



Dave Fern

House of Representatives District
HD-005

Democrat

Contact: (406) 212-0674

211 DAKOTA AVE WHITEFISH, MT 59937-2205



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This legislator voted constitutionally on **17%** of the votes shown below.

★ Pro-liberty ✗ Anti-liberty ? Did not Vote **Vote**

1. HB551 Right to Carry in Montana's Constitution (failed 62 to 34, with two-thirds needed, on 5/2/2023). Would propose to amend Montana's Constitution by declaring that it is the "right of any person to keep and bear arms" and removing the restrictive clause regarding the carrying of concealed weapons. **No** ✗

2. SJ15 Resolution on *Marbury v. Madison* (failed 44 to 55 on 4/12/2023). Resolves that "the belief that the court has exclusive authority to interpret the constitution and that its decisions are binding on the other two branches is a myth based on a faulty understanding" of the U.S. Supreme Court's opinion in *Marbury v. Madison*. **No** ✗

3. HB604 "Sheriffs First" Bill (failed 32 to 68 on 3/2/2023). Would require federal employees to obtain the county sheriff's written permission prior to making an "arrest, search, or seizure" in the state. **No** ✗

4. HB598 Prohibiting Ranked-Choice Voting (passed 56 to 43 on 3/2/2023). Prohibits a ranked-choice voting method from being used to determine the election or nomination of a candidate to a local, state, or federal office. **No** ✗

5. HB527 Defend the Guard Act (failed 40 to 60 on 3/2/2023). Would have prevented any member of the Montana National Guard from being deployed for active duty combat without Congress passing an "official declaration of war." **No** ✗

6. HJ13 Article V Convention: Balanced Budget Amendment (failed 29 to 70 on 3/1/2023). Would apply to Congress for a "convention of the states" under Article V of the U.S. Constitution for the "sole purpose" of proposing a federal balanced budget amendment (BBA). **No** ★



MONTANA LEGISLATIVE **SCORECARD** BASED ON THE U.S. CONSTITUTION

Rep. Dave Fern
Lifetime Score: 8%

MT Scorecard 2023
2023 Regular Session Score

The Legislative Scorecard is a nationwide educational program of The John Birch Society. Its purpose is to create an informed electorate on how state legislators are voting. The Scorecard is nonpartisan; it does not promote any candidate or political party. Bills are selected for their constitutional implications and cost to the taxpayers.

Please share this Scorecard in your district to inform people about your legislator's record on key votes.

U.S. Constitution, Amendment I --- 11 C.F.R. §114(4)(c)(4) --- 616 F.2d 45 (2d Cir. 1980)

The following scorecard lists several key votes in the Montana State Legislature in 2023 and ranks state representatives and senators based on their fidelity to (U.S.) constitutional and limited-government principles.

This is our second state-level Scorecard; the selected votes may not be reflective of legislators' overall records. Their cumulative scores will change as we add more votes. Please check regularly for updates.



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The Constitution

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Bill Descriptions for the Votes that Affect You

1. Right to Carry in Montana's Constitution

HB551 would propose to amend Montana's Constitution by declaring that it is the "right of any person to keep *and* bear arms" [emphasis added] and removing the restrictive clause regarding the carrying of concealed weapons. The Second Amendment to the U.S. Constitution guarantees that the right of the American people "to keep and bear arms, shall not be infringed."

2. Resolution on Marbury v. Madison

SJ15 resolves that "the belief that the court has exclusive authority to interpret the constitution and that its decisions are binding on the other two branches is a myth based on a faulty understanding" of the U.S. Supreme Court's opinion in *Marbury v. Madison*.

Judges are not the sole interpreters of the law or the ultimate authorities on constitutional questions. Article VI, Clause 3, of the U.S. Constitution notably requires that all federal and state officials be duty-bound by oath to support the Constitution. This is part of the Constitution's elaborate system of checks and balances, which provides for both federalism and a separation of powers. Each mutually independent branch of government at every level, therefore, has a co-equal role in maintaining fidelity to the Constitution, including opposing any violations by the others.

3. "Sheriffs First" Bill

HB604 would require federal employees to obtain the county sheriff's written permission prior to making an "arrest, search, or seizure" in the state, with exceptions, and would also invalidate any federal law purporting to give federal employees the authority of a county sheriff.

Upholding the authority of local law enforcement is a basic premise of self-government under the U.S. Constitution's federal system, which decentralizes power and protects state sovereignty. The 10th Amendment makes it explicit that any power not delegated to the federal government nor prohibited to the States by the Constitution is "reserved to the States respectively, or to the people."

4. Prohibiting Ranked-Choice Voting

HB598 prohibits a ranked-choice voting method from being used to determine the election or nomination of a candidate to a local, state, or federal office.

All attempts to enact ranked-choice voting should be opposed. This complicated, multiple-round, and unconstitutional method weakens election integrity by allowing a candidate to potentially win without genuine support from a plurality of voters. The scheme's ballot casting requirements undermine each citizen's right to vote and could deny them from being able to select the one and only candidate of their choice.

5. Defend the Guard Act

HB527 would prevent any member of the Montana National Guard from being deployed for active duty combat without Congress passing an "official declaration of war" or taking an "official action" otherwise pursuant to the U.S. Constitution to "execute the laws of the country, repel an invasion, or suppress an insurrection."

Article I, Section 8, of the U.S. Constitution expressly asserts that "Congress," not the President, "shall have power...to provide for the common defence." Only Congress—as explained and limited by succeeding Clauses 11, 12, and 15—is granted the specified powers to "declare war," "raise and support Armies," and "provide for calling forth the Militia."

6. Article V Convention: Balanced Budget Amendment

HJ13 would apply to Congress for a "convention of the states" under Article V of the U.S. Constitution for the "sole purpose" of proposing a balanced federal budget amendment.

Efforts to call an Article V convention should be resisted. The States should act immediately to nullify all unconstitutional federal laws, rather than risk a constitutional convention. Simply following the U.S. Constitution's limitations on federal power would more than balance the budget, whereas a BBA would have significant loopholes allowing for continued excessive spending. Article V was designed to correct potential errors or defects in the Constitution, not the failure of elected officials to uphold their oath of office.