the Floor, but Wade Dahood was our Committee Chairman, a very strong Committee Chairman and whatever we came up with he would get through we were sure. We were the strongest Committee. Everything we wanted we got through--in the Preamble and then with the--the work we did that night with Chet Blaylock, the school teacher from Laurel, great person, and with that we--

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Evan Barrett: What did Chet do?

00:17:27

Bob Campbell: --we lost the rolling grasslands and then vastness came in and we didn't like the vastness.

00:17:32

Evan Barrett: So you got--so you got a little bit of change. The vastness and rolling plains--rolling grasslands, but that was what? What Chet brokering a deal between you and--?

00:17:40

Bob Campbell: He was the Vice Chairman and our Committee Chairman Wade Dahood was so upset with us, the way we argued--

00:17:45

Evan Barrett: You guys were fighting, huh?

00:17:47

Bob Campbell: We were really fighting and the next day we were going to put it to the Floor. So he said Chet you come back with these two at 8 o'clock tonight in the Committee Room and you work it out and I want to see it at 8:00 in the morning, the final Preamble and we're putting it into the Floor and that's it.

00:18:00

Evan Barrett: With everyone supporting it in the Committee?

00:18:02

Bob Campbell: Yeah; yeah, so they did. And Chet you know held us both ways and this is the compromise that was made, you know. And so I--I think it's good. There isn't enough in there to say that it's not a great Constitution.

00:18:14

Evan Barrett: Well it's--it's--

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Bob Campbell: But it is--

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Evan Barrett: --it's stunning language.

00:18:19

Bob Campbell: Okay; it gets their attention.

00:18:21

Evan Barrett: It's so--I mean I want to compliment both of you. You know I'm not throwing sugar at you. This is really remarkable wordsmithing.

00:18:28

Bob Campbell: The *New York Times* and *Time Magazine*, both picked it up and--and gave it great credit during this Session. So yeah; it was well-received and it still does. It does; it brings tears to your eyes.

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Evan Barrett: Mae Nan do you remember how it went on the--when it came to the Floor? Was it a small issue then?

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Mae Nan Ellingson: Oh yeah; I mean people--

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Evan Barrett: Because you had the whole Bill of Rights to do.

00:18:51

Mae Nan Ellingson: We did; yes, but yeah. The Committee had done such a good job under Wade's hands of really the only other Delegate proposals were to--there were three from within the Committee itself. Don Foster had two and George Rawlings had one. And then Jack Ward had one who wasn't on the Committee. But I think the Committee did such a good job of compromising and working out language from the people who felt strongly about it that when it came out it came out with a ton of support.

00:19:31

Evan Barrett: Yeah and so it was adopted as part of the Bill of Rights plank so to speak.

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Bob Campbell: Yeah.

00:19:37

Mae Nan Ellingson: Yes.

00:19:38

Bob Campbell: We had a public hearing and then we had our Floor. The people could suggest amendments but Wade Dahood was such a strong Chairman that we got exactly what we wanted. He was the most powerful Committee Chairman I think at the Convention. He still is.

00:19:51

Evan Barrett: Our viewers are going to have the opportunity to hear about the Bill of Rights from Wade and Rick Applegate in another program, so--.

00:19:58

Bob Campbell: Oh both of them are outstanding.

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Evan Barrett: The big picture aspects and other things on the Bill of Rights, they're covering in great detail, but this we reserved for you the primary authors to discuss.

00:20:09

Bob Campbell: Oh okay; well we're proud to do it.

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Evan Barrett: Because you really, really should be proud of what you've--you've written. It stands the test of time let me tell you. And now there's a bit of a spinoff in this thing because clearly as you said Mae Nan, it kind of reflects the sense of place and the sense of value that lends itself to the question of well how do we deal with this value? How do we deal with it in terms of what the--if the term environment is right? You know that's a hot-button word for some people but in reality it was an openly used term at that time without any animosity. I mean it was like hey we have environmental issues; they were happening. The first Earth Day was two years before that. There was a

higher degree of consciousness of environmental issues all across the nation. It was not an issue that divided people by Party at the time. Some of the best environmental legislation of the '70s were sponsored by Republicans in the Montana Legislature. There were divisions and differences on the issue but in that Bill of Rights that came out was the first recognition of the environment and that was in the Section 3 of Article 2, Declaration of Rights and Inalienable Rights. Now when you think of Inalienable Rights, you start thinking about the Federal--life, liberty, pursuit of happiness--concepts like that and in the middle of it we have language that says those rights include the right to a clean and healthful environment.

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Bob Campbell: Well that came in after--. We first considered what to put in for environmental rights in our Article 9, the Environment and Natural Resources.

00:22:00

Evan Barrett: But let's stay with this; stay with this.

00:22:03

Bob Campbell: You want to stay with the Preamble?

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Evan Barrett: Let's stay with what's in the Bill of Rights. You're saying that--that term was used elsewhere in the Constitution but it wasn't in here.

00:22:12

Bob Campbell: No; it hadn't been in there when we passed it and it wouldn't be in there if we didn't put it in the Environment--in Natural Resources section first. We would have never gotten it into the Inalienable Rights unless we already had it stated.

00:22:26

Evan Barrett: So it was in the other one but--

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Bob Campbell: Yeah; we voted it in and Mae Nan is very active on that.

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Evan Barrett: However, we're going to talk about that.

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Bob Campbell: But that's what happened afterwards.

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Evan Barrett: In this one--

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Bob Campbell: That's the last thing that happened that was put in.

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Evan Barrett: When it came out of Committee was the Right to a Clean and Healthful Environment in the Inalienable Rights section?

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Bob Campbell: No; it was not.

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Mae Nan Ellingson: No.

00:22:46

Evan Barrett: Ah okay.

00:22:47

Bob Campbell: It was not.

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Mae Nan Ellingson: It was not.

00:22:49

Evan Barrett: So let's talk about how that got in there because that's pretty important. It's in the--it's in the Declaration of Rights of the Constitution.

00:22:55

Bob Campbell: Right but it had to reflect what we already did in the Environment and Natural Resource Committee and Mae Nan can tell you about that. The biggest issue at the Convention was what to do about the environment.

00:23:05

Evan Barrett: Yeah; we're going to run--we're going to get to that. Let's see if we can wrap up this--this thing right here. Now we're not following the sequence but--but we're following--we're looking at this thing. We--we have this as an Inalienable Right. Was it--was there you know an argument about adding this when it came up?

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Bob Campbell: It would never have gotten--

00:23:25

Mae Nan Ellingson: Actually we voted on the Environmental Article on May 1st. And we had a very long and tedious day because when the Environmental Article came out of its Committee which was the Natural Resources

and Environment Committee, it was a very watered down version of what we currently have. We spent the--an entire day, many, many hours of trying to get the Delegates to approve the insertion of the words *clean and healthful* in front of the environment. The way that came out of Committee was that we were basically going to have and preserve an environment for this and future generations. And really I can't tell you the number of votes we--well I can tell you; there were eight votes that occurred on that day in attempts to get some kind of modifiers in front of environment. And--and I think it's really important to understand why that was so important because you know we were from Missoula where on any given day you couldn't even see the mountains because of what was coming out of Horner [Inaudible]. It was the beginning of strip mining in Eastern Montana. We had the aluminum plant up in Columbia Falls, spewing out--

00:25:09

Evan Barrett: Killing all those trees.

00:25:10

Mae Nan Ellingson: --all kinds of--yes and then we had clear cutting. We still had waters that were polluted from the mining at the turn of the century, so for a great number of us it's like we didn't want that exact environment that we had in Montana.

00:25:31

Evan Barrett: You didn't want the status quo.

00:25:33

Mae Nan Ellingson: We didn't want the status quo.

00:25:34

Bob Campbell: No; and--

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Mae Nan Ellingson: And so you know I give so much credit to Bob on this Natural Resources Article because we all made many attempts and it was really his final proposal to insert the word clean and healthful in front of the environment that prevailed. And I think it's worth having Bob talk a little bit about our efforts that day.

00:26:02

Evan Barrett: Before we talk about the process let me take just a second. Does anybody and I didn't ask you this before, so this is an open question--who coined clean and healthful as the adjectives, as the modifying words? Do you have any recall?

00:26:18

Mae Nan Ellingson: Yes; I--I do. It was certainly in one of my earlier amendments but it wasn't as though we were pulling those terms out of thin air which some of the lawyers opposing us were arguing. They were saying how can we add these words? We don't know what they mean? We're going to have all kinds of lawsuits trying to establish what they mean. But those were words that were actually in Federal legislation. They were in--some of the Environmental Protection legislation and so Courts had already started working on and carving out what those terms meant. So it wasn't like you know we were inventing out of whole cloth these two totally foreign concepts.

00:27:07

Evan Barrett: Now when--when the Committee produced a report and it was a rather neutral reference to the environment, not with the modifiers, clean and healthful, just we should maintain an environment or--the Chairman of the Committee who we recently lost, Louise Cross from Glendive, I believe spoke rather strongly on the Floor when it was introduced about whether she thought it was strong enough or not didn't she? I mean she--she was-- Louise--I don't know if either one of you want to take that as to--as to the role Louise played in this thing.

00:27:48

Bob Campbell: All right that's pivotal. Louise Cross has to be given the credit for being the best, strongest Environmental Delegate of the Convention. And that's why Leo Graybill appointed her to be Chairman of the Environment and Natural Resources. But on the Committee she only had one other person that would agree with her

that we should have strong environmental wording to back up and the rest of the Committee overwhelmingly opposed any adjectives above clean and healthful. They just wanted to say we had an environment and they said let the Legislature decide what kind of standards we have in Montana for the environment. You're just going to create problems where they have lawsuits and out of state experts will come in and say that clean means you can dump your oil into the creek and if that expert testifies that this clean and healthful has hurt the environment. So with Louise on the day that this Article was submitted to the Floor, she didn't even have enough people to do a minority report. You had to get three Delegates to do a minority. So she as Chairman had to stand up there and she wrote the night before a statement of why--what the--the majority of that Committee had decided to do with no protection for the environment--was wrong and it took her to tears but the second in the Committee was C.B. McNeil and he took the proposal that the Delegates had--had in that Committee and then he brought it to the floor and he brought it up as it would have been without clean and healthful environment. So then--now that was the biggest issue of the Convention. We had--the rafters were full, the build-up to this was amazing because what was the State going to do about the environment? A lot of business communities, money that was the most controversial step and there if you want to kill a Constitution you put something in there that's going to get people mad.

00:29:50

So I think with Mae Nan now that we're--Louise sits down and C.B. McNeil gets up and said let's just have it the way it is and then Mae Nan, I think this is a good spot for you to say what happened on the Floor after that.

00:30:03

Mae Nan Ellingson: Well the Committee report and C.B. McNeil who ended up carrying the Committee report because the Chair, it really wasn't her Committee report and she didn't feel it was as strong as it could have been, and she stated that on the Floor. So it was very hard for her to say this is the strongest Environmental Article in any US Constitution, which C.B. and the Committee claimed.

00:30:34

There were a great many of us who did not believe it was the strongest because we did have at our disposal several other State Constitutions that had recently dealt with the environment--Puerto Rico and Illinois and actually

even North Dakota, all had adopted environmental provisions in their Constitution to--to some extent. But there were really two big issues.

00:31:01

The first of which was this issue of--I mean I'll just read you what the Committee report said. It--it came out; the proposal was--*Protection and Enhancement. The State of Montana and each person must maintain and enhance the environment of the State for present and future generations.* So the language there brought about this whole question of what modifiers should there be if any in terms of the environment. C.B. McNeil and the Committee felt and I think they were supported by other lawyers, Marshall Murray in particular that it was a stronger Constitution by not having any modifiers in front of the environment. So that formed--that formed one big item of debate.

00:32:01

The minority report that Louise tried to get out would have added an additional provision to the--this Article that would have provided a Montana resident with the right to legal proceedings against a governmental agency charged with enforcing that Article. And--and during that period of time there were a lot of cases going before the US--well not a lot but there was one major case going before the Supreme Court, who had the right to sue on behalf of the environment or did anybody have a right to sue? And certainly in Montana at the time we only recognized standing, meaning a right for anybody to go to Court if they personally suffered some damages. So I mean many of us felt like well my gosh; if--if somebody has to--if there has to be damage to the environment and it has to be personal to someone, how do we really protect the environment?

00:33:18

So some kind of remedy or right to redress the environment or to protect the environment before damage occurred was critical. And that was what was critical to Louise. And so we had to set about those two issues sort of separately and as I said, the biggest and longest fight was on getting the right to a clean and healthful environment in--in the Constitution.

00:33:49

Evan Barrett: Did the standing issue get resolved favorable or was that left for adjudication later?

00:33:54

Mae Nan Ellingson: They--it got resolved in a way that I think ended up being satisfactory to most people in that the provision that was finally adopted basically provided that the Legislature had to establish remedies. So it had to provide access and standing to enable people to go to Court to enforce the environmental protections. And then the other thing and this will get back to your point a little bit earlier about--once we got the right to a clean and healthful environment in the Article and then six days later on March 7th when Bill Burkhardt got it put into the Inalienable Right Section once it got into that Section it became a fundamental Constitutional Right that had a much higher level of scrutiny than if it just had remained in Article 9 itself. So it became more I would say self-executing--

00:35:11

Bob Campbell: Oh absolutely.

00:35:12

Mae Nan Ellingson: --once it got put into the Bill of Rights.

00:35:15

Evan Barrett: But it was put; those words clean and healthful ended up in the--what is it--Section--Article 9--

00:35:24

Mae Nan Ellingson: Yes.

00:35:24

Evan Barrett: --Environment and Natural Resources. Do you--you said there were eight votes? Let's kind of drive through that a little bit before we get to the--the final vote that worked. Obviously there were seven votes that failed.

00:35:38

Bob Campbell: Okay; I'll start a little bit on that.

00:35:39

Mae Nan Ellingson: Yeah; yeah.

00:35:39

Bob Campbell: Okay; so when they submitted that on the Floor, one of our Bill of Rights members, George James from Libby, he just rose and said I move that we add clean and healthful before the word environment.

00:35:54

Evan Barrett: Seems appropriate coming from a Delegate from Libby.

00:35:58

Bob Campbell: He was wonderful. I loved him. He--he--he is; he was great. So anyway, they promptly voted him down. So this really infuriated Jerry [Cate] who sat next to me because he--

00:36:09

Evan Barrett: From Billings.

00:36:08

Bob Campbell: --and others wanted a public trust. Now when they came to me early in the Session and said will you support us in getting a public trust in the Montana Constitution, I said no. I won't because one, you'll never get this body to adopt a public trust, and two, if you did get it in it would kill the Constitution. So I'm not interested in talking about a public trust. So I just went aside. It wasn't my Committee and I didn't do anything until after knowing that we were going to decide what to do.

00:36:39

But Mae Nan, Louise Cross, and others, we listened to Jerry [Cate] and Jerry [Cate] got up and he wanted the public trust. That's it, and he had--he gave probably--

00:36:49

Evan Barrett: Pretty good orator.

00:36:49

Mae Nan Ellingson: Very.

00:36:51

Bob Campbell: He was great and then the whole--all of the galleries were applauding him after that speech. It was wonderful. So Leo had to bring them down again. And they did but he was great. But okay; they defeated that.

00:37:05

Mae Nan Ellingson: Yeah; so he actually offered a specific--

00:37:08

Bob Campbell: He offered it; we discussed it.

00:37:09

Mae Nan Ellingson: --proposal.

00:37:09

Bob Campbell: The State would own the water and the air and it would keep it clean.

00:37:13

Mae Nan Ellingson: Not that they would own it but they would hold it in trust. And that's the way the environment is dealt with in a lot of European countries. It's held in trust. And so it wasn't that they owned it, but once you started talking about holding it in trust, people did start talking about we were taking private land and that was the kiss of death.

00:37:40

Bob Campbell: Would you be able to--

00:37:42

Mae Nan Ellingson: That was the kiss of death.

00:37:42

Evan Barrett: That's a--right there, yeah.

00:37:45

Bob Campbell: Okay; so that was voted down. Then Arlene Reichard stood up and then she used--

00:37:49

Evan Barrett: Who has appeared on one of our programs.

00:37:50

Bob Campbell: Okay from Great Falls and she sat right next to Mae Nan. We seated alphabetically which was the best thing that happened. Dale Harris, our Executive Director did that in our first meeting, put us all alphabetically. He was great. You should have an hour on him alone, but he was the key to the whole thing.

00:38:07

But anyway on the public trust thing we go through Cate and here's Arlene Reichard and she stands up and quotes part of the Illinois proposed Constitution and that goes down. But it gets a little closer, okay. So we're all there; this is really a high-powered--the press. Everybody is really watching us on this. And so then--

00:38:29

Evan Barrett: Battle royale, huh?

00:38:31

Bob Campbell: --it came to Mae Nan. So I'll let you talk about when you came up with your proposal after Arlene's was denied.

00:38:38

Mae Nan Ellingson: Yeah and I think maybe there was one or two in between. I had some additional amendments that did a couple of things. One, it again inserted clean and healthful, and then it had some stronger language about citizens being able to directly bring a lawsuit to enforce the environmental provisions without waiting for the Legislature to enact remedies. So I had--I had a lot of good support, people rising in support of that and saying that we were getting close and this was getting better and better. But even the final vote that went down 50 to 54 or something like that. I got 50 ay votes and 54 no votes. So then you come in next, right Bob?

00:39:40

Bob Campbell: Well it was about 5 o'clock and we had this argued so many times. And there I was sitting there and I--I campaigned and I liked the clean and healthful environment and here I am on the Bill of Rights Committee. I didn't have anything on that Committee, so I just said boy you know it's 10 after 5. People are going home. They've been defeated. I can't let it go. So I stand up and I said Mr. President I move that we add clean and healthful before the word environment in this provision. And so President Leo Graybill says fine, okay; Mr. Campbell you can speak. And as soon as I started to speak C.B. McNeil stands up and says I call for the question. The question means there's no debate and there's no speech--

00:40:23

Evan Barrett: Once you do that you got to take a vote.

00:40:24

Bob Campbell: --you got to take a vote.

00:40:25

Evan Barrett: Well you know usually they're saying I'm ready to get out of here. Let's start talking--

00:40:29

Bob Campbell: He didn't argue--yeah.

00:40:29

Evan Barrett: --let's start voting, right.

00:40:30

Bob Campbell: Yeah; so he just went right to the point which is, do it. You know lost all these times in a row. Let's see what you do this time. So he said oh--so I sat down and they took the vote--61 against me on that okay.

00:40:42

Mae Nan Ellingson: So it was worse.

00:40:43

Bob Campbell: It was the worst. It was the worst of all of them.

00:40:46

Mae Nan Ellingson: It was worst of all of them and we thought we were--we thought with every vote we were getting closer.

00:40:52

Evan Barrett: You were getting progress but--

00:40:53

Bob Campbell: I was sitting there.

00:40:53

Evan Barrett: --I think they wanted to go home.

00:40:55

Bob Campbell: They did want to go home. They were; they won all these times. We had lobbyists that were leaving, some Delegates were leaving, and they were talking on the Floor.

00:41:03

Evan Barrett: Maybe lobbyists leaving was helpful.

00:41:04

Bob Campbell: Well I don't know but they--about quarter after five they're ready to go home. So they were; they are starting to go home. So I was sitting there just dazed and here I got a note from the Page and it was from Leo Graybill the President and he put on that note bring it up again. And I thought oh, he's a lawyer. He's the President. I'm a lawyer so I'll follow his orders. So I just--direction, so I stood up and I said Mr. President I move to add clean and healthful before the word environment. And he says okay; fine. And so I turned to the Floor and I started to talk but they're not--they're not--

00:41:43

Evan Barrett: They're not paying any attention. Man it's done with.

00:41:46

Bob Campbell: I thought C.B. would stand up again and say no and they were all--they were reading newspapers. They were talking to each other. They were all going--

00:41:53

Mae Nan Ellingson: Well and some of us that were even in support thought God we just got shellacked.

00:41:59

Bob Campbell: We did--the worst ever.

00:42:00

Mae Nan Ellingson: Why--why is he doing this again because we didn't know about the note from Graybill?

00:42:07

Bob Campbell: The note said, do it again, and I didn't even know. So I'm trying to talk and take new arguments after five hours and then I finally turned to the President--to President Graybill and I said I can't talk to this Floor. The Floor--there's so much commotion going on. I can't talk to the Delegates. And so he took that gavel and he rapped that thing three of the hardest times I've ever seen him rap and then he said Delegates, Delegate Campbell has something to say and I want you to listen to him. And it all went silent. It was just frozen. And then they came to me. I didn't have a speech. So I'm looking at all of them and I'm saying what do I do now? And so I said well, we've lost all these other votes.

00:42:52

So I said look; you had in all these votes that you wanted a clean and healthful environment but you didn't want to put the words in because they're saying it would cause more chaos. Okay; I said look. If you don't put those words in and you go home and you're seeking to ratify this Constitution you're going to be walking down the street of your town that elected you to this Convention and some little kid is going to come up to me and--or you and say what did you do about my environment in the future? And you're going to have to say we decided to have one. Okay; so the little kid is going to shake his head and he's going to say you spent a half a million dollars in writing a Constitution for me in the future to have an environment but you're not going to tell me whether it's going to be a good environment or a bad environment. And he's going to shake his head and walk away.

00:43:46

I said there won't be any more North Dakota jokes. It will be one big Montana joke that you put in a Constitution with an environment and you didn't say you wanted it clean and healthful for those kids out there. So if you want it you got to vote for it right now. This is it. And I sat down. And nobody got up. And so Leo said okay; we'll call for the vote. Thirty changed their mind on that little North Dakota joke and clean and healthful; thirty changed over to me and we won. We got the majority on that one, about 54 to 48.

00:44:21

So yeah; so we got it there. And then Leo just said okay; now we're going to move to the next Section. And I thought somebody is going to stand up and ask for reconsideration. This isn't going to just sit in there is it? And so he said okay. Now let's go to the next Section. Nobody stood up. Now Don Scanlon came over and he patted me on the back and he said Bob that was really good. He's the only Delegate that did that. And at his funeral in Red Lodge I was looking up his record but he came over after he said that it was good. I gave the eulogy in Red Lodge for him and I noted that he voted against me on that last vote **[Laughs]**, so I thought that's good. But anyway that's the way it--it got in and it stayed in and nobody was--was able to get it out. And now it's been stronger. But it had to be in there before the Inalienable Rights--was the last one that was put in because it--it matched the one--the Environment and the Preamble had words that the Inalienable Rights just made it.

00:45:21

Bill Burkhart, the Presbyterian Minister from Helena was the one that put it up there. And he wasn't a lawyer. And he was asked; are you putting that in there so you can close down the smelter of the Anaconda? And he said no. He said I'm a Minister. I'm not going to sue you. I just think it's words you know--he said look; we got this big Charlie Russell painting up there. He loved that painting. He said I--we've got it in Natural Resources. We've got it in the Preamble. So this just fits the three of them together. And he sat down.

00:45:54

Mae Nan Ellingson: And it's interesting I think to note that it was--as I mentioned it was six days later that he moved that--the Natural Resources was adopted on May 1st. On May 7th and the vote on his specific Amendment to insert it in Article, Section 3 was 79 to 7.

00:46:19

Evan Barrett: So by that time I think the people were going with the flow so to speak.

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Mae Nan Ellingson: Yes; you know--

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Evan Barrett: And consistency.

00:46:27

Mae Nan Ellingson: --yes, and you know and C.B. McNeil and he certainly supported it at that point because he did say you know my notion is to support the strongest provision and so I think by that point he was convinced that it was much stronger.

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Bob Campbell: But this was March 1st--

00:46:48

Evan Barrett: Oh you said May.

00:46:49

Bob Campbell: Yeah you said May.

00:46:50

Mae Nan Ellingson: I'm sorry; yes, March, oh yeah, no, no, yeah March, all March. Yes; excuse me, March, yes.

00:46:55

Evan Barrett: But you're--you made the point earlier that having it in the Inalienable Rights Section gave it better standing as far as the--the primacy of the law so to speak.

00:47:05

Mae Nan Ellingson: Yes; yes.

00:47:07

Evan Barrett: It had a stronger meaning for--

00:47:08

Mae Nan Ellingson: Yes; it became--it became a fundamental right and in constitutional law once something that has been established as a fundamental right the State has a higher responsibility for providing for it and not infringing on it. And that became very important in this first environmental case that went before the Supreme--Montana Supreme Court, the 7-UP Pete case. So the fact that it was a fundamental right to a clean and healthful environment requires a much higher standard, because I mean it just sort of as a general rule and it will sound familiar to you and everybody else is once you've got a fundamental right the State cannot abridge it without showing a compelling--a compelling State interest. And any kind of a statute and what was the issue in 7-UP Pete was the statute that excluded certain kinds of mining permits I believe, right.

00:48:26

Bob Campbell: Exemptions.

00:48:26

Mae Nan Ellingson: Exemptions; it had made some exemptions for certain kinds of mining and didn't require any environmental review. And--and they argued that--that violated the Constitution because they were just excluding from any kind of review this whole host of things that might very well degrade the environment. And so again, the US--or the Montana Supreme Court struck that law as being in violation of both the Constitution--both the Article 3, Section 3 in the Bill of Rights, as well as in violation of Article 9.

00:49:17

Bob Campbell: This was not popular. The Legislators did not like this. It took 27 years before the Supreme Court had to see if that was an actual constitutional right. So 23 years after we put it in the Constitution the 7-Pete decision came down and Mae Nan used in her argument, you shouldn't have to wait until dead fish are floating on the river to find out if it's polluted. And Jerry Trieweiler writing the decision as Justice put it in his decision. He not only said that you don't have to wait for the fish to be dead; he said the Preamble was enacted and so it's part of the law, too.

00:49:54

Evan Barrett: Part of the law.

00:49:54

Bob Campbell: He wrapped them all up and this is what the--you know the *Independent Record* did the next day. It was finally decided that it was a constitutional right that's enforceable. That was 23 years later after the Constitution.

00:50:07

Evan Barrett: I find it very interesting that despite all the legal beagles who were in the Con-Con many of whom since they were--they dealt with litigation all the time thought that this would be nothing but fraught with lawsuits. And yet it took 23 years to have a lawsuit actually adjudicated.

00:50:25

Bob Campbell: Oh it was tough.

00:50:25

Evan Barrett: So it wasn't such a fearsome thing after all or fearful thing after all.

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Mae Nan Ellingson: No; that was a real--I found that--that was a scare tactic that a lot of the lawyers used for anything they didn't want to get in. Oh you're inviting--you know opening Pandora's Box. There's going to be lawsuits. This is the Social Security, Retirement Act for lawyers and--

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Evan Barrett: Let--you know it--it is interesting to--to see that. And when you think about the people, some of the people who opposed these provisions, would it be fair to say that--or suggest that being that they were elected to

represent their areas that they had areas where there were large economic interests and a lot of jobs and they were worried about--legitimately worried about those, so they were reflecting that in their--in their reticence to try to go in this direction? Would that be a fair--?

00:51:22

Mae Nan Ellingson: Well I think it's totally accurate because Marshall Murray got up on the Floor and said you know I represent the area where there's 1,000 people employed up at the Columbia Falls Aluminum Plant. And I can't support this if I think it could very well put the Aluminum Plant out of business. So there were some absolutely practical people who were concerned about the fallout.

00:51:54

Evan Barrett: The--the interesting conflict that one would have to feel being from Butte or Anaconda as an example where clearly degradation had occurred over a century because of standards and neglect and all kinds of things and how it was seen differently. And yet in 1972 there were still 5,000 direct Anaconda Company employees in Butte and Anaconda. Now nine years later there were 17.

00:52:31

Bob Campbell: No--

00:52:32

Evan Barrett: But it--if you're an elected official you could see the push in the pull.

00:52:37

Mae Nan Ellingson: Absolutely.

00:52:38

Evan Barrett: I've got environmental problems but I'm worried about the jobs and--

00:52:42

Mae Nan Ellingson: Jobs and that continues to be a struggle.

00:52:43

Bob Campbell: Now we had six of our Delegates that signed the Constitution that went out and denounced it in their Districts. So out of 56 counties we had 44 that voted against it. It was the rural versus the urban. It was a Tennessee decision that says you know that when a--300 people shouldn't have one Senator when--

00:53:05

Evan Barrett: The Reapportionment was part of that; yeah sure.

00:53:07

Bob Campbell: So we were getting the urban people in there and it was barely--it was 50.1-percent for and 49.9-percent against.

00:53:17

Evan Barrett: Well you know in our--in our--go ahead.

00:53:19

Mae Nan Ellingson: Excuse me. But on the Environmental Article because some of the strip mining, most of the strip mining was going on in the eastern part of the State, the Ag interest, the ranchers were very concerned. And so they were very much in favor of the reclamation provision. And the other thing that's important to note Bob I think in this Environment Article is where water was protected. And again, at that point we started to see the importance to the Ag interest as well as everybody else, the preservation of water. And so it was starting to be a big consideration in terms of the environment and economic development and trying to protect water quality for agriculture.

00:54:16

Bob Campbell: But agriculture exempted itself out of all of the Environmental Acts they passed in the Legislature.

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Evan Barrett: Well that was of course in the Legislature.

00:54:24

Bob Campbell: They had always done that.

00:54:25

Evan Barrett: And it does speak to--

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Bob Campbell: Well that's it.

00:54:27

Evan Barrett: --I think it speaks to the interesting conflicts again that those that were involved around where strip mining was occurring had to feel--be a bit fearful about the environmental provisions and the need for reclamation. And yet, the Farm Bureau was the biggest leader against the--

00:54:42

Bob Campbell: To kill it.

00:54:43

Mae Nan Ellingson: Yes.

00:54:43

Evan Barrett: --the passage and it goes to show you that no--no segment of the economy is monolithic. Whereas, there's a lot of diversity within all of them and--. By the way we're getting closer to the end of the program and I

want to take a second and ask each of you to give me a little bit of a personal reflection about how you feel not just about the meaning of the Constitution but your opportunity to help craft this document?

00:55:12

Bob Campbell: Oh it's got to be the greatest experience of my life and I think every Delegate would tell you that. That day that we signed it every one of us went up. They called our name and we went up. Jean Bowman was our Secretary. She--we'd sit there and sign and the picture would be taken and the 100 did that and that was the proudest moment of the--my life and--and I think every Delegate you had there, except for those six.

00:55:36

But it's--it grew so much because we had to see it ratified. The Supreme Court said we couldn't spend the last \$50,000 to educate people. They hauled up our President Leo Graybill on a contempt charge in front of the Court, before ratification, and look like we were dead. But some people said well if the Supreme Court doesn't like the proposed Constitution maybe there's some good things in it. **[Laughs]** And so I think that helped it. And we as Delegates had to go around you know and do this.

00:56:03

And I brought you one of George Harper's stickers that says you know Praise the Lord and Pass the Constitution.

00:56:09

Evan Barrett: George was a Minister from Helena.

00:56:10

Bob Campbell: We took it on ourselves.

00:56:12

Evan Barrett: And not only was God in the Preamble now but he was on the bumper stickers.

00:56:18

Bob Campbell: He's on the bumper stickers. He did it and he was great and we had to do this ourselves because the Supreme Court held that we could not spend that money.

00:56:26

Evan Barrett: Well in fact those days there wasn't--as I recall, \$10,000 of private money was raised to promote it and that was it. Mae Nan would you give us your reflections on your personal participation and your sense of involvement in this thing and what it's meant to you?

00:56:39

Mae Nan Ellingson: Well [*Laughs*] like Bob, I mean it probably is certainly the best honor I've ever had being able to serve and being able to participate. And--and more than anything I think it just opened my eyes to what--what is possible because I really at that point had only lived in Montana for four years. I moved here in 1967. And for me to make it through initially, 64--there were 64 candidates Bob if you'll remember that--

00:57:19

Bob Campbell: Yes in the Primary.

00:57:20

Mae Nan Ellingson: --started for those eight seats. And then there was 24 in the General. And for me to get--actually I got the second highest number of votes. John Tule was number one. But for me at 24 just a graduate student, to be given that kind of honor is--it's got to restore your faith in our democracy, in our--you know the willingness of people to accept people who are willing to come forth. So it--it was--it opened so many doors to me and it was a life-changing--

00:58:02

Bob Campbell: Recognized your ability.

00:58:04

Mae Nan Ellingson: I guess.

00:58:05

Bob Campbell: And you did it on the campaign trail, at the Convention, and Ratification.

00:58:09

Evan Barrett: Well I've got to tell you guys as we wrap up here that when we talk about these things, I don't know if they give you goosebumps but they give me goosebumps.

00:58:19

Bob Campbell: It does. [*Laughs*]

00:58:20

Evan Barrett: It is the--the Constitution of Montana is stunningly beautiful and good and complete and progressive and it's the best in the nation. It's been cited as that. The Preamble, the Environmental Articles are part of that thing. You're the heart and soul of those issues. It is a thrill for me to be able to be here with both of you and thank you for participating in--*In the Crucible of Change*. We'll look forward to seeing you on the next program.

00:58:49

Bob Campbell: We'll be around.

00:58:52

[*Music*]

00:59:51

[**End For This & Future Generations-Preamble & Environmental Protection Provisions of 1972 Constitution**]