

MONTANA SHOOTING SPORTS ASSOCIATION
2009 LEGISLATIVE ISSUES

2008 LEGISLATIVE CANDIDATE QUESTIONNAIRE

Please check the response that best describes your position on each issue.

1. **"Gun-free" or "helpless victim" zones.** National experience teaches us that emotionally-inspired "gun-free" zones are only gun-free for victims, and actually reduce safety for people in such zones. Police never arrive in a gun-free zone in time to save those who die. Such are the lessons from Virginia Tech and Northern Illinois University. If a madman runs amok in his selected, crowded place, the presence of a person exercising a concealed weapon permit can save many lives. This is the lesson from the Colorado Springs church attack and the Utah mall attack. Montana artificially creates places of high risk by declaring them to be "gun-free" zones, but gun-free for victims only because madmen and criminals don't obey the law. MSSA proposes to correct this mistake and cure problems in Montana law by dramatically reducing the places where qualified Montana citizens are not allowed to exercise a concealed weapon permit.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

2. **Liability for gun shows, shooting ranges and shooting matches.** Each year it becomes more difficult to find insurance companies that even write liability policies for gun shows, shooting ranges and shooting matches, and the expense of such insurance is skyrocketing, all notwithstanding low risk and minimal history of claims for this type of insurance. Montana has enacted law exempting firearm instructors from liability except for gross negligence, for exactly these reasons. To keep these activities alive in Montana, MSSA proposes legislation exempting gun shows, shooting ranges and shooting matches from liability except for gross negligence and declaring that people involved in these recreational activities do so voluntarily and at their own risk. A draft of this bill may be reviewed at:
<http://www.progunleaders.org/Liability/>

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

3. **Montana-made firearms.** Nearly all federal regulation of firearm manufacture and transfer is accomplished under the guise of authority in the U.S. Constitution for Congress to regulate interstate commerce (the "commerce clause"). MSSA will advance a bill to declare that any firearms made in Montana and retained in Montana are simply not subject to federal regulation under commerce clause authority. Any firearms made under this exemption would have "Made in Montana" stamped into the metal of the receiver, and would lose this protection anywhere outside Montana. This bill was introduced in 2007 as HB 420, and may be viewed at:
<http://data.opi.mt.gov/bills/2007/billhtml/HB0420.htm>

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

4. **Supporting self defense.** There is a serious problem for gun owners in other states that is beginning to creep into Montana. When a person uses a firearm in self defense, that person is increasingly likely to face one or more criminal charges as a result.

Possession of firearms for self defense is guaranteed by the Montana Constitution. MSSA will advance a bill to tweak Montana law in a number of respects to clarify the ability of Montanans to possess and use firearms properly for self defense without fear of criminal prosecution. This bill will have a number of sections, each of which will be described separately below (A - K). Not included here is a general declaration of legislative intent, including that self-defense is not a crime.

A. **No duty to summon help or flee.** This section declares what is a cultural norm in Montana now, but which is not currently expressed in law. That is, a person confronted with the need to defend himself or herself has no legal duty to first summon law enforcement assistance, or to either retreat or flee, before defending himself or herself.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

B. **Defensive or harmless display of a firearm not a crime.** Some states have laws defining as a criminal offense something called "brandishing" a firearm. We wish to clarify this topic in Montana law. This section says that no person who displays or shows a firearm for a defensive purpose may be held accountable for a criminal act. This section defines what constitutes simple display of a firearm, or display for a defensive purpose. It also defines what display would require justification for use of lethal force already defined in Montana criminal law, such as pointing a firearm at another person.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

C. **Citizen use of force to detain another.** Currently, Montana law does not clearly authorize a Montana citizen to use any level of force to detain another person believed to have committed a crime. This section says that a person may use reasonable force to detain a person believed to have committed a crime, but that lethal force may only be used under the criteria already established in Montana criminal law (to defend oneself).

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

D. **Court or jury may award legal costs for charges dismissed or exonerated.** Some prosecutors charge multiple criminal charges for one incident, hoping to leverage a quick plea bargain with the threat of excessive defense costs for the accused to defend against the multiple charges. Such overcharging does not serve the cause of justice. This section says that if, in a self defense situation, any of the charges filed are dropped or dismissed, or if the accused is exonerated for any of the charges, either the judge or the jury may award defense costs attributable to the charges dropped, dismissed, or for which the accused is exonerated. This is intended to level the playing field, and, hopefully, persuade prosecutors to file only those charges that they really believe they can prove.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

E. Landlords and hotels may not ban firearms. A non-resident owner of Montana apartment buildings posted a sign banning firearms from the premises. While the Montana Constitution says that the right to keep firearms for self protection "may not be called into question", there is no Montana statute addressing this specific issue. Some say that a property owner has a property right to ban firearms from rental properties. The counter-argument is that a person's home is considered to be his castle. Therefore, when a person rents a room or an apartment, it becomes his castle. Under those conditions the owner transfers much of his property rights to the renter, and the landlord may not prevent a renter from exercising a constitutional right. For instance, landlords may not bar a renter from religious exercise. This section says that landlords and hotels may not prohibit renters from possessing firearms.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

F. Custody or seizure of a firearm - mandatory return. Another area where Montana law is silent concerns when and for how long police may seize firearms. This section clarifies that when a firearm is used in a self defense situation, police may take the firearm used into temporary custody for the safety of persons at the scene, may keep the firearm longer if the person is arrested, and may keep the firearm longer yet if the person is charged with a crime, but must give the person a receipt for the firearm taken, and must return the firearm to the person from whom it was taken or the rightful owner, unless the person is convicted of a crime for which the firearm was used. While there is legitimate discussion about what timelines are proper, it is our position that certain timelines should be expressed in law and that receipts be given for firearms seized for longer than a specified time.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

G. Investigation to disclose self defense. Sometimes when investigations are performed at the scene of a self-defense incident, the investigation is focused primarily on discovering evidence that a crime was committed. This section requires that any investigation of an incident where self-defense is apparent or claimed must also focus on gathering evidence that would disclose valid self-defense.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

H. Firearms not to be destroyed. In some places in the U.S., it has become standard police practice to destroy any firearms that come into police custody, unless they are needed for evidence, even if they may have been lawfully possessed by the person from whom they were taken. This section says that if a firearm taken into custody is not needed for evidence in a pending criminal action, it must be returned to the owner, or, if the owner cannot be found, it must be sold into the marketplace to an eligible buyer such as a licensed firearm dealer, if that can be done, rather than being destroyed. The sale proceeds would go to the general fund of the entity overseeing the law enforcement agency.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

I. **Concealed weapon permit holders exempt from prohibited places.** This section would exempt people who have applied for and obtained concealed weapon permits from the prohibition on exercising their permits in the "prohibited places" currently in Montana law.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

J. **Mandatory probable cause hearing for self defense cases.** Under current law and practice, a person who has defended himself or herself with a firearm may be far into the legal expense of a criminal defense before there is ever an opportunity for the accused to challenge the probable cause upon which the permission for prosecution is granted by a judge. This section would require that if self defense is apparent or claimed, the prosecutor will not be allowed to file criminal charges until the court has held a hearing concerning the probable cause that is the basis for the criminal charge, a hearing at which the accused may contest the probable cause argued by the prosecution. Such a hearing would save money for the justice system where the probable cause might later be found to be insufficient for prosecution.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

K. **Concealed weapon permits.** For 17 years Montana has conducted an experiment whereby a person must have a concealed weapon permit to carry a firearm under their clothing legally inside city limits, but not outside the limits of an incorporated city or town (99.4% of Montana). A successful experiment, this one has demonstrated that there is essentially zero incidence of normally law abiding people getting into trouble when carrying concealed firearms outside cities. In order to harmonize the remaining 6/10ths of 1% with the rest of Montana, we propose to change the law to make carrying a concealed firearm illegal only when the person uses it to commit a crime. This would make it so a permit is not required to carry a concealed firearm anywhere in Montana (except for "prohibited places"), but that permits are still available for those who wish to have them for out-of-state travel and purchases of firearms under the Brady law.

I would:

- Sponsor
- Cosponsor
- Support
- Be Neutral
- Oppose

5. **Shooting range funding.** Montana began using some hunter license money to make matching grants to develop shooting ranges in 1989. The program to build safe and suitable places for Montana people to shoot was put into state law in 1999, as the Shooting Range Development Program (SRDP). The funds for this program are approved each legislative session in the appropriations process for the Department of Fish, Wildlife and Parks budget. There are no general tax revenues used for this program, only money hunters pay for licenses. The 2007 Legislature appropriated \$1,000,000 for the SRDP.

About application of SRDP funds by FWP, Montana law at 87-1-279, MCA, says: "Program rules. (3) The department **shall make every effort** to expend or obligate funds for shooting range improvement grants within the year for which they are appropriated."

In June of 2007, FWP sent a letter to eligible shooting clubs saying: "FWP will have to monitor income and expenditures throughout the coming fiscal year (July 1, 2007 through June 30, 2008) **before making a final decision on whether to spend the additional \$550,000 authorized**. So what does this mean? **FWP will continue to accept grant proposals until May 1, 2008. At that time FWP will make a decision whether or not to award additional grants.**" (Emphasis added)

FWP is saying that it is prepared to violate Montana law in order to chill the grant application process - that clubs may go to the considerable trouble to prepare grant applications only to learn in June of 2008 that FWP has decided (illegally) to NOT spend the money the Legislature appropriated for shooting ranges. If FWP can dissuade clubs from preparing applications, FWP can then tell the Legislature in 2009 that it simply didn't receive enough applications to utilize the funds appropriated in 2007.

We are asking that \$1,000,000 be appropriated to the SRDP again in the 2009 legislative session, regardless of how successfully FWP has chilled the shooting range grant application process.

I would: Sponsor() Cosponsor() Support() Be Neutral() Oppose()

The foregoing responses are actually my positions on these issues, to the best of my knowledge and at this time.

Candidate Signature

Date

Candidate printed name

Office sought

Mailing address if different than envelope.

Thank you for being willing to serve your community and state in public office, and thank you very much for helping to provide us information about your views on issues related to firearms.

Please return questionnaire to MSSA, P.O. Box 4924, Missoula 59806.

Any additional comments may be added here or on separate sheet: