

CONSTITUTIONAL AMENDMENT 41

AN AMENDMENT TO THE CONSTITUTION PROPOSED BY THE LEGISLATURE

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

The 2003 Legislature submitted this proposal for a vote. It would amend the Montana Constitution by adding a provision specifically to recognize and preserve the opportunity of Montana citizens to harvest wild fish and wild game animals. The amendment specifies that this new provision does not create a right to trespass on private property or diminish any other private rights. This amendment is effective upon approval by the electorate.

- FOR recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.
- AGAINST recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.

The language above is the official ballot language. The arguments and rebuttals on the following three pages have been prepared by the committees appointed to support or oppose the ballot measure. The opinions stated in the arguments and rebuttals do not necessarily represent the views of the State of Montana. The State also does not guarantee the truth or accuracy of any statement made in the arguments or rebuttals.

The PROPONENT argument and rebuttal for this measure were prepared by Senator Duane Grimes, Chairman, Senate Judiciary Committee; Representative Joe Balyeat, Chairman, House Fish, Wildlife and Parks Committee; and Gary Marbut, President, Montana Shooting Sports Association.

The OPPONENT argument and rebuttal for this measure were prepared by Senator John Cobb.

ARGUMENT FOR C-41

□ Vote YES on C-41 – The Hunting & Fishing Heritage Amendment

- **Hunting and fishing** in Montana aren't just an important recreational opportunity, a multi-million dollar source of tourist income, and a great source of healthy food. They're **Montana's cherished Way of Life**. Hunting/fishing are irreplaceable major facets of Montana culture.
- More Montanans hunt than in any other state. Hunting/fishing connect us with our great outdoors, giving us stellar appreciation for Montana's magnificence. ***This cultural appreciation for outdoor wonders must be protected for future generations.***
- ***Even if you're not a Montana hunter/angler, it's beneficial to Montana's wildlife and wild-places to maintain a strong hunting/fishing culture. Ever since Teddy Roosevelt it's been sportsmen's dollars – through hunting/fishing license sales – that provide the bulwark of wildlife conservation funding.***
- Montanans don't live here for wealth. We're here for Montana's way of life; the great atmosphere to raise families. **Hunting/fishing are perhaps the healthiest environment to connect with our children; especially teens.**
- ***In other states hunting/fishing opportunities have been steadily eroded by anti-hunting, anti-fishing, "animal rights" extremists, with endless legal challenges to hunting/fishing culture. C-41 gives Montana the legal foundation to resist these challenges in court as they arise – and they WILL inevitably happen here eventually. Rather than be on the defensive, we must be proactive. We must give future generations legal ammunition now to defend our heritage against outside attacks.***
- During Montana's Senate hearing, **virtually no groups opposed this amendment because it strikes a great balance.** While recognizing hunting/fishing in Montana's Constitution, it doesn't create an absolute right which would prevent Fish, Wildlife & Parks from continued regulation of hunting/fishing activity. Thus, **FWP worked intricately on the Amendment, and FWP approved the final language.** This Amendment also carefully balances hunting/fishing rights against other rights such as property rights – recognizing that sportsmen have no right to trespass.
- The purpose of enumerating rights in state constitutions is to protect minority groups against the political whims of the majority. ***While today hunting/fishing are enjoyed by large numbers of Montanans, there may come a day when harvesting wild fish and game is practiced by only a small minority,*** because the hunting population is shrinking. We must pass C-41 today, while we still have the political will to do so. Sportsmen's rights are already under attack elsewhere – that's why **more than half the states have passed a Hunting/Fishing Amendment, or are presently working on it.** Now, Montana's time is right.
- Not all constitutional rights are absolute. You can't exercise your right to vote anywhere, anytime. And certain lawbreakers lose their voting rights. Likewise, **legal scholars agree that passage of this Amendment will recognize a similar "regulate-able" right.** It'll be more than just a common law right which could be trampled on by majority whim; but won't be a fundamental absolute right which cannot be regulated by FWP. The Hunting & Fishing Heritage Amendment strikes perfect balance; and deserves your vote.

□ **Vote C-41 YES.** Protect Montana's **Hunting and Fishing Heritage.**

ARGUMENT AGAINST C-41

This proposed constitutional amendment is a solution in search of a problem. There is no threat of banning hunting or fishing in this state.

The purpose of any democratic constitution is to protect minorities from the tyranny of the majority. Those proposing this amendment are reacting against a truly small anti-hunter minority, which they fear will eventually represent the future majority viewpoint. This proposed amendment implies the present majority will lose our heritage, and that it needs protecting now against an eventuality of a future majority of anti-hunters. This proposal represents a self-defeating attitude by a majority fearing they will become a minority without any other constitutional recourse.

Few are against preserving the heritage to harvest wild fish and game. But this proposed amendment does nothing to guarantee this privilege. Can the proponents show any law, regulation, or rule in Montana that this proposal would change? Can not the Dept. of Fish, Wildlife, and Parks, or the state legislature, continue to regulate hunting and fishing in this state, continuing to manage, restrict or eliminate hunting seasons as well as the numbers of fish and game to be harvested? Can they not restrict the number of hunters and fishermen and even regulate these activities so that opportunities to hunt and fish are restricted?

Either this proposed amendment allows current and future laws and regulations to manage and regulate hunting and fishing, or it does not. It cannot be both.

Common sense says hunting and fishing will still be regulated under this proposed amendment. This proposed amendment is a broad concept with which most people agree. If you ask 100 hunters if they would agree with this proposal, all should agree but if you ask for *details about what it specifically does to protect this heritage*, you will get 100 different answers.

Yes, there is a small minority who attack this heritage. But will this proposal as worded guarantee that our grandchildren will enjoy our heritage of hunting and fishing? No.

A concern is that some group will convince the majority of Montanans to ban hunting and fishing. This proposed amendment in and of itself will not preserve and protect that right and privilege. If we come to a time when the majority of Montanans do not want to allow hunting or fishing, this proposal will not protect the hunter and angler. Despite the passage of this proposal, the majority at that time can easily in piecemeal fashion regulate hunting and fishing to its death, which renders even this proposed amendment ineffective, null, void, and useless.

This proposed amendment also supposes to protect private property from trespass. This proposal will not protect against trespass, as legislatures can change what constitutes trespass.

The real solution to preserving and protecting our heritage lies with those who fish and hunt. For if we fail on an ongoing basis to educate and convince fellow Montanans that this heritage is worth preserving, then we cannot protect either ourselves or our future generations with this proposed amendment.

PROPOSERS' REBUTTAL OF ARGUMENT AGAINST C-41

- ❖ Opponents wrongly suggest there's no threat of hunting/fishing bans. Numerous **other states (Washington, Oregon, etc.) have already experienced bans** on several types of hunting/fishing.
- ❖ Opponents totally miss the biggest threat – not some future 51% of Montanans, but **one Massachusetts animal rights lawyer armed with a clever lawsuit and a large budget**. C-41 gives Montana the legal basis to rebuff court challenges to our hunting/fishing heritage brought by outsiders unfamiliar with Montana culture.
- ❖ Opponents wrongly argue that hunters/anglers don't deserve constitutional protection because they aren't minorities. False – **hunters/anglers presently constitute only 40% of Montanans**. Moreover, *the hunting population is shrinking rapidly – recent statistics reveal 7% shrinkage in just five years*. If opponents defeat C-41 now, there may quickly come a day when we don't have the votes necessary to ever pass it.
- ❖ Opponents wrongly argue that C-41 won't provide any further protection against "majority tyranny." Absolutely wrong. **Without C-41, it only takes one judge or a simple majority of the legislature to ban hunting/fishing. With C-41, it would take 2/3 of the legislature plus a majority of Montana voters to do so.**
- ❖ Opponents argue that proponents can't "...show any law, regulation, or rule in Montana that this proposal would change." Wrong. ***Fish, Wildlife & Parks legal staff has concluded that C-41 will make a difference – it will still permit regulation of hunting/fishing in the best interests of wildlife management; but C-41 will prevent the legislature or activist judges from decreeing unwarranted hunting/fishing bans of specific species.***

Vote YES.

OPPONENTS' REBUTTAL OF ARGUMENT FOR C-41

Our Montana Constitution gives us such Rights as the Right to bear arms, the Right to vote, the Right to a clean environment, the Right to free speech, the Right to freedom of religion. **Not the opportunity but the Right!**

The burden is on Government to show their laws can restrict these rights. Having only an opportunity to a right does just the opposite. It places the burden on the individual to prove the law restricting that opportunity is unreasonable.

This amendment gives us only the opportunity not the right to hunt and fish. It will effectively place into our Constitution that individuals have the burden to show laws infringe on that opportunity. That is a heavy burden to prove.

If you want an amendment to protect hunting and fishing, the amendment should say that "Montanans shall have the right to hunt and fish." This would place the burden on government to show that their laws are reasonable. This would give greater protection against those who seek to end or restrict hunting and fishing.

At the very least, this amendment does nothing; at the worst, it gives power to the anti hunting and fishing groups to restrict those activities with the burden on the individual to prove those laws are unjust. It is ironic that those who fear the anti hunters becoming a majority in Government now give them the power to eliminate or severely restrict those activities.

If you are against hunting and fishing vote for this amendment.