



Civic Caucus

8301 Creekside Circle, #920, Bloomington, MN 55437

[civicaucus@comcast.net](mailto:civicaucus@comcast.net)

*September 8, 2008*

Voter Referendum November 2008 Position Report

## Civic Caucus Statement on Constitutional Amendment for outdoors, water and the arts

### A. Summary

Despite its enticing offer of additional revenue for such worthwhile services as increased protection of the outdoor environment, cleaner water, and expanded programs for the arts, a proposed constitutional amendment should be rejected at the November 2008 election.

It represents an abdication of legislative responsibility; it dangerously reduces budgetary flexibility; it enhances influence of special interests; it sets a bad precedent; it can't guarantee what its advocates seek, and its combination of outdoors, water, and the arts is little more than logrolling.

### B. Principles guiding our position

The proposed amendment is appealing to many salt-of-the-earth, hard-working Minnesotans. How can anyone be other than proud of our lakes and streams, our hunting and fishing, our historical sites, our great institutions of history, theater and the arts? Our respect for supporters of these assets requires that we clearly delineate the principles and the reasons that we oppose this amendment.

**1. The primary constitutional responsibility of the state Legislature is to allocate state resources**— To effectively allocate resources, legislators must retain flexibility - the ability to access any state resource to meet any state need. Whether by statute or constitutional amendment, when state funds are dedicated to specific purposes by formula, however worthy those purposes might be, the state as a whole suffers.

Everything proposed by the proposed amendment can be accomplished by legislation. The amendment demonstrates the impact of a polarized Governor and Legislature referring controversial questions to the voters, instead of taking action themselves. Voters ought to insist that the Governor and Legislature take action, which is why they were elected and what they are paid to do. Despite the motherhood-and-apple pie nature of the amendment, voters ought to send lawmakers a strong message to stop hiding behind such measures.

When tax money is dedicated by formula, no spending debate takes place. There is no evaluation of the value of that spending. "Representation" becomes a hollow term; one is taxed but with no recourse as to how the dedicated proportion of one's taxes are spent.

**2. In setting budgetary priorities among functions, the Governor and Legislature need more flexibility, not less.** Lawmakers will face incredible challenges in juggling revenue sources and spending requests to balance the state's budget. Carving out a permanent revenue source for a few select services merely magnifies the problem for the Governor and Legislature in the future. The amendment creates four new revenue "silos", where funds must be spent only for certain specified purposes, making it impossible to adjust priorities as conditions change.

**3. The interests of the general public should take precedence over narrow interests.** It's tough enough for the public to follow priority-setting in the state's general fund. It's almost impossible for the public to understand, let alone follow, what is going on in dedicated funds.

When special funds are created, and, thereby, removed from the debate over the state's general fund, they are less likely to attract the interest of the media. Consequently, public knowledge and interest also will wane. If history teaches us anything, it is that when transparency is reduced, dedicated funds come to resemble the private preserve of select committees and special interest groups. One additional piece of legislation accentuates the problem. On an assumption that the amendment passes, the Legislature in 2008 created a body made up only of the interest groups to recommend how the outdoor heritage fund portion of the amendment should be spent.

**4. We should not tie the hands of future voters and lawmakers unnecessarily.** The amendment itself is inflexible. It would be immensely difficult, almost insurmountable, to modify or repeal the amendment, once enacted. First, it would be necessary for the Legislature to call for a vote of the people to repeal the amendment, an action that would be strongly opposed by the interests that benefit. Then, of course, a vote of the people, to be successful, would require a majority of everyone voting at the election, whether they vote or not.

The amendment would be in existence for 25 years, to June 30, 2034, so, technically, any problem with inflexibility would not extend beyond that date. However, as the expiration date approaches advocacy groups can be expected to seek—and very likely, obtain—pledges that the Legislature will preserve long-standing dedicated funding for outdoors, water and the arts.

For a precedent on the impact of a permanent amendment, we need to look only to transportation. More than 50 years ago the Legislature proposed and the voters approved a constitutional amendment that permanently apportions state gasoline taxes and vehicle license fees among city governments, county governments, and state government. That amendment today is unchanged, and unchangeable, as if the transportation needs of the state today are identical to what they were in the 1950s. Every dime of from these sources must be apportioned as specified in the 1950s amendment—nine percent to the city roads, 29 percent to county roads, and 62 percent to state roads.

The Legislature ought to submit amendments to the constitution for such matters that (a) only can be handled constitutionally—such as changing the structure of the judiciary or the Legislature itself, or (b) aren't subject to the need for periodic change, as are revenues and expenditures.

**5. Competing state functions ought to have the same starting line. Granting constitutional preference to one function will merely set a bad precedent.** Groups advocating on behalf of care and education for the very young, care for the elderly, elementary-secondary education, higher

education, public safety, criminal justice, health care, and others — urgently needing funds and never satisfied with the outcome — could well be expected to follow the precedent of this amendment.

**6. Legitimate state functions ought to receive fair treatment from the Legislature.** We've not conducted an analysis of the relative financing needs of the beneficiaries of the amendment versus other state services. We have concentrated our efforts on the unsound manner by which additional funding is being sought. However, we compared recent funding levels among state functions and, considering all state revenue sources, didn't find evidence that outdoors, water and the arts have received substantially below-average funding relative to other state agencies.

**7. Constitutional amendments ought to deliver to voters what they appear to promise, which is not assured by the current amendment.** Supporters of the amendment don't want new funds simply replacing regular appropriations. Thus, firm-sounding language in the amendment seems to promise that the Legislature will set the usual amounts for state agencies and services, and that amendment dollars will be handled entirely separately, on top of whatever appropriations are made.

Despite the language, it can be argued that the amendment will not restrict legislative flexibility. The Legislature will set appropriations at wherever level it chooses. It might always treat the amendment funds as something special. But imagine the dynamics of a session facing a significant deficit. To erase the deficit the Legislature could cut other general fund appropriations for outdoors, water, and the arts, and use constitutionally-guaranteed revenue to offset the cuts.

**8. Logrolling is inevitable in legislation, but ought not be the basis of a constitutional amendment** — The game and fish lobby has worked for over a decade to put a dedicated funding amendment on the ballot. While we oppose this amendment, we applaud them for their diligence and honesty. However, the current amendment invalidates the integrity of the amendment process by throwing in the arts. The arts and the outdoors are two disparate activities, and voters are denied the opportunity to vote for one but not the other. The honest approach would have been placing two discrete amendments on the ballot.

The amendment is not a referendum on whether we like clean water, good fishing and hunting, and the arts, or even whether we think such services deserve more support.

This amendment is much more fundamental than that. It's about the way we want our state governed. Is the state general fund to be adjusted every biennium by the Governor and Legislature as needs for governmental services change or is the general fund to be permanently divided—specifically to hundredths of a percentage point—among competing interests?

It's not easy to match public needs with public resources. That's why we elect our Governor and Legislature, entrusting them to listen to the wide range of interests of citizens of this state, and entrusting them to decide year by year who gets what and how much. Chances are we'll never be fully satisfied with the results.

## **C. Background**

**1. What the amendment provides**— Voters will be asked to approve an amendment to the Minnesota constitution at the November 2008 election. The vote to place the amendment on the ballot was 85-46 in the House and 46-17 in the Senate.

A majority of all persons casting ballots—irrespective of whether they vote on the amendment or leave it blank—is necessary for approval.

**The language of the amendment as it will appear on the ballot:**

"Shall the Minnesota Constitution be amended to dedicate funding to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater by increasing the sales and use tax rate beginning July 1, 2009, by three-eighths of one percent on taxable sales until the year 2034?"

A state sales tax increase of three-eighths of one percent represents an additional tax of 37.5 cents on a \$100 purchase. The statewide sales tax, now at 6.5 percent, would increase to 6.875 percent. The sales tax in five metropolitan area counties (Anoka, Dakota, Hennepin, Ramsey and Washington), would increase from 6.75 percent to 7.125 percent.

The three-eighths of a penny sales tax would raise an estimated \$300 million annually, according to a group advocating passage of the amendment. The tax would go into effect on July 1, 2009. It would be apportioned as follows:

—33 percent in an outdoor heritage fund "to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game and wildlife."

—33 percent in a clean water fund "to protect, enhance, and restore water quality in lakes, rivers and streams and to protect groundwater from degradation." At least five percent of this fund must be spent to protect drinking water sources.

—14.25 percent in a parks and trails fund "to support parks and trails of regional or statewide significance."

—19.75 percent in an arts and cultural heritage fund "for arts, arts education, and arts access and to preserve Minnesota's history and cultural heritage."

Revenue deposited in these funds would be appropriated by the Minnesota Legislature. In an effort to discourage the Legislature's using the funds to replace other appropriations, the language of the constitutional amendment states the money "must supplement traditional sources of funding for these purposes and may not be used as a substitute."

**2. A special council is created to recommend use of outdoor heritage fund** —The 2008 Legislature created a special council to make recommendations to the Legislature on how the outdoor heritage fund would be appropriated. The Council, to be named the Lessard Outdoor Heritage Council in honor of former State Sen. Robert Lessard, would have 12 members, eight non-legislators and four legislators. The non-legislators would "have practical experience or expertise or demonstrated

knowledge in the science, policy, or practice of protecting, enhancing wetlands prairies, forests and habitat for fish, game and wildlife", but could not be registered lobbyists. The Governor would appoint four non-legislators, and the Senate and House leadership, two each. The legislative members, appointed by Senate and House leadership, would include the environmental and natural resource committee chairs in the House and Senate and one minority party member from each body.

Up to one percent of the outdoor heritage fund (about \$1 million annually) could be used to cover staffing, administrative expenses and compensation and travel for council members.

No such groups have been set up for the other funds that would be created by the amendment.

**3. History of the amendment** —Bills initially introduced in the 1990s for dedicated funding were first directed to game, fish, and wildlife habitat, but gradually were expanded to include state parks and trails, metropolitan and other regional parks, and water quality improvements, according to a background memo prepared by the research department of the Minnesota House of Representatives. It wasn't until 2000 that bills began to be heard in committee. In 2006 the list of beneficiaries of dedicated funding was expanded to include arts and humanities. The final bill was approved as a first item of business in the 2008 Legislature.

**D. Related Civic Caucus positions** —In 2006 the Civic Caucus unsuccessfully opposed a constitutional amendment that dedicates the motor vehicle sales tax to transit and highways. The Civic Caucus warned that passage of the transportation amendment could lead to additional amendment, including the possibility of an amendment to guarantee revenue to the outdoors. See the Civic Caucus report at:

[http://www.civiccaucus.org/ReportTranspAmend\\_09\\_06.htm](http://www.civiccaucus.org/ReportTranspAmend_09_06.htm) .

Before the 2008 Legislature convened, when it was increasingly apparent that lawmakers were poised to pass the outdoors-water-arts amendment, the Civic Caucus, recommended that the Legislature not submit an amendment without at least trying to pass legislation first. See [http://www.civiccaucus.org/Report\\_OutdoorsWAAmend.htm](http://www.civiccaucus.org/Report_OutdoorsWAAmend.htm) .

**E. The Civic Caucus process**— The Civic Caucus is a non-partisan, tax-exempt, educational organization, with a unique approach for involving participants. A small core group meets weekly. (See <http://www.civiccaucus.org/about/meet-the-group.html> for background on members of the core.) Another 1,000 persons participate on-line. Summaries of weekly meetings are circulated to all participants, who, in turn, are invited to share their comments and respond to questions. Those comments and responses are placed permanently on the Civic Caucus website, <http://civiccaucus.org>

The Civic Caucus occasionally prepares position papers, such as this position paper on the constitutional amendments. When a position paper is prepared, the Civic Caucus reviews information provided by thought leaders on the subject under study. For information from some 20 thought leaders on the constitutional amendments go to <http://www.civiccaucus.org/issuesF4DedicatFunding.html> .

A first draft is prepared, reviewed and changed by the Civic Caucus core group, after which it is circulated among on-line participants for their input. The Civic Caucus makes further changes based on participants' suggestions, and the report then is approved by the Civic Caucus core group. After approval, the final report is circulated among the on-line participants, requesting their signatures in support. Names of supporters then are included in the final report. Participants' suggestions and comments, pro and con, are placed on the website adjacent to the final report.

**F. Supporters of this statement** —The following individuals agreed to have their names listed in support of this statement:

John S. Adams

Stephen R. Alderson

Donald H. Anderson

Ray Ayotte

Ann E. Berget

Dave Broden

Ellen T. Brown

Robert J. Brown, former state senator

David Carlson

Norm Carpenter

Charles H. Clay

Gary Clements

Marianne Curry

Jack Davies, former state senator, and Pat Davies

Sandra W. Davis, Blake S. Davis

Bright Dornblaser

Senator Dave Durenberger, Retired

Ed Dirkswager

John Farrell

John R. Finnegan, Sr.

Gene Franchett

Don Fraser, former member of Congress

Robert A. Freeman

Bill Frenzel, former member of Congress

Debby Frenzel

Paul A. Gilje

Scott W. Halstead

Paul Hauge

Roger Heegaard

James L. Hetland, Jr.

Ruby Hunt

Wayne B. Jennings

James E. Jernberg

Curt Johnson

Dennis L. Johnson, LaVonne S. Johnson, Deer River, MN

Verne C. Johnson

A. M. "Sandy" Keith, former chief judge, Minnesota Supreme Court

Sheila Kiscaden, State Senator (retired)

Jay Kiedrowski

Joseph Lampe

Dan Loritz

Charles P. Lutz

Robert P. Mairs

Tim McDonald

Richard McGuire

Malcolm McLean

John W. Mooty

John C. Nowicki

Sally Olsen

Jim Olson

Carolyn Ring

John Rollwagen

Steve Rothschild

John E. Sampson

Royce Sanner

Ann and Larry Schluter

Ray Schmitz

Clint Schroeder

Lyall A. Schwarzkopf

Clarence Shallbetter

Tony Solgard

David M. Strom

Tom H. Swain

Roy L. Thompson

Rod Tietz

Steve Tjeltveit

Jim Weaver

Craig Westover

Bob Whereatt

Robert J. White

Frank Wright, retired journalist

---