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CONSTITUTIONAL AMENDMENT GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 2001 WISCONSIN LEGISLATURE

INTRODUCTION

A proposal to amend the Wisconsin Constitution to create the right to hunt, fish, trap, and take game was adopted on first consideration by the 2001 Wisconsin Legislature. It will be eligible for second consideration by the 2003 Legislature.

Section Created	Resolution	Subject
Article I, Sec. 26	2001 Senate Joint Resolution 2 (Enrolled Joint Resolution 16)	The right to hunt, fish, 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 3 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 HUNT, FISH, TRAP, AND TAKE GAME

Amendment Text. The text of the constitutional change, as approved in 2001 Enrolled Joint Resolution 16, reads:

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.

Background. An earlier attempt to guarantee the right to hunt, fish, 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.

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Federal and State Guarantees. While the Second Amendment to the U.S. Constitution guarantees the right to bear arms, regulation of hunting, fishing, 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.

Wisconsin provides certain protections for hunting, fishing, 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 hunting, fishing, 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 hunting, fishing, or trapping activity by private parties trying to prevent the taking of a wild animal.

PROPONENTS AND OPPONENTS OF THE PROPOSED AMENDMENT

Arguments in Support of the Proposal. Proponents of the constitutional amendment cite the need for further state protection of fishing, hunting, and trapping rights. They are concerned that certain interest groups will successfully challenge these activities through political action that leads to increasingly restrictive regulation. The chief argument of supporters is that the legislature and DNR can easily alter statutory laws and administrative rules, thereby leaving hunting, fishing, and trapping rights constantly vulnerable to political pressure.

Arguments in Opposition to the Proposal. A major part of the opposition to the proposed amendment arises from animal rights activists who argue that hunting is inhumane and should not be guaranteed as a constitutional right. Other opponents of a guaranteed right to hunt and fish claim that these activities are already protected by current law and the constitution is not an appropriate place for such policy matters. They are concerned that making such activities a right creates the potential for court challenges to any regulation proposed by the legislature or DNR, no matter how beneficial such policies might be for the respective sports. They also contend it could affect wildlife protection, create safety problems in more densely populated areas, and raise issues about property owners' rights.

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