

League of Women Voters of Dane County Forum

State Constitution: Are Changes Necessary?

Cosponsored by the
League of Women Voters of Wisconsin

Monday, January 9, 2023, 6:30-8 p.m.
Online via Zoom



Panelists

- Dustin Brown, Senior Staff Attorney at the State Democracy Research Initiative, University of Wisconsin Law School
- Jerome Dillard, Executive Director, and Co-Founder of EXPO
- Jeff Mandell, Founder, President, and Lead Counsel at Law Forward

Moderator

- Sue Jennik, LWVDC Program Director and LWWVI Legislative Committee Chair

Discussion Questions

1. What problems do you foresee if only the Legislature may allocate federal funds?
2. Should pretrial detention and bail policies be determined by the Legislature or the courts?
3. What are the consequences that could result from the proposal that only a U.S. citizen may vote?
4. What would happen if there is not sufficient money available to administer elections and private money is prohibited?
5. What should the Dane County League do to educate the public about these proposed amendments?

The Proposed Amendments

Four amendments to the Wisconsin Constitution were passed by the Legislature in the last session. The State League opposes each of these proposals. If passed again in the next session, which begins January 3, 2023, those amendments will go on the ballot at a time determined by the Legislature. This could be as early as the statewide election for Supreme Court Justice on April 4, 2023. If a majority of voters approve the amendments, they will immediately become part of the Constitution.

Eliminate the Governor's Authority to Allocate Federal Funds

League Position

We promote an open governmental system that is representative, accountable, responsive and capable of making decisions.

[Government Structures & Procedures | MyLO](#)

Analysis

Both the Senate and the Assembly passed 2021 Enrolled Joint Resolution 14 which states:

Section 1. Section 35 of article IV of the constitution is created to read:

[Article IV] Section 35 (1) The legislature may not delegate its sole power to determine how moneys shall be appropriated.

(2) The governor may not allocate any federal moneys the governor accepts on behalf of the state without the approval of the legislature by joint resolution or as provided by legislative rule.

[https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%2014%20\(1st%20consideration\)](https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%2014%20(1st%20consideration))

The Legislative Reference Bureau report on this proposal states:

Since the 1930s, the Wisconsin Constitution has given the Governor the authority to distribute Federal Funds approved by the United States Congress. The Wisconsin State Constitution gives authority to the State Legislature to distribute funds from the State Budget. This balance of power has worked without incident for over 50 years. Today the State Legislature has proposed changing our State Constitution, to take the power to distribute Federal Funds away from the Governor and give it to the State Legislature.

- [2021 Enrolled Joint Resolution 14: A proposed constitutional amendment on the allocation of federal funds](#)
- <https://docs.legis.wisconsin.gov/1933/related/acts/401.pdf>

The [Main Street Alliance](#), an organization of small business owners, opposed the proposal, stating: “We believe it is the duty of the Governor to manage and expend federal funds in times of emergency. The legislative majority attempted to cut \$400 million in small business relief when attempting to take control of these funds earlier this year.”

[Senate Joint Resolution 84 - Lobbying in Wisconsin](#)

Additional Resources

- [Clipping the Governor's Control of Federal Funds \(Wisconsin Examiner\)](#)
- [The Great Debate: Who Has the Authority to Spend Federal Stimulus Funds? \(National Conference of State Legislatures\)](#)
- [State Oversight of Federal Stimulus Funds \(National Conference of State Legislatures\)](#)

- [Updated Information on State and Local Fiscal Recovery Funds Under ARPA \(July 21, 2021\)](#)
- [Governors Begin Proposing Uses of American Rescue Plan Act Funds \(National Association of State Budget Offices\)](#)
- [Budget Processes in the States \(National Association of State Budget Officers, 2021\)](#) (includes table summarizing state laws)

Change Pretrial Detention and Bail Criteria

League Position

Support for a system of justice that assures adults and juveniles prompt and equal treatment before the law.

In the area of pretrial disposition of the adult defendant in the criminal process, use of a point system based on past record, family ties, employment and length of residence, to evaluate the stability of the individual, and all who qualify to be released on recognizance.

[Administration of Justice | MyLO](#)

Analysis

Both the Senate and Assembly passed 2021 Assembly Joint Resolution 17 which states:

Section 1. Section 8 (2) of article I of the constitution is amended to read:
 [Article I] Section 8 (2) All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm as defined by the legislature by law, or prevent the intimidation of witnesses. Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court, or if the person is accused of a violent crime as defined by the legislature by law, only upon a finding that there is a reasonable basis to believe that the conditions are necessary based on the totality of the circumstances, taking into account whether the accused has a previous conviction for a violent crime as defined by the legislature by law, the probability that the accused will fail to appear in court, the need to protect members of the community from serious harm as defined by the legislature by law, the need to prevent the intimidation of witnesses, and the potential affirmative defenses of the accused. The legislature may authorize, by law, courts to revoke a person's release for a violation of a condition of release.

[https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%206%20\(1st%20consideration\)](https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%206%20(1st%20consideration))

The Legislative Reference Bureau report analyzing this proposed amendment states:

If the proposed constitutional amendment is ratified, the legislature must define by law “serious harm” for the purposes of determining conditions that the court may impose. In carrying out this duty, the legislature could expand the definition of “serious harm” to include more than death or substantial risk of death or more than just bodily injuries.

...

The proposed constitutional amendment creates a new category of crime—“a violent crime as defined by the legislature by law”—for purposes of imposing and setting bail. Under the amendment, if a defendant is accused of a crime that the legislature has defined as a violent crime, the court may impose bail if the court finds a reasonable basis to believe that bail is necessary based on the “totality of the circumstances.” ... For all crimes that are not defined by the legislature as a violent crime, the court would be allowed to impose bail only to assure the appearance of the defendant in court, as under the current version of Wis. Const. art. I, § 8 (2).

...

Under the proposed amendment, Wisconsin would be unusual in providing that the legislature define terms rather than giving the court discretion.

[2021 Enrolled Joint Resolution 6: A proposed constitutional amendment on the eligibility and conditions for pretrial release and considerations for imposing bail](#)

An article about the proposed amendment stated:

Posting bail can be a condition of release. However, as the state’s bail laws currently exist, judges can impose “monetary conditions of release ... only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court.” [quoting University of Wisconsin Law School professor Cecelia Klingele.]

...

It’s important to remember, Klingele said, that in the U.S. justice system, defendants are presumed innocent until proven guilty by the state.

Since that’s the case, she said, “we don't get to punish them before they've been convicted of a crime. That means that the starting point is that people presumed innocent get to be in the community.”

[Explainer: What would proposed bail changes mean for Wisconsin? \(The Capital Times, February 22, 2022\)](#)

Additional Resources

- [Pretrial Release: State Constitutional Right to Bail \(\(National Conference of State Legislatures\)](#)
- [Pretrial Detention](#)

- [Testimony of Adam Plotkin, Legislative Liaison for the Wisconsin State Public Defender against the proposed amendment](#)
- [A Tale of Two Tragedies: How Wisconsin Is Sidestepping Key Recommendations in Push for Bail Reform \(Channel3000.com, March 13, 2022\)](#)

Change Eligibility to Vote

League Position

[Support of the following:] The individual liberties guaranteed by the Wisconsin Constitution. The League of Women Voters of Wisconsin is convinced that individual rights now protected by the Wisconsin Constitution should not be weakened or abridged. (This position paraphrases the position on Individual Liberties of the LWVUS in reference to the U.S. Constitution).

<https://my.lwv.org/wisconsin/position/citizens-rights>

Analysis

The Senate and the Assembly passed 2021 Enrolled Joint Resolution 13 which proposes to change the language of the Constitution from: “Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district...” to: “Only a United States Citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district who may vote in an election for national, state, or local office or at a statewide or local referendum.”

“The Wisconsin Constitution guarantees that every U.S. citizen age 18 and over is a qualified elector. But it does not specifically say that only U.S. citizens are qualified to vote in state or local elections.” [Only citizens could vote in Wisconsin under amendment \(AP News, January 25, 2022\)](#)

According to the Legislative Reference Bureau, current law already limits voting at all levels in Wisconsin to citizens:

However, the current statutes governing elections in Wisconsin do limit voting in state and local elections to U.S. citizens. Only “eligible electors” are qualified to vote in national, state, and local elections in Wisconsin, and the statutes limit “eligible electors” to include only U.S. citizens. According to the 2016–20 American Community Survey, 95 percent of the population in Wisconsin was born in the United States, while 5 percent was foreign-born.

[2021 Enrolled Joint Resolution 13: A proposed constitutional amendment on the eligibility to vote in Wisconsin](#)

Alabama, Colorado, and Florida passed similar measures in 2020. [Three states pass amendments that 'only citizens' can vote \(AP News, November 7, 2020\)](#) Opponents to this proposal and others like it feel it is unnecessary and contributes to anti-immigrant sentiments.

Additional Resources

- [Voting Laws Roundup: October 2022 \(Brennan Center for Justice, October 6, 2022\)](#)
- [Why do states have different election rules? \(2020\) \(Ballotpedia\)](#)
- [Right of foreigners to vote in the United States - Wikipedia](#)
- [Statement of League of Women Voters of Wisconsin in opposition to proposal](#)

Prohibit Use of Private Funds for Election Administration

League Position

[Regarding Election Administration, we support:] A statewide voter registration system that is adequately funded to allow municipal and county clerks to do their jobs without additional undue financial burden

<https://my.lwv.org/wisconsin/position/citizens-rights>

Analysis

The Senate and Assembly passed 2021 Enrolled Joint Resolution 17 which states:

Section 1. Section 7 of article III of the constitution is created to read:

[Article III] Section 7 (1) No state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for, accept, expend, or use any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity.

(2) No individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.

[https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%2017%20\(1st%20consideration\)](https://docs.legis.wisconsin.gov/constitution/joint_resolutions/2021%20enrolled%20joint%20resolution%2017%20(1st%20consideration))

This amendment would essentially disallow the state and local governments from using money or equipment sourced from non-governmental organizations to fund elections, and it specifies that only an election official designated by law would be able to conduct the election.

The Legislative Reference Bureau gave the background for the proposal:

[I]n September 2020, CTCL [Center for Tech and Civic Life] and the Center for Election Innovation & Research (CEIR)⁷ announced a \$300 million donation from Mark Zuckerberg, CEO of Meta Platforms (formally Facebook, Inc.) and his wife Priscilla Chan to “promote safe and reliable voting in states and localities during the 2020 COVID-19 Pandemic.” Of the \$300 million donation, \$250 million went to CTCL and its COVID-19 Response Grant Program. This program was available to all U.S. local election jurisdictions. CTCL distributed grants ranging from \$5,000 to \$19 million to almost 2,500 U.S. local election jurisdictions across 49 states. Ultimately, over 200 municipalities across the state of Wisconsin accepted a

combined \$10 million in CTCL grants, of which the cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine received \$8.8 million of the combined total.

[2021 Enrolled Joint Resolution 17: A proposed constitutional amendment prohibiting private grants for the conduct of elections administration](#)

The Presidential Commission on Election Administration, in its January 2014 report on the American Voting Experience, shared that: “Election administrators have described themselves as the least powerful lobby in state legislatures and often the last constituency to receive scarce funds at the local level.” [January 2014 The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration](#)
The proposed amendment raises the concern that our elections will not have sufficient funding to allow them to be effectively run and managed.

Those who are opposed to private funding of elections argue that it can bias election results. Those who support allowing private funding cite the chronic underfunding of election administration. Despite multiple lawsuits brought in Wisconsin to try to prove there was bias in the way private funds were used in the 2020 election, judges have continually held that receiving the private grants is legal and have said there was nothing to suggest bias in the way funds were allocated. [Wisconsin judge upholds legality of private election grants \(AP News, June 1, 2022\)](#)

Additional Resources

- [The Cost of Conducting Elections \(National Institute for Civil Discourse\)](#)
- [Prohibiting Private Funding of Elections \(National Conference of State Legislatures\)](#)
- ['The money needed to come from somewhere': How Madison spent its 'Zuckerbucks' \(WKOW, June 23, 2022\)](#)

Resource Materials prepared by Sue Jennik, Tori Sheldon, and Dan Stapleton.

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