

DAKOTA

YOUR GOVERNMENT ON THE HILL NUBS

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Measure 3 proponents don't expect any problems

Measure would put right to keep and bear arms in state constitution, despite redundancy on federal level

From the ballot: This amendment to Article 1 of the North Dakota Constitution provides for the right of individuals to keep and bear arms for lawful purposes. This includes but is not limited to the defense of their person, family, property, the state, and for lawful hunting and recreational purposes. This amendment further provides that this right shall not be infringed. A yes vote means you approve the constitutional measure concerning the right to keep and bear arms.

By KEVIN WHALEN
Tribune Staff Writer
The right to keep and bear arms is protected under the U.S. Constitution. True to a point, too. But false to a point, too, say backers of Measure 3, a proposed amendment to the state constitution. It is true that the U.S. Constitution states that "the right to keep and

bear arms shall not be infringed." But it is also true that a federal appeals court has upheld a city ordinance in Illinois banning the sale and possession of handguns. It was that law and others like it that sparked the North Dakota Shooting Sports Association to get signatures to put Measure 3 on the ballot. MEASURE 3 backers said they don't want to see cities and towns in North Dakota enacting local laws prohibiting ownership and possession of weapons. "What we are looking at is

trying to make sure, in the state of North Dakota, that the laws regulating the ownership and possession of firearms will remain uniform throughout the state," said Jim Valentino, the NRA liaison for North Dakota. Keith Trego of Bismarck, president of the Shooting Sports Association, which is affiliated with the NRA, said the idea behind Measure 3 is two-fold. "First of all, from the legal standpoint, some of the more recent court rulings on the concept of the Second Amendment rights seem to

indicate the Second Amendment of the U.S. Constitution only applies to the federal law," Trego said. "THE OTHER other part of it is it's basically an affirmation of what we feel most people in North Dakota believe already." North Dakota is one of only 11 states that do not have clauses in their constitutions ensuring the right to bear arms, Trego said. The existing state constitution makes no specific mention of the right to bear arms, apparently relying on the strength of the U.S. Constitution's Second Amendment.

"A lot of people said, 'Well, gosh, I thought that was already in there. I'm surprised that we didn't have it,'" Trego said. Measure 3 would change that by adding a clause to Article 1, Section 1 of the North Dakota Constitution. CURRENTLY, THAT section outlines "certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property and reputation, pursuing and obtaining safety and happiness." Measure 3 would add these words at the end of Section 1: "and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed."

Trego said, "It's pretty hard for anybody to argue with the wording unless they are outright opposed to people owning firearms. The constitutional measure is not specific in what political units of government can do. What this amendment would do is pass along a very strong intent to our government, our elected officials, about how the people of the state feel about their inherent right to keep and bear arms."

MEASURE 3 should not be confused with an interim legislative committee's work to revise the state's weapons laws. The Judiciary B Committee has drafted legislation that basically re-enacts North Dakota's laws relating to weapons. Included in the legislation, which will be considered during the 1985 Legislative session, is a clause calling for handgun permits issued by the head of the state Bureau of Criminal Investigation. The bill draft has nothing to do with Measure 3, although Trego said his group supports both.

"There's been just some tremendous confusion," he said, adding that the bill draft is not anti-weapon. "OUR GROUP and the NRA and law enforcement groups have been working very closely with the committee, attorney general and Legislative Council," Trego said. "I think the wording (of the proposed legislation) is very supportive of the wording in this constitutional amendment, even though the two aren't directly related."

He said confusion between the two efforts should not affect the fate of Measure 3, which is garnering widespread support. Petitions filed to place Measure 3 on the ballot carried the signatures of about 40,000 people, believed to be a record. "No one has stepped forward — publicly, at least — to oppose the measure."

Members of the committee sponsoring the constitutional amendment include Sen. Quentin Burdick, D-N.D., and Sen. Mark Anderson, R-N.D. The measure's backers are anticipating overwhelming approval from state voters Tuesday.

"I'm looking for a 75 percent favorable vote on it," Trego said. The measure needs a simple majority to become effective 30 days after the election.

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Other cities' laws contribute to N.D. gun issue

High court action upholding Morton Grove, Ill., ban of handguns concerns NRA, other groups

By KEVIN WHALEN
Tribune Staff Writer
North Dakota's Measure 3, which is on Tuesday's ballot, stems in part from court rulings upholding a handgun ban in the city of Morton Grove, Ill. After a long history — one whose final chapter is perhaps still being written — that law was recently upheld by the Illinois Supreme Court. Earlier, a federal appeals court said the law is constitutional. In 1981, the Morton Grove Village Board approved the ordinance, which banned the sale and possession of handguns in the city of 24,000 people.

The law was immediately challenged by groups led by the National Rifle Association. But those challenges failed, first at the federal appeals court level and later at the state court level. In 1981, a U.S. district judge said the law was unconstitutional. In good conscience, oppose what Morton Grove has done, while equally reasonable people can fully support this ordinance. "The judge said the ordinance does not violate the U.S. Constitution's guarantee of a citizen's right to bear arms. The matter was appealed to the

U.S. Supreme Court, which declined to hear the case. At that time, speculation was that the high court would allow the Illinois Supreme Court to rule first before taking the case. That Illinois Supreme Court ruling came last month, and the law was upheld. The ban was justified, the Illinois court wrote, "because of the ease with which handguns can be concealed and handled, as compared with other types of weapons."

"THE JUDGES ruled that the law did not infringe upon the state constitution, which guarantees that 'subject only to police power, the right of the individual to keep and bear arms shall not be infringed.'" Following the court rulings, other cities in the Midwest have looked at enacting similar ordinances, Jim Valentino, the NRA's liaison for North Dakota, said. Three more Illinois cities, Evanston, Oak Park and Chicago, have enacted stringent "very restrictive laws on handguns," Valentino said. Those laws could result in hunters being arrested for illegal possession of weapons "even

though they were unloaded and carried in the trunk," he said. In addition, Appleton, Wis., is considering an ordinance that would prohibit a person from "going armed with a dangerous weapon. And the definitions of dangerous weapon include any firearm, whether loaded or unloaded." The result of the city ordinances and legal rulings is Measure 3, which would amend the North Dakota Constitution to spell out the right of state residents to keep and bear arms for legal purposes.

Measure 2 OK would finish change of legislative article

North Dakota voters approved the first half of constitutional change in June; second part up for blessing now

By STACY HERBON
Tribune Staff Writer
The basement has been built and now it's time to get on with finishing the rest of the house. That's basically what Measure No. 2 is asking voters to do Tuesday — get on with rewriting the second part of the legislative article of the state constitution. Measure No. 2 is the second phase of the program to moderate the legislative article. The first phase was approved by voters in the June primary. The idea for "cleaning up and modernizing" the legislative article began in 1972 with the state Constitutional Convention, according to Sen. Frank Westrom, R-Williston, a sponsor of Measure No. 2. "We went over each article piece by piece," says Westrom of the Constitutional Convention. "We knew what had to be done."

THOSE REVISIONS were twice voted down. The new constitution was defeated when it was put on the ballot in 1972; 10 years later, in 1982, North Dakotans also defeated a proposed complete revision of the legislative article. The 1983 Legislature decided, however, to revive the issue again. But instead of putting the whole thing back on the ballot once more, they opted with the one-two approach. "The reason we divided it," Westrom says about the two-phase measure, "was because it was too much for people to read on the ballot." No one publicly testified against the resolution during the hearing of the Legislature's Constitutional Revision Committee, according to a spokesman from the Legislative Council. SOME HOUSE members, however, voted against the resolution. The reason, says Westrom, is because some legislators think the constitution is sacred and no one should tamper with it. "What they're forgetting," adds Westrom, "is the constitution was

written in 1889 when there were no typewriters. Everything was done in one long bill. Nowadays bills are as thick as the Sears and Roebuck catalog. "The conditions aren't the same as when the constitution was written," says Westrom, 61. Westrom says he is not aware of any organized campaign against the measure. Westrom recognizes there are some who have reservations about the article, such as those put forth by Lloyd Ondahl of the University of North Dakota Bureau of Governmental Affairs. OMDAHL HAS written frequently about Measure No. 2 in "The Tribune." Ondahl has written, "Were it not for an oversight on the effective date of laws passed by the Legislature, it would be easy to write kindly about Measure No. 2. "The new language provides the laws passed by the Legislature become effective on July 1 or 90 days after adjournment of the Legislature, whichever is later. This language could put appropria-

tion and tax measures in July, after the fiscal year begins. This could create some problems." Ondahl says one solution to this is to have the bills or measures in question declared emergencies and pass them by a two-thirds vote in both houses. But Ondahl warns this could lead to vote-trading with other bills in order to get the appropriate bills passed in the last days of the session. WESTROM COUNTERS that criticism, though. Westrom says not changing the constitution will still leave the state with the problem outlined by Ondahl. "At the present time the statute allows us to go 90 days into the session, recess and come back again. A bill passed then would still be later than July." Other changes Measure No. 2 deals with include the following, according to an October Legislative Council report: • In the case of an election tie, the secretary of state will determine the winner by the toss of a coin. • Contested elections will be re-

viewed by the courts. However, each house will still be the judge of the qualifications of its members. At present each house the judge of contested elections of its members. • NO BILL could be amended to change its general subject matter. The way the constitution reads now is a bill cannot be amended to change the original purpose of the bill. • No bill can be amended, extended or incorporated in any other bill by reference to its title only, except in the use of definitions and procedural provisions. This change was recommended in 1965 by the Legislative Research Committee to "eliminate unnecessary bulk in the bills." • Every bill must be read on two separate natural days and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present. The present constitution provides the first reading may be by title only unless a reading at length is demanded. The second reading must be at length. It is clear, the

Legislative Council report says, that the present language of the constitution in this case is neither practical nor followed. • REQUIRES the presiding officer of each house to sign all bills and resolutions adopted and to enter the fact of signing in the journal at once. The present law, in addition to these requirements, provides that the title of all measures must be signed in the presence of the respective houses. • No local or special laws, except as otherwise provided in the constitution, shall be enacted. The present constitution allows a number of local and special laws which the Legislative Assembly may not pass. The 1972 Constitutional Convention recommended a change, however, because it appears the present law "prohibits passing local or special laws." The measure repeals several sections of Article IV of the state's Constitution. These sections, according to Westrom, are outdated, and in some cases have been declared unconstitutional by the courts.