



Montana Legislative Services Division

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TO: Revenue Interim Committee

FROM: Jaret Coles, Staff Attorney

RE: Constitutional Sales Tax Provisions

DATE: November 7, 2025

The Montana Constitution establishes the limits on legislative authority for legislative action. The general rule is that the Constitution is a limit and not a grant of legislative authority. *State ex rel. Evans v. Stewart*, 53 Mont. 18, 161 P. 309 (1916).

Article VIII, section 16, of the Montana Constitution establishes a limit on legislative authority by establishing a 4% limit on a general statewide sales tax or use tax. This memorandum discusses the history of this constitutional amendment, as well as proposed legislative changes to the limit during the 21<sup>st</sup> Century.

### **Overview of the Constitutional Sales and Use Tax Limit**

During the 1993 Legislative Session, the Legislature passed two significant pieces of legislation regarding a statewide sales tax.

The first piece of legislation was Senate Bill No. 235, which was passed by the Legislature<sup>1</sup> and titled Legislative Referendum No. 111 (LR 111). The referendum was considered by the qualified electors during a special election that was conducted on June 8, 1993. Voters were asked to consider a generally revise taxation bill that contained 192 sections. The measure provided for a 4% general statewide sales tax, as well as reductions to individual income taxes, reductions to the corporate income tax, reductions to property taxes, increases in state support of school funding, and an increase to electrical energy tax revenue. LR 111 failed to pass based on a vote of 78,349 for the referendum and a vote of 228,587 against the referendum. The arguments for and against LR 111 from the voter information packet and the fiscal statement are provided in Exhibit A.

The second significant piece of legislation was Senate Bill No. 289, which was passed by the Legislature<sup>2</sup> and titled Constitutional Amendment No. 27 (CA 27). The proposed amendment to the Montana Constitution was considered by the qualified electors on November 8, 1994, shortly before commencement of the 1995 Legislative Session. CA 27 tracked with the failed LR 111 because it provided for a 4% limit to a general statewide sales tax or use tax, which was the same rate in LR 111. CA 27 passed based on a vote of 175,618 for the amendment and a vote of

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<sup>1</sup> Chapter 544, Laws of 1993.

<sup>2</sup> Chapter 545, Laws of 1993.

150,469 against the amendment. The full text of the amendment was codified in Article VIII, section 16, of the Montana Constitution as follows:

**Section 16. Limitation on sales tax or use tax rates.** The rate of a general statewide sales tax or use tax may not exceed 4%.

The arguments for and against CA 27 from the voter information packet are provided in Exhibit B. There was no discussion in the voter information packet pertaining to what is considered a “general statewide” sales tax. The effect is that the Legislature cannot impose a general sales or use tax at a rate above 4% without amending the Montana Constitution, which ultimately requires a vote by the qualified electors of the state. If the Legislature were to enact a general sales or use tax, the revenue could be appropriated for any public purpose without any restrictions. *See* Art. VIII, secs. 1, 14, Mont. Const.

As it stands, Montana does not impose a general statewide sales tax on goods and services, but it does impose a selective statewide sales and use tax on accommodations, campgrounds, and vehicles rented for 30 days or less. *See* section 15-68-102, MCA. Additionally, resort taxes are levied on certain goods and services by resort communities, resort areas, or resort area districts. *See* sections 7-6-1501 through 7-6-1551, MCA. The resort taxes are not levied on a statewide basis and are limited to luxury items and goods and services that are typically purchased by tourists. *See* section 7-6-1503(2), MCA.

### **Proposed Amendments to the Sales and Use Tax Limits in the 21<sup>st</sup> Century**

During the 2025 Legislative Session, [House Bill No. 841](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that “[s]ales tax or use tax revenue, less administrative costs, must be used solely to reduce property taxes that fund public schools and the Montana university system unless appropriated for other purposes by a vote of three-fourths of the members of each house of the legislature.” The proposal was tabled by the House Taxation Committee on March 28, 2025.

During the 2017 Legislative Session, [Senate Bill No. 351](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that the “state may not impose a general statewide sales tax or use tax.” The proposal was tabled by the Senate Taxation Committee on March 28, 2017.

During the 2015 Legislative Session, [House Bill No. 276](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that the “legislature is prohibited from imposing a tax on the income of an individual or entity when the state is also imposing a general statewide sales tax” The proposal was tabled by the House Taxation Committee on February 13, 2015.

During the 2007 Legislative Session, [Senate Bill No. 529](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that “[i]f a general statewide sales tax or use tax is enacted and if it contains a provision for property tax relief, no statewide tax or fee on property may be levied on class three, class four, class ten, or the first \$150,000 in market value of class eight property as those classes were defined on December 31, 2006.” The proposal was passed by the Senate and tabled by the House Taxation Committee on April 25, 2007.

During the 2005 Legislative Session, [House Bill No. 717](#) was introduced for the purpose of adopting a new section of the Montana Constitution. The proposal provided in relevant part that “[a]n individual income tax and a general statewide sales tax or use tax may not be imposed at the same time, but either the individual income tax or the general statewide sales tax or use tax may be imposed without the other.” The proposal died in the House Taxation Committee after the bill missed the deadline for revenue bill transmittal.

During the 2005 Legislative Session, [House Bill No. 779](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided that if real property sales are subject to a sales or use tax, the amount of the tax could not exceed the 4% limit. The proposal also provided that a certain amount of the sales tax or use tax would be refunded to Montana residents through the income tax. The proposal was tabled by the House Taxation Committee on March 30, 2005.

During the 2005 Legislative Session, [Senate Bill No. 450](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that “[i]f a general statewide sales tax or use tax is enacted and if it contains a provision for property tax relief no statewide tax or fee on property may be levied on class three, class four, or class ten property as those classes were defined on January 1, 2007.” The proposal was passed by the Senate Taxation Committee and missed the transmittal deadline from the Senate to the House.

During the 2003 Legislative Session, [House Bill No. 381](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal provided in relevant part that “[i]f a general statewide sales tax or use tax is enacted and either the state income tax or the statewide property tax is eliminated with the enactment, then the eliminated tax may not be reestablished without an affirmative vote on the question of its reestablishment at a statewide general election.” The proposal was passed by the House and tabled by the Senate Taxation Committee on April 10, 2003.

During the 2001 Legislative Session, [House Bill No. 635](#) was introduced for the purpose of amending Article VIII, section 16, of the Montana Constitution. The proposal increased the maximum amount of a general statewide sales tax or use tax from 4% to 5%. The proposal was tabled by the House Taxation Committee on March 27, 2001.

# EXHIBIT A



## VOTER INFORMATION PAMPHLET FOR THE JUNE 8TH SPECIAL ELECTION ON LEGISLATIVE REFERENDUM 111

### Argument FOR Legislative Referendum 111

True tax reform for Montanans must provide significant reform of our income tax system and significant relief of both residential and personal property taxes. Referendum 111 provides real tax reform by reducing income and property taxes, stimulating Montana's economy, and providing jobs.

Montana must move away from its historic reliance on excessive property taxes, anti-competitive business taxes, and income taxes that continue to escalate. Montanans who create new businesses and new jobs are penalized under our current tax system. Referendum 111 is about jobs growth, expanded business activity, and an equitable tax system for Montana.

Referendum 111 is a less punitive and more progressive income tax proposal which provides for a single rate (6%) income tax structure with generous personal exemptions and standard deductions. A significant number of low-income families will no longer pay Montana income taxes. This simplified tax system eliminates many of the complexities that everyone presently faces when preparing their personal tax returns.

Homeowners will gain a \$20,000 exemption on their property taxes. A credit on the Montana income tax return, equal to the property tax paid on the first \$20,000 of market value on an owner-occupied residence, provides an average property tax savings of \$217. In addition, an average of 35 local education mills will be eliminated, resulting in a further 10% reduction in property taxes. Property tax relief for renters is provided through a \$150 renter's credit claimed on the Montana individual income tax return.

A reduction in the anti-competitive tax on equipment from 9% to 4.5% will

allow small Montana businesses to expand and add jobs. The drain of Montana businesses and Montana jobs to surrounding states will stop.

Referendum 111 uses a 4% sales tax to provide much needed tax relief and reform. Exemptions from the sales tax include: groceries, prescription items, medical services, wages and salaries, utilities, insurance premiums, interest and dividends, motor fuels, mineral interest, occasional sales (including garage sales and fundraisers for charitable groups), advertising services, transportation, day care services, private school tuition, and construction services. The cost of administering Referendum 111 is about 2% of the revenue collected - an extremely efficient and cost effective tax collection system.

A low-income sales tax credit of \$90 per individual is available for each member of a household when total income is below \$13,000. The \$150 renter's credit provides additional low-income relief. These credits are payable even if the individual pays no Montana income tax.

Referendum 111 is not a mechanism for new government programs or spending. The sales tax is capped at 4% and cannot be increased without another vote of the people. Referendum 111 provides a long-term solution to the present imbalance of Montana's fiscal structure and will enable Montana to fund necessary governmental services.

The PROPONENTS' argument and rebuttal were prepared by State Senator Bruce Crippen, State Representative Chase Hibbard, and State Senator Harry Fritz.

### Argument AGAINST Legislative Referendum 111

Montanans believe taxes should be based on a person's ability to pay and that corporations should shoulder their fair share of taxes to pay for the privilege of using the state's resources to make a profit. In the past 13 years, the Legislature has turned our tax policy upside-down, with low and middle-income taxpayers subsidizing huge tax breaks for corporations.

\* Montana lost \$141,400,000 of state revenue in the 1992-93 biennium alone (Legislative Fiscal Analyst), from tax loopholes promoted over the years by big business lobbyists.

\* Through the last 12 years, these subsidies cost Montanans over \$500,000,000! Most Montanans want to close these loopholes instead of shouldering another burdensome tax.

The proposed sales tax makes a bad situation worse, replacing \$125,000,000 in property taxes with sales taxes paid by Montana consumers. Although some property tax relief goes to homeowners and some renters, TWO-THIRDS OF THE BONANZA GOES TO BIG BUSINESSES, CORPORATIONS AND MAJOR LANDHOLDERS.

Individuals and families would pay for the bulk of these corporate tax cuts. The sales tax would raise your total state taxes ABOVE the amount you now pay for all taxes, including the new 6.7% flat income tax.

\* Wealthiest families' taxes stay at 5.3% of their total income.

\* Middle-income families' taxes jump from 7.9% to 8.9% of their total income.

\* Poorer Montana families' taxes rise from 7.5% to 8.5% of their total income.

**IS THE SALES TAX ACTUALLY TAX REFORM? NO!** It does nothing to close existing tax loop holes or make taxes more fair.

**WILL THE SALES TAX REDUCE TAXES? NO!** It amounts to a 55% net

increase in tax collections! \$331,700,000 in new taxes! Furthermore, income and property taxes are deductible from federal taxes. Sales taxes are not. Under the sales tax, a family of four with an income of \$35,000 would see their total tax burden rise by 23%!

**WILL THE SALES TAX STOP TAX INCREASES? NO!** A cap on tax increases lasts until the first day of the next Legislature. When revenue is needed, sales tax exemptions will be eliminated one by one. The sales tax would also repeal 1-105, the property tax limitation law, allowing increases in property taxes.

**WILL THE SALES TAX HELP OUR SCHOOLS? NO!** It provides no additional money for schools. It just replaces permissive levies for debt service, retirement, and transportation.

**WILL THE SALES TAX HELP FAMILY FARMS AND RANCHES? NO!** It would increase taxes on ranchers and farmers for all equipment, parts, and repairs.

**WILL TOURISTS PAY A LARGE SHARE OF THE SALES TAX? NO!** Sales taxes from tourists would barely cover the costs of administering the tax. Tourists would pay about 7% of sales tax revenue, while Montana consumers and businesses would pay 93%.

**WILL THE SALES TAX HELP SOCIAL PROGRAMS? NO!** Not a dime of sales tax money would go to help Montanans with physical or mental health problems, or to abused children.

The sales tax is opposed by small business owners, family farmers, labor, and consumers.

*Join us June 8. Reject the 4% sales.*

The OPPONENTS' argument and rebuttal were prepared by State Senator Bill Yellowtail, State Representative Bill Strizich, and Superintendent of Public Instruction Nancy Keenan.



## PROPOSERS' rebuttal of argument opposing Legislative Referendum 111

The opponents of Referendum 111 want you to ignore the facts. They want you to buy worn-out arguments that have kept you and our children from good job opportunities right here at home.

**THE FACT IS:** R-111 reduces overall income taxes for everyone. Total income taxes for all Montana households would be reduced by about \$82 million a year.

**THE FACT IS:** The sales tax, capped by law at 4%, applies to less than half your purchases. For every four dollars raised, three will give you income and property tax relief and the fourth dollar will be used to pay for such things as education and human services.

**THE FACT IS:** Over \$50 million a year in sales tax revenue will come from out-of-state travelers and out-of-state businesses.

**THE FACT IS:** Montana's businesses will not receive "huge" tax breaks. There are no "loopholes." Businesses will, in fact, pay more taxes under R-111.

**THE FACT IS:** Tax reform is supported by small business, family farmers and education.

**THE MOST IMPORTANT FACT IS:** R-111 balances Montana's entire tax system. Property taxes will no longer be driven to levels that punish your family and destroy jobs. Instead, R-111 gives us a broad-based stable tax system that is fair to all and encourages the creation of new jobs for all of us, young and old.

Without tax reform, we will continue to export our future, our children, control of our state, and jobs to other places.

## OPPONENTS' rebuttal of argument supporting Legislative Referendum 111

*Let's compare the bottom lines.*

● While the sales tax plan contains some short-term tax relief in property and income taxes, in truth, ***the total tax bill for families would be higher under this plan.*** Middle-income Montanans would see the biggest increase.

● ***The sales tax is not tax reform, but a direct tax shift,*** cutting property taxes for big businesses; replacing them with a sales tax on families. Railroads and airlines would receive a \$7,280,000 property tax break, nearly \$5,000,000 for Burlington-Northern alone.

For years, big business lobbyists have claimed, with each additional corporate tax-break, that a stimulated economy and new jobs would result. After hundreds of millions of dollars in tax giveaways to big business since 1981, where are those jobs?

● The only jobs a sales tax would be sure to bring to Montana are the ***148 new tax collectors*** required to administer the sales tax.

● This tax scheme reduces county property tax mills, replacing them with state-controlled sales taxes. Therefore, it ***reduces incentives for schools to control costs.*** It gives no help to schools or local government, increasing pressure to raise local property taxes.

● The sales tax contains many loopholes for special interests. Besides much-advertised exemptions for groceries and medical services, it also contains less well-known ***exemptions for the advertising industry, large mining companies, banks and the insurance industry.***

● ***Referendum 111 is regressive tax policy.*** It is unfair, long-term relief for corporations at the expense of Montana families.

### HOW THE ISSUE WILL APPEAR ON THE JUNE 8TH BALLOT

#### LEGISLATIVE REFERENDUM NO. 111

#### AN ACT REFERRED BY THE LEGISLATURE

AN ACT GENERALLY REVISING TAXATION; ENACTING A 4 PERCENT SALES AND USE TAX; ALLOWING EXEMPTIONS FROM THE SALES TAX AND USE TAX; EXEMPTING CERTAIN PROPERTY FROM TAXATION; REVISING DEBT LIMITS FOR LOCAL GOVERNMENTS AND SCHOOLS; REVISING INDIVIDUAL INCOME TAXES AND PROPERTY TAXES; ALLOWING CREDITS AGAINST INDIVIDUAL INCOME TAX LIABILITY; PROVIDING FOR DISTRIBUTION OF SALES TAX AND USE TAX REVENUE; PROVIDING STATE SUPPORT FOR CERTAIN SCHOOL FUNDING; PROVIDING THAT THIS ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE STATE AT A SPECIAL ELECTION; AMENDING SECTIONS 7-1-2111, 7-3-1321, 7-6-2211, 7-6-4121, 7-6-4254, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-4104, 7-31-106, 7-31-107, 7-34-2131, 15-1-111, 15-6-133, 15-6-138, 15-6-141, 15-6-144, 15-6-207, 15-8-205, 15-23-703, 15-24-301, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-117, 15-30-122, 15-30-126, 15-30-131, 15-30-137, 15-30-142, 15-30-177, 15-30-323, 15-31-131, 15-32-303, 15-36-112, 15-51-101, 16-1-306, 16-1-411, 16-2-301, 17-3-213, 19-11-503, 19-11-504, 20-3-205, 20-6-702, 20-9-331, 20-9-333, 20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-406, 20-9-407, 20-9-439, 20-9-501, 20-10-104, 20-10-141, 20-10-142, 20-10-144, 20-10-145, 20-15-311, 33-7-410, 61-3-303, 61-3-317, 61-3-502, 61-3-504, 61-3-506, 61-3-509, 61-3-701, AND 61-4-112, MCA; REPEALING SECTIONS 15-10-401, 15-10-402, 15-10-406, 15-10-411, 15-10-412, 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

This proposal, submitted by the Legislature for a vote, would reduce income and property taxes and enact a 4% general sales and use tax. Exemptions include: groceries, prescriptions, medical services, tuition, wages, housing payments, utilities, daycare, transportation, and financial services; and exemptions for agriculture, mining, manufacturing, and non-profit organizations. It would set a 6% income tax rate and increase personal exemptions and standard deductions. Property tax reductions include: a \$20,000 homeowner exemption, business and utility tax reductions, and reduced levies for school funding. Low-income households and renters would receive refundable tax credits. It would repeal 1-105, the property tax freeze.

#### FISCAL STATEMENT

The proposal would:

1994-95 biennium  
impact (in millions)

|  |       |
|--|-------|
| Impose a 4% general sales tax            | \$310 |
| Reduce individual income taxes           | (124) |
| Reduce corporation income taxes          | (3)   |
| Reduce property taxes                    | (125) |
| Increase state support of school funding | (48)  |
| Increase electrical energy tax revenue   | 75    |

Net available to reduce state deficit \$85

☐ FOR imposing a 4% sales tax and use tax as part of comprehensive tax reform.

☐ AGAINST imposing a 4% sales tax and use tax as part of comprehensive tax reform.

# EXHIBIT B

### Constitutional Amendment 26 (continued)

When a bill has been passed by both houses there is usually a time lag of from five to ten days or more while the bill is being enrolled and signed by the Speaker of the House and the President of the Senate before the bill is transmitted to the Governor. The Governor's final review process can start from the time the bill has passed both houses, allowing more than ten days to make a decision. The additional days this amendment proposes are not necessary.

Controversial legislation not passed by a two

thirds vote would be subject to political manipulation in trying to delay action so as to avoid the possibility of getting enough votes during the session to override a veto.

The Constitutional Amendment process should not be used to micro manage the administrative process of the legislature.

Constitutional Amendment 26 is not needed and should be defeated.

## **CONSTITUTIONAL AMENDMENT 27**

### ***How the issue will appear on the ballot:***

#### **CONSTITUTIONAL AMENDMENT NO. 27**

An amendment to the Constitution proposed by the Legislature

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII OF THE MONTANA CONSTITUTION TO LIMIT TO 4 PERCENT THE RATE OF A GENERAL STATEWIDE SALES TAX OR USE TAX; AND PROVIDING AN EFFECTIVE DATE.

The Legislature submitted this proposal for a vote. It would add a new section to the Montana Constitution providing that if a general statewide sales tax or use tax is enacted, the rate of tax could not exceed 4%. If passed, the amendment would apply to any general statewide sales or use tax, whether enacted by the Legislature or by public vote.

☐ FOR limiting the rate of a state sales tax or use tax to 4%.

☐ AGAINST limiting the rate of a state sales tax or use tax to 4%.

#### **◆ ARGUMENT FOR CONSTITUTIONAL AMENDMENT 27**

A taxation system should include a balance between funding sources rather than being too dependent on any one source of revenue. If Montanans ever do enact a general sales tax statewide, we must be assured that state government will never become overly reliant on sales tax revenue by legislative action. To insure that our voice will be heard, please vote for placing a constitutional limit of 4% on a state sales tax.

**This measure's PROPONENTS' argument and rebuttal were prepared by Senator Mignon Waterman, Representative Chase Hibbard and C.**

**Gordon Morris.**

#### **◆ ARGUMENT AGAINST CONSTITUTIONAL AMENDMENT 27**

We urge you to reject C-27. Here's why. Voters defeated a sales tax measure by three to one in the vote in June, 1994. C-27 was part of the same tax measure, yet required a separate vote since a constitutional change must be voted on in a general election. We believe that changing the constitution to limit a sales tax is a bad idea for several reasons:

1) C-27 is not needed since voters resoundingly defeated the sales tax measure in June. C-27 was meant to give citizens

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confidence that a Montana sales tax would not experience "tax creep" as we have seen in so many states. Without a sales tax, this is not an issue.

2) We should not change our constitution for specific tax policy. The constitution is meant to define how to govern, not to set specific policies. We need the constitution to provide a basis for our policy decisions. We should keep the constitution clean and simple so it retains maximum flexibility to reflect the times. It is more difficult to change a constitution, and it should be. Let's not clutter it with measures which are more appropriately defined by laws. If and when we want to limit the impact of a sales tax, we should do it through law, not through a constitutional change.

3) C-27 inappropriately limits the powers of our representative government. We elect representatives to make laws which govern us. Representatives express the will of the people by fair representation from all parts of the state. We rule by a majority vote. This is our democratic process, and to work it needs to change as the times change, unlike the constitution which is meant to represent unchanging principles. If your representative does not do their job well, you need to work to elect someone who does. We urge you to reject C-27 and keep the democratic process working.

**This measure's OPPONENTS' argument and**

## **CONSTITUTIONAL AMENDMENT 28**

***How the issue will appear on the ballot:***

CONSTITUTIONAL AMENDMENT NO. 28

An amendment to the Constitution proposed by the Legislature

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 3, OF THE MONTANA CONSTITUTION TO ALLOW EQUALIZATION OF PROPERTY

rebuttal were prepared by Senator Steve Doherty, Representative Emily Swanson and Dennis Burr.

### **◆ PROPONENTS' REBUTTAL OF THE ARGUMENT OPPOSING CONSTITUTIONAL AMENDMENT 27**

C-27 is needed for the very reason cited by the opponent's that we have representatives to make laws. The fact that one legislature submitted the issue of a sales tax to the voters does not mean that a future legislator would do likewise.

As a result, having a constitutional limit on a potential sales tax at 4% will ensure that regardless of how such a tax comes into existence, it cannot exceed the cap authorized under C-27. This is not a question of majority rule, but a guarantee that once implemented a sales tax could not creep up as a result of legislative actions and allow Montana finances to become overly dependent upon any one funding source.

We urge you to support C-27 and constitutionally assure that a general statewide sales tax could never exceed 4%.

### **◆ OPPONENTS' REBUTTAL OF THE ARGUMENT SUPPORTING CONSTITUTIONAL AMENDMENT 27**

Montana does not have a sales tax. We should keep unnecessary concepts out of the constitution. When and if Montana enacts a sales tax we will debate how to limit it. Vote AGAINST limiting a sales tax in Montana's constitution since we don't have a sales tax and may never have one.