



Wisconsin Briefs

from the Legislative Reference Bureau



Brief 03-5

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CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY WISCONSIN VOTERS, APRIL 1, 2003

INTRODUCTION

A proposal to amend the Wisconsin Constitution to create the right to fish, hunt, trap, and take game was adopted on first consideration by the 2001 Wisconsin Legislature, and on second consideration by the 2003 Legislature. It will be placed on the April 1, 2003, ballot to be voted on by Wisconsin citizens.

Section Created	Resolution	Subject
Article I, Sec. 26	2001 Senate Joint Resolution 2 (Enrolled Joint Resolution 16) 2003 Assembly Joint Resolution 1 (Enrolled Joint Resolution 8)	The right to fish, hunt, trap, and take game

Amendment Process

Article XII, Section 1, of the Wisconsin Constitution requires that every constitutional amendment must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for "first consideration" in the form of a joint resolution that must pass both houses but does not have to be submitted to the governor for approval. It must be published for three months before the next election. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on "second consideration" by the next legislature. The second joint resolution specifies the wording of the ballot question and sets the referendum date. The third and final step involves submitting the question to a statewide referendum vote where a majority of those casting ballots must ratify the amendment.

THE RIGHT TO FISH, HUNT, TRAP, AND TAKE GAME

Ballot Question

The question will appear on the ballot in this form:

Right to fish, hunt, trap, and take game. Shall section 26 of article I of the constitution be created to provide that the people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law?

Proposed Language

Section 26 of article I of the constitution is created to read: [Article I] Section 26. The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

Legislative Reference Bureau Analysis

The Legislative Reference Bureau analysis of 2001 SJR 2 states:

This proposed constitutional amendment, proposed to the 2001 legislature on first consideration, provides that the people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

Attorney General's Explanatory Statement

Attorney General Peggy A. Lautenschlager has provided the following explanatory statement of the effect of the proposed amendment as required by Section 10.01 (2) (c), Wisconsin Statutes:

It is generally assumed that the people of Wisconsin have the right to fish, hunt, trap and take game as they have done since before the state was founded. And such a right is implied in the statutory and administrative rules that have been enacted to regulate fishing, hunting, trapping and taking game in this state. However, no current provision of law expressly grants a right to fish, hunt, trap and take game.

The proposed amendment to the Wisconsin Constitution would expressly recognize that the people have a fundamental right to fish, hunt, trap and take game. This right would not be absolute, however, but would be subject to reasonable restrictions prescribed by law. Fishing, hunting, trapping and taking game are presently restricted by laws prescribed by the Legislature and rules having the force of law prescribed by the Department of Natural Resources.

A "yes" vote on this question would mean that a right to fish, hunt, trap and take game, subject to reasonable restrictions, would be expressly recognized by the constitution.

A "no" vote on this question would mean that a right to fish, hunt, trap and take game would not be expressly recognized by any provision of law in this state. However, such a right would continue to be implied in the statutory and administrative rules that have been enacted to regulate fishing, hunting, trapping and taking game.

BACKGROUND

Prior Efforts

An earlier attempt to guarantee the right to fish, hunt, and trap was proposed in almost identical wording in 1997 Senate Joint Resolution 36, which did not pass on first consideration. A related amendment to guarantee the right to bear arms, which received second consideration in that same session, was ratified in November 1998 by an almost 3-to-1 margin. The vote created Article I, Section 25, which reads: "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose."

The proposed new amendment would expand the protection of hunting from a “lawful purpose”, dependent upon legislative action, to a guaranteed right that could only be limited by reasonable restrictions. Trapping and fishing would be added to the guaranteed rights.

Federal and State Guarantees

While the Second Amendment to the U.S. Constitution guarantees the right to bear arms, regulation of fishing, hunting, trapping, and other taking of game generally falls under the jurisdiction of state and local governments. According to the National Conference of State Legislatures, seven states currently have constitutional amendments protecting or guaranteeing hunting and fishing: Alabama, California, Minnesota, North Dakota, Rhode Island, Vermont, and Virginia. Attempts to create similar amendments have failed in Idaho and Colorado.

Statutes and Administrative Rules

Wisconsin provides certain protections for fishing, hunting, and trapping through state statutes and administrative law. A Wisconsin Legislative Council Staff memorandum, dated July 10, 2000, cites examples, including the provision for state title to wild animals for the benefit of hunters in Section 29.011 (1), Wisconsin Statutes, and the rules of the Department of Natural Resources (DNR) establishing open and closed seasons to conserve game and fish and improve the quality of the sport. Based on 1997 Wisconsin Act 170, state law for the most part prohibits local units of government from interfering with fishing, hunting, or trapping (s. 29.038), and DNR has the authority to void nonconforming local ordinances. Another statute (s. 29.083), enacted by 1989 Wisconsin Act 190, prohibits interference with lawful fishing, hunting, or trapping activity by private parties trying to prevent the taking of a wild animal.