



A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO DEFINE THE PHRASE "SHALL NOT BE CALLED IN QUESTION" AS USED IN ARTICLE II, SECTION 12, OF THE MONTANA CONSTITUTION.

WHEREAS, the current language at Article II, section 12, of the Montana Constitution was first articulated in the Montana Territorial Constitution of 1884; and

WHEREAS, this language was repeated in the Montana Statehood Constitution of 1889 and was also approved by the other several states via Congress; and

WHEREAS, this exact language was repeated verbatim by the Montana Constitutional Convention of 1972, which was approved by the electors of Montana; and

WHEREAS, there is no authoritative definition existing of the phrase "shall not be called in question" that is applied in Article II, Section 12; and

WHEREAS, the phrase "shall not be called in question" is understood to be the strongest form of prohibition that the framers could imagine and express using polite language; and

WHEREAS, the phrase "shall not be called in question" is understood to be a prohibition imposed by the electors of Montana specifically on government policy, government entities, and government actors; and

WHEREAS, in response to a question about what the phrase "shall not be called in question" meant as used in the proposed Article II, section 12, of the Montana Constitution in the 1972 Constitutional Convention, Delegate and Chairman of the Bill of Rights Committee Wade Dahood responded that the phrase meant "that the right shall remain inviolate and shall not be questioned by any person in authority" (transcript of the 1972 Montana Constitutional Convention, Volume 5, Page 1739); and

WHEREAS, the maxims of jurisprudence found at Title 1, chapter 3, part 2, of the Montana Code Annotated are examples of guidance in interpretation of laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the phrase "shall not be called in question," as used in Article II, section 12, of the Montana Constitution, is defined as follows:

(1) Any impairment, restriction, or curtailment of a person's rights under Article II, section 12, of the Montana Constitution by public policy or governmental actors may not be done unless such impairment, restriction, or curtailment survives an examination more restrictive than strict scrutiny, a level of restraint identified as maximum scrutiny and that meets the criteria provided in subsection (2).

(2) To survive maximum scrutiny requires the following:

(a) A government interest is actually proven and so complete that without impairment, restriction, or curtailment human lives will actually and imminently be at serious risk, or be lost, as demonstrated by current facts in evidence and by clear articulation;

(b) any impairment, restriction, or curtailment is accomplished by a means that cannot be more narrowly limited to achieve its objective as to geography, polity, objects, topics, time frame, societal or political conditions, or class of people affected;

(c) there is convincing evidence that the impairment, restriction, or curtailment will accomplish the intended purpose;

(d) there is convincing evidence that the impairment, restriction, or curtailment will have no consequence in restricting the free action of citizens beyond its intended purpose;

(e) any impairment, restriction, or curtailment is not a prior restraint; and

(f) the impairment, restriction, or curtailment is permissible even though in conformance with subsections (a) through (e).

(3) Keeping or bearing arms, which shall not be called in question:

(a) includes but is not limited to producing, manufacturing, storing, transporting, displaying, marketing, obtaining, selling, transferring, carrying, and wearing arms;

(b) includes but is not limited to both loaded and unloaded arms, ammunition, ammunition components, and arms accessories; and

(c) does not allow any registration, licensing, special taxation, or fees.

(4) The use of arms is an essential and protected child of the protections assured for the right to keep or bear arms, and included within that protection. Notwithstanding such protection, the use of arms may be regulated by statute only, and only if such regulation is not a prior restraint, is narrowly drawn, is essential for

public safety, achieves its stated purpose, is free from unintended consequences, does not inhibit self-defense, and does not unreasonably burden hunting opportunity.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Supreme Court and to the Montana Attorney General.

- END -

I hereby certify that the within joint resolution,
SJ 0011, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2017.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2017.

SENATE JOINT RESOLUTION NO. 11
INTRODUCED BY K. REGIER, M. BLASDEL

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