

SJR 2



WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Laws on Hunting, Fishing and Trapping

ISSUES

Recent rule proposals and legislation have focused attention on hunting, fishing and trapping. For example, the Department of Natural Resources (DNR) recently promulgated rules to allow the hunting of crows and mourning doves. Bills regarding the use of dogs to hunt bear and the use of bait for hunting were extensively debated in the 1999-2000 Session.

At legislative hearings on these issues, some of those who speak on the issue may also express opposition to all forms of hunting, fishing or trapping, not just the particular proposal that is being discussed at the hearing. Supporters often express a general support for hunting, fishing and trapping and some may advocate a state constitutional amendment to create a right to hunt, fish and trap.

This memorandum provides background information on the following:

- States that have constitutional protections for the right to hunt, fish and trap.
- Recent proposals in Wisconsin for a constitutional amendment creating a right to hunt, fish and trap.
- Current Wisconsin statutes that provide protection for hunting, fishing and trapping activities.

STATES WITH CONSTITUTIONAL PROVISIONS

Alabama. Amendment No. 597 to the Alabama Constitution (ratified in 1996) establishes a right to hunt and fish in Alabama. The text of the amendment contains an official name for the amendment: the "Sportsperson's Bill of Rights." The substantive provision of the amendment is as follows:

All persons shall have the right to hunt and fish in this state in accordance with laws and regulations.

California. The California Constitution provides that the people have the right to fish from public lands of the state and in state waters. This provision was adopted in 1910, and reads as follows:

Art. 1, sec. 25. 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.

Minnesota. An amendment to the Minnesota Constitution (ratified in 1999) “preserved” hunting and fishing for the people. Earlier drafts of the amendment established hunting and fishing as a “right.” The Minnesota Constitution provides as follows:

Art. XIII, s. 12. 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.

North Dakota. An amendment to the North Dakota Constitution (ratified in 2000) “preserves” hunting, fishing and trapping for the people. The North Dakota Constitution provides as follows:

Art. XI, s. 1. Hunting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good.

Rhode Island. The Rhode Island Constitution provides that the people may exercise the “rights of fishery.” Although this provision has been cited as an example of constitutional guarantees of hunting and fishing, it appears to be something less than that, although no less significant. This is an old constitutional provision that creates a public trust guaranteeing to the people a right of passage across the tidal zone (i.e., the right to have access to the shore). This provision is similar to Wisconsin’s public trust in navigable waters under Wis. Const. art. IX, s. 1. Under Wisconsin’s public trust, one of the recognized incidents of navigation is hunting and fishing, similar to the Rhode Island Constitution. The provision in the Rhode Island Constitution is as follows:

Art. 1 s. 17. **Fishery rights -- Shore privileges -- Preservation of natural resources.** -- 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, including but not limited to fishing from the shore . . . ; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values. . . .

Vermont. The Vermont Constitution provides that inhabitants of the state may “hunt and fowl” on their own land, the land of others that is not fenced and on all public waters. This provision was created in 1777 and its purpose, according to cases interpreting it, was to reverse the common law in effect at that time which prohibited hunting on the land of another. The provision in the Vermont Constitution is as follows:

Chapter II, s. 67. [**Hunting; fowling and fishing**]

The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not enclosed, 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.

Virginia. An amendment to the Virginia Constitution (ratified in 2000) creates a “right” to hunt and fish and harvest game. The Virginia Constitution provides as follows:

Art. XI, s. 4. The people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.

According to proponents in Virginia, this amendment was motivated in part by concerns that local restrictions on hunting in Virginia will expand with increasing property development.

RECENT PROPOSALS FOR A WISCONSIN CONSTITUTIONAL AMENDMENT

1997 Senate Joint Resolution 36 was introduced by Senator Shibilski and others. The joint resolution was referred to the Senate Committee on Judiciary, Campaign Finance Reform and Consumer Affairs. There was no public hearing or other action on the joint resolution. The resolution provided as follows:

Art. 1, sec. 25. Individuals have the right to fish, hunt, trap and take game subject only to reasonable restrictions as prescribed by law.

1997 Assembly Joint Resolution 76 was introduced by Representative Baumgart and others. The joint resolution was referred to the Assembly Committee on Elections and Constitutional Law, which held a public hearing but did not take further action. This resolution differed from Senate Joint Resolution 36 by the omission of a reference to trapping. Representative Baumgart offered a substitute amendment to the joint resolution that made Assembly Joint Resolution 76 identical to Senate Joint Resolution 36.

No joint resolution to provide recognition for hunting, fishing and trapping in the constitution was introduced in the 1999 Legislative Session, or in sessions prior to the 1997 Session.

CURRENT WISCONSIN STATUTES THAT PROTECT HUNTING, FISHING AND TRAPPING ACTIVITIES

Although a constitutional provision regarding hunting, fishing and trapping can have a number of different purposes, one of the main purposes is to limit the potential for legislation, administrative rules or ordinances that restrict

those activities. A number of recent Wisconsin statutes provide a measure of protection for hunting, fishing and trapping activities. These statutes arguably provide a different means of accomplishing the objectives of a constitutional amendment.

State title to wild animals. Section 29.011 (1), Stats., states that the legal title to wild animals is in the state, and the state's title is "for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals."

DNR rules. Section 29.014 (1), Stats., directs the DNR to establish open and closed seasons and other provisions of the rules related to the taking of fish and game to "conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping."

Local regulations. Section 29.038, Stats., prohibits local governmental regulation of hunting, fishing, trapping or management of wild animals, with certain limited exceptions. The statute authorizes local regulation that has the primary purpose of protecting public health or safety, if those regulations have only an incidental effect on hunting, fishing or trapping. The statute also establishes a procedure for the Department of Natural Resources to review local ordinances that may violate the statute and to issue an order declaring the local regulation void.

Interference with hunting, fishing or trapping. Section 29.083, Stats., prohibits interference with or attempting to interfere with lawful hunting, fishing or trapping for the purpose of preventing the taking of a wild animal. The statute covers a variety of activities such as harassing a wild animal, obstructing a person who is hunting, fishing or trapping, disturbing the personal property of a person engaging in hunting, fishing or trapping or disturbing a lawfully placed hunting blind. A person who is adversely affected by conduct that violates the

statute may bring a civil action for an injunction or damages or both.

Local firearms regulations. Section 66.0409, Stats., restricts the authority of local governmental units to regulate firearms. Although this is not directly related to hunting, the statute prohibits local regulation that relates to possession or transportation of firearms.

Recreational use liability. Section 895.52, Stats., substantially limits the liability of property owners for injuries suffered by recreational users of property. "Recreational activity" is defined in the statute to include hunting, fishing and trapping. Although this statute does not directly protect hunting, fishing or trapping activities, it encourages private property owners to give permission for these activities.

Sport shooting ranges. Section 895.527, Stats., provides the owner or operator of a sport shooting range with certain liability protections from harm resulting from the operation of a sport shooting range, and restricts local governmental authority to regulate sport shooting ranges. Although this statute is not directly related to hunting, sport shooting ranges

are used for practice with firearms and for sighting firearms.

CONCLUSION

The debate on hunting, fishing and trapping throughout the country is intense and often polarized. Proposals for constitutional amendments are likely to continue to have a part in this debate. However, there have not yet been court challenges to any state fish and game regulations based on existing state constitutional provisions, so it is too early to tell what effect these provisions will have.

This memorandum provides background information on current and proposed protections for hunting, fishing and trapping activities. This memorandum makes no attempt to discuss the potential legal effect, in Wisconsin, of a constitutional right to hunt, fish and trap. This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared on December 28, 2000, by *Mark C. Patronsky, Senior Staff Attorney.*

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02/06/01

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To Whom It My Concern:

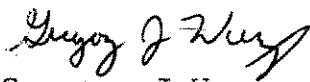
I would like to introduce myself. My name is Greg Wurz. I am twenty five years old and I live in Marathon City in Marathon County with my wife Sarah. I would like to take this time to voice my opinion at the public hearing about "The Right to Hunt Act." I support the making of a constitution that would protect my hunting rights.

I understand that the senate is proposing a bill that will insure my hunting rights. In this letter I will state my support for passing this bill.

I've been hunting in this great state for fourteen years. I have taken many game animals and enjoyed the beautiful landscape. I can't image not being able to hunt in Wisconsin all because a bunch of animal activists who want to take it away from us. I feel making a constitution to protect our hunting rights is very important. When I hunt I am doing my part in conservation. Cutting the population down of a certain species is very important and very healthy to that species. When a large species of animal becomes overpopulated, life becomes a little harder for us and for that species. For humans, the high deer population causes property damage. Some examples would be crop damage, vehicle accident, other types of property damage and diseases that the animal might carry when the animal is consumed by man. Overpopulation causes problems for animals as well. For example, not having enough food to eat during the winter, becoming ill with diseases that can kill it, being pushed by other animals of the same species into on-coming traffic causing property damage. Having the right to hunt in the state of Wisconsin is very important. There has been other states where the animal activists closed hunting, and now the state has to deal with overpopulation of certain species. An example would be the state of California, where cougar hunting is not allowed. Another is the state of Washington, where there is a ban of hound dogs used for hunting purposes. Finally, in British Columbia, Canada, the citizens were asked to vote on a mountain lion management program that protected the mountain lion from being hunted. Sadly it passed. Five years later, people in British Columbia are now being hurt or even killed by the overpopulated mountain lions. I feel that it is very important for the state of Wisconsin to have a constitution protecting our hunting rights.

In conclusion, I've stated my reasons why I support this "Right to Hunt Act" why it should be made into a constitutional law. I also stated the benefits it will have on the state ecosystem and on the conservation aspect. Animals and humans alike will benefit from this constitution as well. Finally, I told of other states and countries where hunting bans and limitation were put into place and how it affected the life cycle. I hope you will take into consideration my letter and pass a constitution that protects our hunting rights. Thank you.

Sincerely,


Gregory J Wurz

Written Testimony for the Senate Environmental Resources Committee meeting in Manitowoc, Feb.6, 2001 to get citizen input on the creation of section 26 of Article I of the state of Wisconsin's Constitution

Submitted by Robert C. Wilberscheid, w1094 Hwy. 149, New Holstein, WI 53061-920-894-7037- Representing the Calumet County Conservation Congress and the Calumet County Sportsmen's Alliance

"...That they are endowed by their Creator with certain inalienable rights. That among these are life, liberty and the pursuit of happiness." Millions of Americans find great happiness in hunting, fishing and trapping. Over a million citizens in Wisconsin find that hunting, fishing and trapping give them great pleasure. In the 2000 gun deer season, hunters came to Wisconsin from every state in the union and 57 foreign countries.

Game wardens throughout Wisconsin and the nation will testify that over 90 % of those who participate in hunting, fishing and trapping do so in a reasonable manner as prescribed by law.

The Milwaukee Journal-Sentinel editorial board, that bastion of outdoor enthusiasts, states the proposed amendment is totally unnecessary. I vehemently disagree!

The Wildlife Legislative Fund of America reports that the main body of anti-hunting/animal rights groups have a combined war chest of over \$300 million. Groups such as PETA, ELF, ALF and the Fund for Animals have targeted Wisconsin for years with frivolous lawsuits and unscientific challenges. Much worse, some groups have committed acts of terrorism and vandalism.

I am sure you are all familiar with PETA's efforts. But did you know that the Fund for Animals, which has supported the work of Wisconsin Citizens Concerned for Cranes and Doves, has gone on record to end all hunting fishing and trapping and has disseminated school material that teach children that hunting is evil.

From the floor of the Conservation Congress I have heard a delegate from Dane County, a self-proclaimed preservationist, rant against almost every conservation proposal brought to the floor. Her efforts to have other anti's elected to the Conservation Congress failed last April, but this was only a preview of what is coming.

Our Department of Natural Resources has many employees, even people engaged in fieldwork, that have never hunted, fished or trapped. Even more disturbing was a recent revelation that DNR employees can contribute through payroll deductions to "charities" engaged in anti-hunting, anti-fishing and anti-trapping activities.

This past October I spent a goodly sum of money to hunt elk in southern Colorado. During the five-day hunt, our party of six never fired a shot. One of the reasons for this was the presence of individuals who employed strobe lights to spook elk off of mountainsides at elevations exceeding 13,000 feet. These individuals were dedicated to their beliefs, but they were brazenly breaking the law.

Not only do we need this amendment, but also we need its strict enforcement when it becomes law!

Thank you!

Baumgart

STATEMENT IN SUPPORT OF SJR 2

THE RIGHT TO HUNT AND FISH CONSTITUTIONAL AMENDMENT WAS FIRST INTRODUCED IN 1997 AT THE REQUEST OF THE SHEBOYGAN COUNTY CONSERVATION ASSOCIATION AND OTHERS. A HEARING ON THE PROPOSAL WAS HELD IN EARLY 1998. ALTHOUGH THERE WAS A GOOD DEAL OF INTEREST IN THE CONCEPT, THE BILL DID NOT RECEIVE ACTION BY THE COMMITTEE.

INTEREST IN THIS ISSUE HAS NOW GROWN AND HAS RESULTED IN SENATE JOINT RESOLUTION THAT IS NOW BEFORE US TODAY. THE RESOLUTION HAS STRONG, BI-PARTISAN SUPPORT FROM BOTH HOUSES AND SOME SIX STATES HAVE NOW ENACTED SUCH A CONSTITUTIONAL AMENDMENT-THE TIME HAS COME TO TAKE ACTION IN WISCONSIN.

THE SPORTSMEN IN OUR STATE HAVE INVESTED GREAT TIME, ENERGY AND MONEY TO PROMOTE HUNTING AND FISHING. THEY WANT TO INSURE THAT THEIR CHILDREN CONTINUE TO BENEFIT FROM THOSE EFFORTS. THEY UNDERSTAND THE EFFECTIVE PROTECTION CURRENTLY GUARANTEED FOR NAVIGABLE WATER RIGHTS IN WISCONSIN AND THEY RECOGNIZE THE NEED FOR THIS SAME PROTECTION FOR THE RIGHT TO FISH AND HUNT.

REGARDING SENATE JOINT RESOLUTION 2

Proposed Amendment as Currently Drafted –

“Individuals have the right to hunt, fish and trap and take game subject only to reasonable restrictions prescribed by law.”

If this wording was plagiarized from another state, it demonstrates the problem of plagiarizing where the other state may have a dissimilar constitution or indifference to the reason for the amendment. If not plagiarized the reason and source of the wording remains extremely questionable.

By wording the amendment in this manner you run into the very problem our founding fathers confronted and then solved in Article III, Section 2 of the U.S. Constitution. The Constitution must control what laws can be passed by the legislative body. You cannot have the legislative body define what the Constitution means. It would be “the tail wagging the dog.” Rights emanate from the Constitution; not the legislative nor executive branches and they cannot limit nor expand those rights by statutes or vetoes. It is solely for the judicial branch to define the Constitution. This novel “blending of powers,” rather than separation of powers creates no rights we do not already enjoy and can only lead to absurd results. The law hates absurdities.

Even if you could in theory get over this insurmountable hurdle, the wording of the proposed amendment is irreparably flawed.

“Reasonable.” What does that word mean? It refers to the “reasonable man” standard in the law, i.e. what a reasonable man would think of this. It is an open door to litigation as that standard can vary from day to day or year to year. Furthermore, you run into the legislature defining the Constitution and as the legislature

is presumed to act in a “reasonable” manner, by case law, the legislature could abolish any viable meaning to the amendment by a simple up and down vote.

“Restrictions.” The word in and of itself infers this is not an expansion of Constitutional rights; rather, a limitation of those rights.

“Law.” The Constitution prescribes what the law can be, not the other way around.

We cannot open the door to more restrictions rather than more rights. The proposed amendment does this in no uncertain terms. It gives us nothing we do not already have and opens the door to total abolition of hunting, fishing and trapping by a simple vote of the legislature.

We have all seen the absurdities in arguments over the U.S. 2nd amendment. All you can do is try and cover these types of problems into the foreseeable future.

Ten years from now you may have a group claiming hunt, fish and trap was meant only to allow taking of pictures of live animals. Therefore, there needs to be wording that the amendment allows for the taking into possession animals by “lethal” means.

Arguments about felons or nonresidents being allowed to carry guns and hunt have already surfaced under the umbrella of the amendment. Therefore the word “citizenship” needs to be in the amendment (felons are currently persons not considered to have full rights of citizenship).

What about 6 year old children, the mentally ill or persons under guardianship enjoying the protection of the amendment? The word “status” needs to be inserted.

As for the arguments that this could lead to shooting guns within the cities or other dangerous practices, both state and federal case law have already addressed these problem repeatedly by stating "public health, safety and welfare" always take precedence. As an example "freedom of speech" does not protect yelling "fire" in a crowded theater

What about shooting of endangered species? Any such problem would be eliminated by using the wording "consistent with current conservation methods at the time of the adoption of this amendment."

The needed wording for this amendment was already passed by the Wisconsin Conservation Congress, in a near unanimous 1998 vote. To restate that basic wording:

"The people shall have the right to hunt, fish and trap animals by lethal means and consistent with current conservation methods at the time of the adoption of this amendment unless otherwise prohibited by citizenship or status.

Sincerely,



2/1/01

John R. Bergstrom
Attorney at Law
Vice Chairman Rock County Delegation to Wisconsin
Conservation Congress

Edgerton, Wisconsin



WISCONSIN WILDLIFE FEDERATION

242 Koeller St., Oshkosh, 54903

AFFILIATED WITH NATIONAL WILDLIFE FEDERATION

February 3, 2001

State Senator James R. Baumgart:

On Saturday, February 3, 2001, at the Wisconsin Wildlife Federations wildlife committee meeting in Steven Point, Wisconsin we had a discussion on Senate Joint Resolution 2. In the discussion we feel that the word **GATHERING** should be added to the original wording of the bill. The Wildlife committee is in favor of the original bill, and will bring it to the whole body of directors February 9th and 10th in Plover, Wisconsin.

Thank You :

First Vice President and Acting President

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