

Deborah K. McKnight, Legislative Analyst (651) 296-5056
John Helland, Legislative Analyst (651) 296-5039

Hunting and Fishing

A Proposed Minnesota Constitutional Amendment

The hunting and fishing amendment is one of three amendments to the state constitution proposed by the 1998 Minnesota Legislature. Each of the proposed amendments will be submitted to the voters for ratification at the November general election. This information brief describes the hunting and fishing amendment, explains the positions of its proponents and opponents, lists similar amendments in other states, and discusses hunting and fishing amendment case law in other states.

The Hunting and Fishing Amendment

The hunting and fishing amendment is a brief statement that would be added as a new section 12 in article 13 of the state constitution as follows:

“Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good.”

The ballot at the November state general election will ask the voters the following question:

“Shall the Minnesota Constitution be amended to affirm that hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good?”

An amendment to the state constitution must be approved by a majority of everyone voting at the general election; voting at the general election but not voting on this amendment counts the same as voting “no.”

Proponent and Opponent Positions

In legislative hearings, proponents of the constitutional amendment indicated they wanted a statement of principle to ensure that attempts that have been made in some other states to completely ban hunting or fishing or a type of hunting or fishing could not happen in Minnesota. Opponents pointed out that no such activity has occurred and that in this state there is a statute protecting the rights of hunters and fishers. Opponents also objected to placing recreational

interests in the state constitution.

Hunting or Fishing Amendments in Other States

Four states have a constitutional provision protecting an interest in hunting or fishing. The texts follow.

Alabama: All persons have the right to hunt and fish in this state in accordance with law and regulations. (1996)

California: The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the Legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken. (1910)

Rhode Island: The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state. But no new right is intended to be granted, nor any existing right impaired, by this declaration. (1844)

Vermont: The inhabitants of this State shall have the liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly. (1777)

Case Law under Hunting or Fishing Amendments in Other States

Constitutional provisions on hunting or fishing have stimulated very little litigation in other states. In no published appellate decision has a statute or regulation been invalidated because it conflicted with one of the provisions. Courts elsewhere have not interpreted hunting or fishing to be fundamental rights elevated above the legislature's usual ability to exercise its regulatory powers or to delegate appropriate powers to an administrative agency.¹

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¹ Appellate court decisions challenging a law or regulation under a hunting or fishing constitutional amendment from these states consist of the following: *California Gillnetters Ass'n v. Department of Fish and Game*, 46 Cal. Rptr 2nd 338 (1995); *State v. Racine*, 329 A.2d 651 (Vt. 1974); *Opinion to the Senate*, 137 A.2d 525 (R.I. 1958); *Elliot v. State Fish & Game Commission*, 84 A.2d 588 (Vt. 1951); *Windsor v. Coggeshall*, 169 A.326 (R.I. 1933); *People v. Monterey Fish Products Co.*, 234 P.398 (Cal. 1925); *State v. Norton*, 45 Vt. 258 (1872).