



League of Women Voters of Minnesota Records

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LEAGUE OF WOMEN VOTERS OF MINNESOTA
APRIL 11, 1988

EMERGENCY PROGRAM ITEM

The Board of Directors of the League of Women Voters of Minnesota recommends to the delegates at the State Council meeting that they adopt the following position:

"The League of Women Voters of Minnesota opposes an amendment to the Minnesota Constitution that gives individuals the unrestricted right to bear arms."

The Board agrees that there is an emergency to which the League needs to respond. The issue is the proposed Minnesota constitutional amendment for gun possession. The proposed legislation reads:

" Section 1. An amendment to the Minnesota Constitution, adding a section to article I, is proposed to the people of the state. If the amendment is adopted, the section will read:

Sec. 18. The right of a citizen to keep and bear arms for the defense and security of the person, family, or home, or for lawful hunting, recreation, or marksmanship training shall not be abridged.

Section 2. The amendment shall be submitted at the 1988 general election. The following question shall be proposed:

'Shall the Minnesota Constitution be amended to provide that the right of a citizen to keep and bear arms for the defense and security of the person, family, or home, or for lawful hunting, recreation, or marksmanship training shall not be abridged?

Yes.....

No'

STATUS OF THE LEGISLATION

At the time this information is being prepared for local league delegates, the legislature is still in session. H.F. 93 is in the House Rules Committee. S.F. 268 failed in the Senate Judiciary Committee after reconsideration of the bill. League lobbyists have talked to committee chairs, leaders and authors. No one says the bill has been stopped. The bill can still pass the House and be sent over to the Senate for further consideration.

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The League has used information from several sources to present the discussion of the bill at the Legislature.

House Research Information Brief, Revised Jan. 1988.

This brief contains a chart showing what has happened to gun regulation statutes in the states that guarantee the right to bear arms in the constitution. According to the brief, "The chart indicates that most weapons regulations have been upheld against constitutional attack. Based on lawsuits elsewhere, none of Minnesota's current statutes would be invalidated if a right to arms amendment were adopted.

A more difficult question to answer is whether a right to arms amendment would limit the Legislature's regulatory power in the future. Courts could conclude that the amendment was intended to limit the Legislature's regulatory power to what existed at the time the amendment passed. Otherwise, it might seem there would be no reason to adopt the amendment. As a result, if an amendment passed, it might not be possible for the Legislature to enact new kinds of weapons regulations that might someday be considered desirable."

The chart and the list of the states that have constitutional provisions guaranteeing the right to bear arms are attached.

House Research legal memorandum, "Effect of A Right To Arms Constitutional Amendment on State Weapons Laws" by Shannon Peterson and Jerilyn Aune, Revised, Feb. 1988.

The memorandum addresses issues concerning the validity of existing and future firearm regulations if H.F.93 or a similar amendment is adopted. The summary states that "this comparison of Minnesota with case law from other states shows that no current Minnesota weapons regulation is likely to be found invalid if a right to arms constitutional amendment were adopted.

The adoption of any constitutional guarantee of the right to bear arms, including one similar to H.F. 93 would probably have no effect on current firearm regulation in Minnesota. While it might initially create uncertainty about the validity of existing regulation, it is almost certain that these laws would be upheld as valid exercises of the police power.

In the future, although the Legislature would still have the power to regulate the use of arms, it could not expressly prohibit the possession and use of arms for the purposes of recreation, lawful hunting, or for security and defense, nor could it pass a law that would have indirect effect of banning arms for these purposes."

Letter to Gov. Perpich from Attorney General Humphrey, Feb. 23, 1988.

Here some excerpts from the letter:

"My review of the case law in this area demonstrates that even if such an amendment were passed, the constitutional right to bear arms remains subject to the reasonable exercise of public safety or general welfare

powers by the legislature. Moreover, the amendment is not likely to impact on existing gun control legislation in Minnesota.

I cannot, of course, guarantee that the amendment will not serve as a basis for a challenge to future attempts to regulate the use of firearms. Should that occur, the scope and impact of the amendment will certainly come into question... Similar language in the other state constitutions has been construed as neither encouraging the possession of firearms, but as prohibiting the confiscation of all firearms... my legal analysis demonstrates that it is unlikely that the amendment will interfere with legislative authority under the state's police power to reasonably regulate firearms...

Constitutional provisions in many states are similar to the proposed provision in that they appear to provide an individual right to bear arms as opposed to a collective right designed to promote the effectiveness of the militia.

My review indicates two common themes of courts in construing gun control statutes in "individual-right" states. They are (1) the constitutional provision providing a right to bear arms does not provide an absolute right, and (2) the right is subject to the police power.

Interviews with Rep. Jean Wagenius, DFL-Mpls. and Billie Franey, Legislative Chair, MN AAUW.

Rep. Wagenius, who worked on the Court of Appeals before serving in the legislature, does not think that the Minnesota courts will interpret the amendment as other states cited in the House Research and Attorney General's reports. She says the courts will interpret an amendment only if it is unclear. She thinks the wording of this amendment is very clear. Rep. Wagenius notes that the states cited in the case law analyses were Wyoming and North Dakota, states not usually cited by Minnesota court decisions. Rep. Wagenius thinks the proponents of the legislation, the National Rifle Association (NRA) are trying to establish a civil right to bear arms. If the civil right is established, the basis for the case law analysis, which is the valid exercise of police power, would be undermined. Civil rights can rarely be abridged by police power. During the House Judiciary hearing, Rep. Wagenius asked the proponents if they would include in the amendment additional wording that the right to bear arms would be restricted by the reasonable exercise of public safety and they said absolutely not. Similarly, when an amendment was offered in the Senate Judiciary Committee removing reference to an individual, but stating the right to bear arms and not attributing it to individuals, this wording was rejected by the author. Both Rep. Wagenius and Ms. Franey think the intent of the legislations is to give individuals the unrestricted right to bear arms. Ms. Franey, a long time good government advocate, is also concerned about the effort

to promote the constitutional amendment on the ballot. She is particularly concerned about the amount of money proponents will spend in support of the amendment. If the amendment becomes part of the constitution, its applicability will be tested almost immediately by the proponents. Ms. Franey believes the amendment comes with built-in expensive court costs. Both Rep. Wagenius and Ms. Franey agree that the amendment will prohibit future legislative restrictions on the right to bear arms.

Another concern of opponents of the amendment is the future of new classes of handguns, such as plastic guns. It could be argued that these guns are for security and defense. And yet the purpose of making the guns out of plastic is to avoid detections by metal detectors. It is possible then that the legislature would have no ability to prohibit these guns with the amendment in place.

It is also important to note that legislators repeatedly mentioned that they never had any intention of banning guns for hunting or sportsmanship purposes. And yet proponents claim that is their fear.

Attached also for your information is an editorial from the St. Paul newspaper and a brief summary of present handgun restrictions in Minnesota.

LITIGATION UNDER RIGHT TO ARMS GUARANTEES

LAWS CHALLENGED IN OTHER STATES	RESULT	SIMILAR MINNESOTA LAW?
Laws Banning Certain Weapons		
Person with prior history of DWI conviction or tendency to violent/emotionally unstable conduct may not obtain handgun license.	Valid	No
Aliens may not own or possess dangerous weapons. ¹	Mixed	No
No one may possess short-barrelled rifles, shotguns or machine guns.	Valid	Yes
Laws Regulating How or Where Weapons May be Possessed or Used		
Convicted felon may not possess a firearm anywhere except at home.	Valid	No. Felons may not possess a pistol anywhere for ten years after conviction.
No one can carry a pistol, brass knuckles, or knife over a certain length on his or her person.	Valid	No. Possession of brass knuckles is completely prohibited.
No one may carry an unlicensed firearm on his or her person.	Valid	Yes
No one may carry even an unconcealed weapon on his or her person.	Valid	No.
No one may possess, carry, or use a dangerous weapon except at home or at a shooting range.	Invalid	No.
Hunters may not carry firearms at night.	Invalid.	No.
A hunting license may be suspended for violating hunting regulations.	Valid	Yes.
No one may possess a weapon in public under circumstances tending to provoke a breach of the peace.	Valid	No.
No one may possess a firearm while intoxicated	Valid	No.

¹ This kind of regulation may be invalid under the federal Constitution's equal protection guarantee for aliens. See *Equal Protection: Standards Used in Judicial Review of State Legislation*, by Deborah K. McKnight, Research Department Information Brief.

LAWS CHALLENGED IN OTHER STATES	RESULT	SIMILAR MINNESOTA LAW?
<hr/> Laws Affecting the Commission of Crime While Armed		
Additional prison term imposed for committing certain crimes while using a firearm.	Valid	Yes.

The states that have a constitutional provision guaranteeing the right to arms are:

Alabama
Alaska
Arizona
Arkansas
Colorado
Connecticut
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Kansas

Kentucky
Louisiana
Maine
Massachusetts
Michigan
Mississippi
Missouri
Montana
New Hampshire
New Mexico
North Carolina
Ohio
Oklahoma

Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
Wyoming

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FRIDAY, FEBRUARY 26, 1988

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RIGHT TO BEAR ARMS

Why pass amendment when there's no need?

If the proposed right to bear arms amendment to the state Constitution will not prevent the Legislature from regulating firearms and will not eliminate existing gun control laws in Minnesota, why should this state adopt it?

Attorney General Hubert H. Humphrey III issued a legal memorandum Tuesday saying that the constitutional right to bear arms remains subject to the "reasonable exercise" of the general welfare or public safety powers of the Legislature.

And, he added, "... the amendment is not likely to impact on existing gun control legislation in Minnesota."

The National Rifle Association and the local Committee for Effective Crime Control both are lobbying heavily for the constitutional amendment. They argue that the Second Amendment to the United States Constitution does not adequately protect an individual's right to bear arms, which the state amendment would do.

There is argument over whether that constitutional failing actually exists, but, according to Minnesota's attorney general, one thing the proposed state amendment would do is prohibit the confiscation of all firearms.

There is no danger of that happening in Minnesota, even without the amendment. Efforts to ban handgun sales in Minnesota repeatedly have failed in the Legislature. Candidates for statewide office who have supported such legislation have lost elections.

Frankly, there is no demonstrable need for passage of the right to bear arms amendment and no need to put it on the ballot in November.

REGULATING USE AND POSSESSION OF PISTOLS: PLACES AND PERSONS

[Provisions in Chapter 624 regulate the use and possession of pistols. A permit is required to carry, hold, or possess a loaded pistol in a motor vehicle, snowmobile, or boat; to carry a pistol, loaded or unloaded, on or about a person's clothing; or to possess or control a pistol in a public place or area. Minn. Stat. Sec. 624.714, subd. 1. To qualify for a permit the applicant must have proof he or she can safely use a pistol, must have an occupational or personal safety hazard which requires a permit to carry a pistol, and must not be a member of one of several classes of persons. These classes include persons with prior convictions for crimes of violence unless ten years have passed or the sentence has expired; persons who have been confined as mentally ill, unless a doctor or psychiatrist will certify that the applicant no longer suffers from this disability, and persons who have been convicted of or treated for the use of controlled substances or alcohol, unless a doctor or psychiatrist will certify that this abuse has not occurred within the previous two years. Minn. Stat. sections 624.714, subdivision 5; 624.713.] As these regulations

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*advised
4/19/88
by Council*

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Georgia	Montana	Utah
Hawaii	New Hampshire	Vermont
Idaho	New Mexico	Virginia
Illinois	North Carolina	Washington
Indiana	Ohio	Wyoming
Kansas	Oklahoma	

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