

**2005 DRAFTING REQUEST**

**Senate Joint Resolution**

Received: 03/01/2006

Received By: rchampag

Wanted: Today

Identical to LRB:

For: Tim Carpenter (608) 266-8535

By/Representing: Stuart Ewy

This file may be shown to any legislator: NO

Drafter: rchampag

May Contact:

Addl. Drafters:

Subject: Legislature - miscellaneous res.

Extra Copies: PJD

Submit via email: YES

Requester's email: Sen.Carpenter@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Recalling SJR 53

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**Instructions:**

See Attached.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	rchampag 03/01/2006	kfollett 03/01/2006	jfrantze 03/01/2006	_____	sbasford 03/01/2006	sbasford 03/01/2006	

FE Sent For:

*None*

<END>

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/?	rchampag	1/15 f 3/4	g 3/1	g/ps 3/1			

FE Sent For:

<END>

## Champagne, Rick

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**From:** Dykman, Peter  
**Sent:** Wednesday, March 01, 2006 11:02 AM  
**To:** Champagne, Rick  
**Subject:** FW: Drafting Request SJR

FYI. I will draft it when I get back unless you are so bored that you want to do it rather than look at the ceiling. I don't know where the joint resolution goes after it is enrolled, maybe to sec of state or elections board. Maybe it doesn't matter and it doesn't need to be stated just that it be returned to the senate etc.

-----Original Message-----

**From:** Ewy, Stuart  
**Sent:** Wed 3/1/2006 10:06 AM  
**To:** Dykman, Peter  
**Subject:** Drafting Request SJR

Hi Peter

We need an SJR drafted, that we have previously discussed: Here is the language. It need inserting the "Enrolled Joint Resolution Number," where indicated.

"Whereas, the 2003 legislature in regular session considered a proposed amendment to the constitution in 2003 Assembly Joint Resolution 66, which became 2003 Enrolled Joint Resolution 29, and agreed to it by a majority of the members elected to each of the 2 houses, which proposed amendment reads as follows:

SECTION 1. Section 13 of article XIII of the constitution is created to read:  
[Article XIII] Section 13. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.

Whereas, the 2005 legislature in regular session considered the identical proposed amendment to the constitution in 2006 Senate Joint Resolution 53, which became 2005 Enrolled Joint Resolution \_\_. Now, therefore, be it resolved by the senate, the assembly concurring,

That the foregoing proposed amendment be returned as a Senate Joint Resolution to the Senate from the Secretary of State and from the Elections Board, for consideration of amendments and any other matters relating to this proposed constitutional amendment."

Can you insert the applicable Enrolled Joint Resolution number, and have the SJR printed out? Tim would like to circulate this for cosponsorship.

Thanks!

Regards,

G. Stuart Ewy  
Office of Sen. Tim Carpenter

**From:** Ewy, Stuart  
**Sent:** Monday, January 09, 2006 1:27 PM  
**To:** Dykman, Peter; Champagne, Rick  
**Subject:** RE: Drafting Request  
Hi Peter & Rick-

I spoke with Tim, and he likes the option of using an SJR to return SJR 53 or the new

Enrolled Joint Resolution to the chamber of origin (Senate) so that he could argue again that it must be amended to delete the second sentence (through a sub joint resolution, that would then put it back to first consideration).

So how about something like the following:

"Whereas, the 2003 legislature in regular session considered a proposed amendment to the constitution in 2003 Assembly Joint Resolution 66, which became 2003 Enrolled Joint Resolution 29, and agreed to it by a majority of the members elected to each of the 2 houses, which proposed amendment reads as follows:

SECTION 1. Section 13 of article XIII of the constitution is created to read:  
[Article XIII] Section 13. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.

Whereas, the 2005 legislature in regular session considered the identical proposed amendment to the constitution in 2006 Senate Joint Resolution 53, which became 2005 Enrolled Joint Resolution \_\_. Now, therefore, be it resolved by the senate, the assembly concurring,

That the foregoing proposed amendment be returned as a Senate Joint Resolution to the Senate from the Secretary of State and from the Elections Board, for consideration of amendments and any other matters relating to this proposed constitutional amendment."

Regards,

G. Stuart Ewy  
Chief of Staff  
Office of Senator Tim Carpenter  
State Capitol 126 S  
608.266.8535

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From: Dykman, Peter  
Sent: Monday, January 09, 2006 12:34 PM  
To: Ewy, Stuart  
Cc: Champagne, Rick  
Subject: RE: Drafting Request

I have never heard of this type of thing in this state. The constitution sets out the process (which has been completed). It has no provision for reconsideration after the final vote on second consideration. There is the argument that if the constitution doesn't provide for rescinding before the vote by the people, once the legislature has acted and sent the amendment to the secretary of state it is beyond its control. On the other side, there is the argument that the constitution is silent so the legislature can rescind before the proposal is submitted to the people.

Under current rules, either house can recall a proposal from the other house by the adoption of a joint resolution doing so. The rules also provide that the houses can recall a bill from the governor the same way. However, in NY, their top court invalidated the recall because the constitution didn't provide for one.

This issue as to rescinding actions on a proposed constitutional amendment has been litigated in other states and there are at least some cases saying that the legislature can always reconsider a vote until the new legislature is sworn in, even if the rules prohibit it. In those cases, I believe that the court held that the constitution granted to each house the exclusive right to determine the rules of its own proceedings and was only limited by the state and federal constitutions.

I think the same type of issue arose in the federal equal rights amendment. Illinois legislative rules required more than a simple majority to ratify a federal constitutional amendment. The equal rights amendment was silent on the vote required in each state. The court said that the amendment was not ratified by Illinois even though it received a

simple majority but not the required majority in the second house.

Therefore, it is up to the senator to decide if he wants to try something new for this state. I guess it could be by bill but I think that by joint resolution is more logical and somewhat more in line with the rules.

The options I can think of are a joint resolution recalling the proposal from the other house or from the secretary of state an delections board; a joint resolution rescinding the actions of the legislature on second consideration; a joint resolution changing the date of the ratification vote; or a joint resolution returning the joint resolution to second reading in the first or second house.

There would be no need for whereas clauses but you could provide some if you wished.

Maybe Rick would have more information or suggestions.

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From: Ewy, Stuart  
Sent: Monday, January 09, 2006 11:17 AM  
To: Dykman, Peter  
Cc: 'Tim Carpenter'  
Subject: Drafting Request

Peter Dykman

Hi Peter-

Happy New Year! Tim would like something drafted that would either rescind or repeal the anti same-sex marriage bill before it goes to the voters. Are there any options here in bill or resolution form? Perhaps a bill that says that despite previous vote of the legislature, that "we've changed our minds", that it will not go to voters, something like that. Any ideas what we can do?

Regards,

G. Stuart Ewy  
Chief of Staff  
Office of Senator Tim Carpenter  
State Capitol 126 S  
608.266.8535



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4783/1  
RAC: *lyf*

*Todan*

*now*

**2005 SENATE JOINT RESOLUTION**

1 **Relating to:** recalling enrolled Senate Joint Resolution 53 for further action  
2 relating to providing that only a marriage between one man and one woman  
3 shall be valid or recognized as a marriage in this state.

4 ***Resolved by the senate, the assembly concurring, That:***

5 Whereas, the 2003 legislature in regular session considered a proposed  
6 amendment to the constitution in 2003 Assembly Joint Resolution 66, which became  
7 2003 Enrolled Joint Resolution 29, and agreed to it by a majority of the members  
8 elected to each of the 2 houses, which proposed amendment reads as follows:

9 SECTION 1. Section 13 of article XIII of the constitution is created to read:  
10 [Article XIII] Section 13. Only a marriage between one man and one woman shall be  
11 valid or recognized as a marriage in this state. A legal status identical or  
12 substantially similar to that of marriage for unmarried individuals shall not be valid  
13 or recognized in this state; and

*INS X*

1 ~~And~~ Whereas, the 2005 senate and assembly in regular session considered and  
2 adopted the identical proposed amendment to the constitution in 2005 Senate Joint  
3 Resolution 53; now, therefore, be it

4 ***Resolved by the senate, the assembly concurring, That,*** pursuant to joint  
5 rule 6, upon adoption of this joint resolution by the senate and concurrence by the  
6 assembly, ~~the~~ enrolled Senate Joint Resolution 53, relating to providing that only a  
7 marriage between one man and one woman shall be valid or recognized as a marriage  
8 in this state, is recalled for further action at the amendable stage.

9 (END)

2005

amendment to the people for ratification and must determine the question or questions to appear on the ballot.

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1           Whereas, the 2003 legislature in regular session considered a proposed  
2 amendment to the constitution in 2003 Assembly Joint Resolution 66, which became  
3 2003 Enrolled Joint Resolution 29, and agreed to it by a majority of the members  
4 elected to each of the 2 houses, which proposed amendment reads as follows:

**SECTION 1.** Section 13 of article XIII of the constitution is created to read:

[Article XIII] Section 13. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state.

insert  
X

**SECTION 2. Numbering of new provision.** The new section 13 of article XIII of the constitution created in this joint resolution shall be designated by the next higher open whole section number in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a section 13 of article XIII of the constitution of this state. If one or more joint resolutions create a section 13 of article XIII simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the sections created shall be numbered and placed in a sequence so that the sections created by the joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the sections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the sections.

5           *Now, therefore, be it resolved by the senate, the assembly concurring,*  
6 *That* the foregoing proposed amendment to the constitution is agreed to by the 2005  
7 legislature; and, be it further

8           *Resolved, That* the foregoing proposed amendment to the constitution be  
9 submitted to a vote of the people at the election to be held on the Tuesday after the  
10 first Monday in November 2006; and, be it further

11           *Resolved, That* the question concerning ratification of the foregoing proposed  
12 amendment to the constitution be stated on the ballot as follows:

**Basford, Sarah**

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**From:** Ewy, Stuart  
**Sent:** Wednesday, March 01, 2006 2:42 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 05-4783/1 Topic: Recalling SJR 53

RUSH!  
Please Jacket LRB 05-4783/1 for the SENATE.

Thank you!

Regards,

G. Stuart Ewy  
Chief of Staff  
Office of Senator Tim Carpenter  
State Capitol 126 S  
608.266.8535