

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 04-851

ANITA BIG SPRING,)	
)	
Contestant and Appellant,)	
)	
v.)	O R D E R
)	
RICK JORE,)	
)	
Contestee and Respondent.)	
)	

On December 17, 2004, counsel for appellant Anita Big Spring filed the notice of appeal, as well as motions to expedite transmission of the record and briefing, in this matter. On December 20, 2004, we granted the motions. By close of business on December 22, 2004, the District Court record and transcript, as well as the parties' briefs had been filed. On that same date, we ordered that the original ballots at issue in this matter be delivered to the Clerk of this Court. The delivery of the original ballots and filing thereof also was accomplished on December 22, 2004. The final procedural occurrence in this matter prior to today also occurred on December 22, 2004, with Big Spring's filing of a motion to strike certain matters attached to respondent Rick Jore's brief.

Given the date on which this matter was appealed, it is not possible for the Court to issue a full opinion on the issues raised and argued before the Fifty-Ninth Session of the Montana Legislature convenes on Monday, January 3, 2005. Nevertheless, the public interest of all Montanans, the parties to this matter and the members of the 2005 Legislature clearly requires that we advise of our conclusion as early as possible so the Legislature may proceed in a timely fashion. Having considered the record, the briefs and the original ballots at issue, we deem it appropriate to issue a preliminary order setting forth our ultimate

conclusion on the outcome of this matter, with a full written and published opinion to follow at a later date.

Stated in plain English, the ultimate issue herein is whether the Twentieth Judicial District Court, Lake County, correctly determined that all seven ballots at issue were validly counted for Rick Jore. Since the race for House District 12 was declared a tie, it is undisputed that if the District Court erred with regard to any one of the seven ballots, Jeanne Windham will have won election to the Montana House of Representatives. We hold that the District Court erred in ruling that all seven of the ballots at issue, assigned to Rick Jore, were valid. Stated affirmatively, we hold that one or more of the seven ballots at issue is invalid. Therefore, we reverse the District Court.

In addition, we expressly advise that the time period for filing a Rule 34, M.R.App.P., petition for rehearing does not begin to run until the Court's full opinion has been filed. Finally, we take Big Spring's motion to strike certain attachments to Jore's brief under advisement.

The Clerk is directed to give immediate notice of this Order by telephone or facsimile to counsel for the parties, followed by notice by mail.

DATED this 28th day of December, 2004.

Chief Justice

Justices

Justice Jim Rice dissents from the Court's order.