Gene Harbaugh and Alex Sakariassen, 2021 September 1

Alex Sakariassen [00:00:00] This is Alex Sakariassen, and I'm here with Gene Harbaugh, who was a delegate to the 1972 Montana Constitutional Convention. We're speaking on September 1st, 2021 in the House Chamber in Helena, Montana. So Gene, where were you living in 1971? What was your occupation and what was your party?

Gene Harbaugh [00:00:21] Well, in 1971 I was a pastor in Poplar, Montana, and we had moved there in 1965. So I had been in that parish for a number of years and we were close to the place where I grew up, which was at Jordan, Montana, which was about a hundred and twenty five miles to the South. So our family was glad to be back in Montana after having been away to seminary and having served another parish in Wyoming, prior to that.

Alex Sakariassen [00:01:05] Oh, excellent. And what was your party?

Gene Harbaugh [00:01:08] Well, we were Democrats at that point, and I guess I came from a long line of people who were Democrats. My father was. He, he was a person who felt like Theodore Roosevelt [Ed: he likely means Franklin Delano] was kind of a savior for him and for a lot of people in eastern Montana during the thirties. So I inherited that.

Alex Sakariassen [00:01:44] What were your reasons to run to be a delegate for the constitutional convention and why did you think you'd be a good delegate?

Gene Harbaugh [00:01:52] Well, you know, I wasn't sure actually whether I'd be a good delegate or not. But what had happened was that shortly after I moved to Poplar, there was a young Catholic priest in the area. I was a Presbyterian pastor, but this Catholic priest had taken up correspondence, a study of law. And so he was involved in a law study from LaSalle Extension University in Chicago and was looking for someone that might join him in his study. Studying law by yourself is not a whole lot of fun. So anyway, I decided to join him in that. Unfortunately, after about a year, he left the area. But I continued the law study for five years and got a got a diploma from the LaSalle Extension University in Law, which

at the time, if you had done, you know, an extension study, you could still take the Montana bar exam and get an attorney's license. I was at a stage in my ministry, I guess, at that point, like many young men who really had questions of whether, you know, is this where I belong or should I do something different? And so it was within that context that the Constitutional Convention came up on the ballot. And they, of course, voted to to revisit the Constitution. So I had some questions about it and, um, it took me until the very last day to apply for the position of a delegate to come to Helena and and file my papers. So it was a it was a decision that was fraught with a great deal of of wrestling with my own abilities and future and all of that. Actually, I went on to take the bar exam, but because I'd never had any Montana law, I did not pass the bar exam. And in the process, following the convention, I decided that really my my gifts and my talents were more suited to pastoral ministry. So I stayed in pastoral ministry. But my goal really was to try to find a small community where I could both serve as as an attorney and as a pastor. At that time, that was not a thing that people did. And so I didn't do it. Probably today it'd be a different story.

Alex Sakariassen [00:05:13] Excellent. So the delegates were seated alphabetically instead of according to political parties, to encourage bipartisanship. How did that influence the proceedings?

Gene Harbaugh [00:05:24] Oh, it really had a tremendous impact on the on the proceedings. I think from, you know, we we organized the convention... It was organized along party lines, I believe in either late November or December. And following that organizational procedure, where people were elected to serve in certain slots, we elected the president and that, following that when we met in January, then, political party was not really an issue. In fact, it's interesting because... Just within the last few years where I live in New Mexico, I got to know the state senator and one of the state senators, and I talked to him about that. You know, we were discussing the the acrimony and the divisions within the Congress itself. And so I told him about our experience in Montana back in '72. And it was interesting because he crossed the he crossed the aisle and sat with some of his Republican colleagues, and it persuaded a number of the others to do the same. It was at least, you know, a little inroad into into that. And and I'm encouraged by the fact that there are groups of both in the Senate and in the

Congress today who who get together on a regular basis. They talk about their their families, their their mutual interests. And I think it helps to break down a lot of that kind of division that is just so unhelpful.

Alex Sakariassen [00:07:28] Well, what do you remember about the delegates seated near you or next to you?

Gene Harbaugh [00:07:34] The delegates...?

Alex Sakariassen [00:07:35] Seated next to you.

Gene Harbaugh [00:07:36] Oh, well, Paul Harlow was next to me, and he was an older gentleman, very wise. I learned a great deal from him, actually. You know, I think especially for those of us who were younger, it was really a learning experience in political process. And it was it was a very broadening experience for us. But we came to know each other as delegates. You know, over the years and the years since, the Constitutional Convention delegates have become people with close with very close bonds to one another. And so we've remained a lot of us have remained in contact. Obviously, we're a much smaller group than we used to be. But there's a camaraderie and a friendship there that is enduring.

Alex Sakariassen [00:08:45] Excellent. Well, I mean, you mentioned, you know, sort of the current political climate, but can you describe what partisanship was like in Montana in 1972?

Gene Harbaugh [00:08:57] Oh, well, there was partisanship, for sure. I mean, we certainly experienced it as as the convention concluded and the drafting of the Constitution was over. One of the things that happened was we had we had access to a $30,000 grant from the federal government to develop some materials to publicize the constitutions through throughout the state. I was one of 10 delegates who were appointed to to do that. The first thing that happened to us was we got sued by the Farm Bureau, and they said that it was unconstitutional for us to use the federal funds. They accused us of partisanship, of course, and and so the court upheld their complaint. And so there was no money to publicize the Constitution throughout the state. And of course, any time you have a document like this which touches the lives of

people and of all kinds of businesses and corporate interests, you're going to draw a fire, which we did. And really, it looked like the Constitution didn't have a chance because there were so many groups and organizations that were in opposition to it. So but it fell upon the hundred delegates themselves.... Actually, 99, because one of our delegates died, you know, shortly after the convention concluded. But the delegates were the ones who voluntarily went out across the state and publicized the Constitution. As you probably know, by the record, the referendum was kind of a cliffhanger.

Alex Sakariassen [00:11:01] Do you recall who who the delegate was, who died shortly after?

Gene Harbaugh [00:11:06] Yeah, Skari [Carmen Skari] was his name, and he died shortly after that convention convened.

Alex Sakariassen [00:11:14] Do you recall his first, his full name, sir?

Gene Harbaugh [00:11:18] I don't right off the top... There are a lot of things I don't remember.

Alex Sakariassen [00:11:21] That's ok.

Gene Harbaugh [00:11:22] At 85, um, I I have some of that happen.

Alex Sakariassen [00:11:28] Well, and and going back into some of the convention work, you were on the Education Committee. What was your experience being educated in Montana as a child?

Gene Harbaugh [00:11:39] Oh, well, it was very unusual. Maybe not so unusual at that time, but I grew up in Garfield County and in a very isolated, unpopulated area. And so my first year in school, when I was a first grade elementary student, I walked a mile and a half to a country school, which was halfway between my uncle's place and my parents' place. And we had, I think, seven students the first year, which was the most we ever had at that school. And I went there for six years, and by the end of six years, my younger brother and I were the only two students left in the whole district. So we moved the schoolhouse to a bunkhouse that was on our

family ranch. And the teacher came and lived in the bunkhouse, and that's where my younger brother, Don and I went to school for two years.

Alex Sakariassen [00:12:58] And I seem to recall reading something about a Piper Cub later on?

Gene Harbaugh [00:13:04] Well, yes, when I went to high school, then we were 13 miles from from Jordan, where the Garfield County High School was located. So in the wintertime, we had three and a half miles of dirt road to before we got to the highway. We had two creeks to ford, which often flooded and then froze and then flooded and froze again and became real barriers. Plus, we could get a lot of snow. So my older brother, Carl had learned to fly when he was in high school from a family friend. So my dad bought a J-3 Cub. And so my brother would fly me to to a little area that was sometimes used as a golf course south of the high school. And so that's sometimes I went to school that way. Yeah.

Alex Sakariassen [00:14:10] Well, what were your main priorities for the Education Committee's work during the convention?

Gene Harbaugh [00:14:18] Priorities... Well, I think seeing that that. Education was available to all students, and especially since Montana, you know, has so many Native American people. It was a concern to me that that that need be met and in a way that was appropriate. Poplar of course was the is the tribal headquarters for the Sioux and Assiniboine tribes. And so I was a pastor there for nine years, so I was concerned to to try to represent their concerns so that there would be some equality of education and so that students could be educated to develop their talents and their gifts in the best possible way. That was the main concern, really.

Alex Sakariassen [00:15:28] And how did that take shape and ultimately in the in the product that came out of that?

Gene Harbaugh [00:15:34] Well, it really did take shape. I mean, we have, I think, a very unusual a very unusual section in the Education Committee education article that the committee developed, that speaks to that very issue. Yeah.

Alex Sakariassen [00:15:57] Excellent. Well, you were, you were also a key author of the no-aid clause continuing the prohibition on state funding to private schools from the 1889 Constitution. How did you and the other delegates arrive at the language that you ultimately included in the Constitution?

Gene Harbaugh [00:16:15] Well, that's kind of an interesting story, because the Blaine Amendment was the heart of that section. The Blaine Amendment, and of course, was something that that grew out of an era when there was a great deal of prejudice in the country, especially against Catholics and maybe Irish Catholics, especially. But Blaine was a presidential candidate who never got elected, of course. But what he did do was he was able to to get a bill through Congress that had the prohibition of, uh, the prohibition of those public funds going to any sort of religious institution.

Alex Sakariassen [00:17:14] Sorry, Gene, we just need to interrupt, your microphone fell off. Oh, so sorry, I just noticed that.

Gene Harbaugh [00:17:25] I should sit still, maybe.

Alex Sakariassen [00:17:27] No worries, I just noticed that so, but I noticed that around when you were starting to talk about the Blaine Amendment, so you could kind of start start there. Sorry to make you backtrack and repeat it.

Gene Harbaugh [00:17:39] Oh, ok. Well, the Blaine Amendment came out of this era when there was, as I said, a great deal of prejudice against Catholics, Catholics, especially. And Blaine got his amendment to the US Constitution adopted by the Congress, but it was never adopted by the people. You know, it was never ratified, so it did become a part of the Constitution. But he went out across the country and he lobbied state legislatures, and he lobbied states that were forming constitutions at that time. And he got his article into their constitution. So there are 37 states that have this almost exact language in them, prohibiting public money from going to any sort of religious institution. And in Montana's case, that was very, very stringent language. No direct or indirect aid could be given by the state using public funds. So. What what I was concerned to do was to we were in an era where where there was a lot of discussion about vouchers, you know, about trying to assist children who maybe were attending religious schools, this kind of thing. I think

that at at that point, my concern was to try to soften that language some way. And the the thing that finally I was able to to get into the language was that federal funds would not be that they would be exempted from from that if there were federal funds coming to the state to help students, Montana would not stand in the way of those funds passing through then to benefit children who might be in a religious setting so that that became a new section, a subsection in in Article 10. Interesting, though, the the most recent developments related to that the the case of Espinoza versus the state of Montana came about. And in recent years and last year.... Oh, let's see, I guess it was it was 2020. The case went to the U.S. Supreme Court. I was fortunate to be invited as a guest to the Supreme Court, as was Mae Nan, Mae Nan Robinson also Ellingson went to Washington, D.C., and we sat in the court while that case was adjudicated before the Supreme Court. I thought, I guess I was naive. I thought that the case would be a slam dunk. I mean, it seemed to me that it was that that it ought to be pretty obvious that you couldn't take public money and give it to anyone for religious purposes. Apparently, I was wrong about that. The Supreme Court struck down that article in the Montana Constitution and said that it was unconstitutional. Oh, I guess, you know, as much as I respect the Supreme Court and I really admired the process that I saw there, I think that what has happened is that there's a much larger picture here and it is that what we have seen happen in this country is a shift in thinking away from what I would call the social compact that we always honored in this country, which meant that the the good of the country comes above individual concerns and issues. And the court, I think at this point has elevated the elevated the importance of individual rights over what I would consider to be the social compact. I think it's a great mistake. I think it has raised havoc with our institutions. I think it's a lot of where the current what I would call anarchy philosophy of government, comes from that individual rights trump everything else. I think that's a mistake. And like so many things, I think the pendulum will swing back eventually, but very difficult to develop a society where you don't have... Well, you don't support public education in a way that enables you to have some core understandings of history and value that cause the nation to adhere. And I think that what we are seeing is some disintegration of that and that some of the core values and certainly many of our institutions are really suffering because we seem to be subscribing

to a form of government in which individual rights trump everything else. So that's that's just my way of looking at it.

Alex Sakariassen [00:24:34] Well, and how did, uh, more specifically, because I mean, given your your background with Montana's no-aid clause, how did that specifically come into the Espinoza case? Can you maybe explain a little bit more about, you know, what the issues raised around that that particular clause in the Constitution were?

Gene Harbaugh [00:25:04] Well, I think that that the court and the Supreme Court saw that in terms of again, they saw it in terms of it being depriving people of their right. And so, you know, the the Establishment Clause in the U.S. Constitution, which says, you know, there there will be no establishment of religion. So I think they, you know, they they didn't look at it as as establishment of religion issue so much as it was an issue related to individual individual rights. And so it's just, you know, it's just a whole different way of viewing. I guess the the issue of of what you do, how you support education. I think the other piece of this that is really important is that for a number of years, I think there has been a tendency to erode the support for public education and public education throughout the country is suffering from lack of funding. It's suffering from a splintering of proliferation, really of various kinds of schools, charter schools, what have you that tend to siphon funds away from public education. And this is this is particularly a problem and in poor areas, in minority areas where public education really is the only alternative for many people. And so as you bleed funds away from that, you further erode the viability of possibilities for for minority people and for those who live in poverty. And it's it's a it's a big issue.

Alex Sakariassen [00:27:41] Well, and kind of well, I guess I'm also curious since this speaks to to, you know, separation of church and state. What was the view of the separation of church and state back in '72 during the convention? What was what was your view? What was the view of the other delegates?

Gene Harbaugh [00:28:00] Oh, I think it was unanimous. I would think that we all agreed. You know, the country was founded on separation of church and state. That's really what the revolution was about to a large extent. And and so separation of church and

state was a foregone conclusion. And any suggestion that there was going to be any kind of public money used for religious purposes was taboo. Those of us, I was one of the pastors who was, you know, a part of that delegation. We all understood that, uh, we did not want that because whenever the history of of education in whatever country you go to is obvious where where the state becomes involved in supporting any religion, that's trouble. It's trouble for that particular religious group. It's trouble for everybody in the country. And so nobody wanted to go there. That's why I don't quite understand why we are flirting with the fringes of that right now. And I think I think the other thing is that people who want to see us go in that direction are eventually going to be really sorry they did this because if you open this to any one group, you open it to every group and you know the kinds and the variety of religious sentiment that is out there, it will just be appalling.

Alex Sakariassen [00:29:54] Was was there any recognition of that possibility back in '72 that that opening the doors to everyone else or to all...?

Gene Harbaugh [00:30:02] Well, nobody wanted to open the door for sure. Like I said, it was pretty much a unanimous view of everyone that we would retain that prohibition language. It was common. It was in the other constitutions that we read, you know, we read a lot of different constitutions and preparing for writing the one we did. And you know, there was there was no thought that that we would ever move in that direction.

Alex Sakariassen [00:30:40] Well, in every 20 years, the people of Montana decide whether or not to rewrite the state constitution. If that happens, what parts of the 1972 constitution would you encourage new delegates to keep or to change?

Gene Harbaugh [00:31:00] Well, I think that that provision was far sighted, I think that really a lot of what we did in writing the '72 Constitution went beyond what we ever perceived. And and that's but but that's an acknowledgment that, you know, none of us has the absolute answer. None of us has the final solution to any issue that it's up to succeeding generations to govern themselves in the way they see fit. And, you know, I wouldn't be able to I wouldn't be able to guess what people would want to retain or not retain. But I do think that if there's any thing that at this moment is really

pertinent in the '72 Constitution, it is that environmental article. And as I said earlier in the day today quoting Bill Gates, who said, you know, if you think we've got difficult issues now, it's nothing to compare with what we're going to have with climate change. And I think we're faced with a catastrophic a catastrophic situation if we don't deal with it. So I think enforcing environmental regulations, which are based on solid science is critical. I think that should certainly they should never be softened for anything. Well, for for certain they need to be more stringent than they are. So.

Alex Sakariassen [00:33:09] Well, then in the future, if a new constitutional convention is called, what advice do you have for future delegates in general?

Gene Harbaugh [00:33:20] Well, I think you have to pay attention to what's down the road. If if you're riding a bicycle and you look down at the pavement, you're going to have a wreck. Don't give in to the cries of and the pleas that seem so urgent for the day. I think you have to take the long view. I think you have to look down the road and you have to frame a constitution if you're going to write a new one that doesn't just address the situation of the day. There are too many forces that that want to focus on the immediate because that's what benefits them. And you have to look down the road. We can't always, you know, be prognosticating what's going to come, but we need to try.

Alex Sakariassen [00:34:26] Well, what is your most lasting memory of the '72 convention?

Gene Harbaugh [00:34:36] I guess Leo Graybill, I think Leo Graybill was a gift to Montana and certainly a gift to that constitutional convention, that was just so important. I think he was even handed. He was strong. He he was able to move things along. It was amazing the amount of work we did and what was at 52 or 54 days, whatever it was and seeing him standing up there in in that podium directing traffic. He was the key.

Alex Sakariassen [00:35:30] Were you able to build a personal relationship with him during the convention? Did the two of you talk?

Gene Harbaugh [00:35:36] Well, I think everybody did, really. But what's interesting is I when I went to the United States Supreme Court in January of '20, I was able to sit beside his grandson and who is a new lawyer in the state and and watch those proceedings. And that was a very special time. So, yeah.

Alex Sakariassen [00:36:05] Well, we're in the capital on the House floor where the convention took place.

Gene Harbaugh [00:36:11] Mm-Hmm.

Alex Sakariassen [00:36:12] You just attended a luncheon with fellow delegates. What has it been like to be here again and to see these old comrades?

Gene Harbaugh [00:36:22] Well, you know, it's always great to get together with with fellow delegates. We've done that over the years. We started shortly after the convention was over. We met one summer in Yellowstone. We took buses to Yellowstone, had a great day together. We met at Torrey Johnson's ranch down on the Powder River. For all these years we have tended to get together and enjoy one another's company. And so, you know, it's it's sad not to see a lot of our colleagues who have now gone on before us, but it's always good to get together with those who who can come in and join in.

Alex Sakariassen [00:37:12] Yeah. Well, and you mentioned Leo Graybill. I'm curious, you know, of the delegates who are no longer with us, is there anyone else in particular who impressed you because of how they behaved during the convention or what they contributed?

Gene Harbaugh [00:37:28] Well, certainly Wade Dahood was was one of the delegates that we've met. I've remained a good friend of his and and of course, he was on the opposite of the opposite political party. But we've enjoyed visiting with with Wade over the years, and it's unfortunate that he was not able to be here for for this particular gathering. But Mae Nan, uh, Ellingson was in D.C. at the same time we were last year ago in January and to visit the Supreme Court. So we've enjoyed corresponding and visiting with her and we we enjoy all of Arlyne, especially Arlyne Reichert. So

over the years, we've become good friends with many of them, yeah.

Alex Sakariassen [00:38:29] Excellent. And any any memories of someone here is no longer, no longer with us?

Gene Harbaugh [00:38:38] Oh, yeah. Rick Champoux as the chairman of the Education Committee, and I got to know Rick really well. He passed not so many years ago, but he was he was one of the people that we had long discussions together about educational issues. And of course, he was an educator and and did a great job of leading our Education Committee and of being an exponent of the article when it came up for debate on the floor.