

Some *Distinctions* Between the U.S. and Montana Constitutions

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UNITED STATES CONSTITUTION (1788-1992)

MONTANA CONSTITUTION (1972-2018)

PREAMBLE: Why “We the People” established our Constitutions	
<i>We the People of the United States</i>, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. (Preamble.)	We the people of Montana <i>grateful to God for the quiet beauty of our state</i>, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, <i>equality of opportunity</i> and to secure the blessings of liberty for this and future generations do ordain and establish this constitution. (Preamble.)
RATIFICATION AND AMENDMENTS: How We create and maintain our Constitutions	
[Ratification.] The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution.... Art. VII.	Periodic submission. [T]he question of holding a convention ... shall be submitted ... <i>at the general election in the twentieth year</i> following the last submission. Art. XIV, § 3.
[Amendments.] The Congress, whenever <i>two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution</i>, or, on the Application of the Legislatures of <i>two thirds of the several States, shall call a Convention for proposing Amendments</i>, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by [three fourths of the several States]. Art. V.	Amendment by legislative referendum. Amendments to this constitution may be ... adopted by [two-thirds of the members of the legislature, and if] <i>approved by a majority of the electors voting thereon</i>, the amendment shall [be ratified] ... Art. XIV, § 8. Amendment by initiative. <i>The people may also propose constitutional amendments by initiative</i> ... If approved by a majority voting thereon, it shall [be ratified]. Art. XIV, § 9.
POPULAR SOVEREIGNTY: How our Constitutions constitute our governments	
[Federal supremacy.] This Constitution, and the Laws of the United States which shall be made <i>in Pursuance thereof</i> ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, <i>any Thing in the Constitution or Laws of any State to the Contrary notwithstanding</i>. Art. VI, § 2. [Reserved powers.] <i>The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.</i> Amend. X. [Oath of office.] ... [A]ll ... Officers, both of the United States and of the several States, shall be <i>bound by Oath or Affirmation, to support this Constitution</i> ... Art. VI, § 3. [Limits on States.] <i>No State shall enter into any Treaty, Alliance, or Confederation.</i> Art. I, § 10(1).	Popular sovereignty. <i>All political power is vested in and derived from the people....</i> Art. II, § 1. Self-government. The people ... <i>may alter or abolish the constitution and form of government whenever they deem it necessary.</i> Art. II, § 2. Oath of office. [A]ll ... officers, shall [swear or affirm to] support, protect and defend <i>the constitution of the United States, and the constitution of the state of Montana</i>, and that I will discharge the duties of my office with fidelity (so help me God). Art. III, § 3. Compact with United States. All provisions of the enabling act of Congress (1889), including the agreement and declaration that <i>all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States</i>, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

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LEGISLATIVE POWER: Enumerated federal powers / general state power (& duties)	
[Legislative powers.] All legislative Powers herein granted shall be vested in a <i>Congress of the United States</i>, which shall consist of a Senate and House of Representatives. Art. I, § 1.	Power and structure. The legislative power is vested in a legislature ... <i>The people reserve to themselves the powers of initiative and referendum.</i> Art. V, § 1. <i>See also Separation of powers.</i> ... No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others ... Art. III, § 1.
[Taxation and spending.] The Congress shall have Power To <i>lay and collect Taxes</i> ... to pay the Debts and provide for the common Defence and general Welfare of the United States ... Art. I, § 8(1); <i>see also</i> Amend. XVI (income taxation). [Federal property.] [T]o ... make <i>all needful Rules and Regulations</i> respecting the Territory or other Property belonging to the United States ... Art. IV, § 3(2). [Commerce.] To <i>regulate Commerce</i> with foreign Nations, and among the several States, and with the Indian Tribes ... Art. I, § 8(3). [Necessary and proper.] To make all Laws which shall be <i>necessary and proper</i> for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution ... Art. I, § 8(18). [Civil rights.] Congress shall have power to enforce, by <i>appropriate legislation</i>, the provisions of [Amend. XIV]. Amend. XIV, § 5.	Balanced budget. <i>Appropriations by the legislature shall not exceed anticipated revenue.</i> Art. VIII, § 9. Educational goals and duties. ... The state recognizes the distinct and unique <i>cultural heritage of the American Indians</i> ... The legislature <i>shall provide a basic system of free quality public elementary and secondary schools</i> ... Art. X, § 1(3). [Environmental] Protection and improvement. The legislature <i>shall provide for the administration and enforcement of [the duty to] maintain and improve a clean and healthful environment</i> in Montana for present and future generations. Art. IX, § 1. Nonmunicipal corporations. ... The legislature <i>shall provide protection and education for the people against harmful and unfair practices</i> by either foreign or domestic corporations, individuals, or associations. Art. XIII, § 1(2).
[Foreign emoluments.] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, <i>accept of any present</i>, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. Art. I, § 9(8); <i>see also</i> Art. II, § 1(7) (state emoluments). [Obligation of contracts.] No State shall ... pass any Bill of Attainder, ex post facto Law, or <i>Law impairing the Obligation of Contracts</i>, or grant any Title of Nobility. Art. I, § 10(1).	Code of ethics. The legislature shall provide a code of ethics <i>prohibiting conflict between public duty and private interest</i> for members of the legislature and all state and local officers... Art. XIII, § 4. [O]bligation of contracts, and irrevocable privileges. ... No law impairing the obligation of contracts, or <i>making any irrevocable grant of special privileges</i> ... shall be passed ... Art. II, § 31. Local and special legislation. <i>The legislature shall not pass a special or local act</i> when a general act is, or can be made, applicable. Art. V, § 12. Tax purposes. Taxes shall be levied by <i>general laws for public purposes</i>. Art. VIII, § 1.

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EXECUTIVE POWER: Unitary federal executive / plural state executives	
[Executive power.] <i>The executive Power</i> shall be vested in a President of the United States of America. Art. II, § 1.	Officers. The executive branch includes a governor, lieutenant governor, <i>secretary of state, attorney general, superintendent of public instruction, and auditor...</i> Art. VI, § 1.
JUDICIAL POWER: Independence & accountability through tenure / elections	
[Judicial power.] <i>The judicial Power</i> of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may ... ordain. Art. III, § 1.	Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law. Art. VII, § 1.
[Judicial terms.] The Judges, both of the supreme and inferior Courts, shall hold their Offices <i>during good Behaviour...</i> Art. III, § 1.	Selection. Supreme court justices and district court judges <i>shall be elected by the qualified electors ...</i> Art. VII, § 8.
RIGHTS: Specific Montana rights stand above the floor of federal rights	
[Liberty.] [N]or shall any State deprive any person of life, <i>liberty</i>, or property, without due process of law ... Amend. XIV, § 1. [Privileges or immunities.] No State shall make or enforce any law which shall abridge <i>the privileges or immunities of citizens</i> of the United States ... Amend. XIV, § 1.	Inalienable rights. All persons are born free and have certain inalienable rights. <i>They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities</i>, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways ... Art. II, § 3.
[Equal protection.] No State shall ... deny to any person within its jurisdiction <i>the equal protection of the laws</i> . Amend. XIV, § 1.	Individual dignity. <i>The dignity of the human being is inviolable.</i> No person shall be denied the equal protection of the laws. <i>Neither the state nor any person, firm, corporation, or institution shall discriminate against any person</i> in the exercise of his civil or political rights on account of race, color, sex, <i>culture, social origin or condition, or political or religious ideas</i> . Art. II, § 4.
[Freedom of religion.] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ... Amend. I.	Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Art. II, § 5. See also Aid prohibited to sectarian schools. The legislature ... <i>shall not make any direct or indirect appropriation or payment ... for any sectarian purpose ...</i> Art. X, § 6(1).
[Freedom of expression.] Congress shall make no law ... abridging the freedom of speech, or of the press ... Amend. I.	Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech <i>or expression</i> . <i>Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty ...</i> Art. II, § 7.

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RIGHTS: Specific Montana rights stand above the floor of federal rights, cont.	
[Right to assemble and petition.] Congress shall make no law ... abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Amend. I [Congressional record.] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy ... Art. I, § 5(3).	Right of participation. <i>The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law. Art. II, § 8.</i> Right to know. <i>No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. Art. II, § 9.</i>
[Due process of law.] [N]or shall any State deprive any person of life, liberty, or property, without due process of law ... Amend. XIV, § 1.	Due process of law. No person shall be deprived of life, liberty, or property without due process of law. Art. II, § 17. <i>See also Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. Art. II, § 10.</i>
[Right to bear arms.] A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. Amend. II.	Right to bear arms. The right of any person to keep or bear arms <i>in defense of his own home, person, and property</i>, or in aid of the civil power when thereto legally summoned, shall not be called in question, <i>but nothing herein contained shall be held to permit the carrying of concealed weapons.</i> Art. II, § 12.
[Denial or abridgment of voting rights.] Amends. XV (race), XIX (sex), XXIV (poll taxes), & XXVI (age 18).	Right of suffrage. <i>All elections shall be free and open</i>, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Art. II, § 13.
[Trial by jury.] In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. Amend. VII.	Trial by jury. <i>The right of trial by jury is secured to all and shall remain inviolate. Art. II, § 26.</i> <i>See also The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character... Right and justice shall be administered without sale, denial, or delay. Art. II, § 16.</i>
[Takings.] ... [N]or shall private property be taken for public use, without just compensation. Amend. V.	Eminent domain. Private property shall not be taken <i>or damaged</i> for public use without just compensation <i>to the full extent of the loss having been first made</i> to or paid into court for the owner ... Art. II, § 29.