
Wisconsin Briefs

from the Legislative Reference Bureau

Brief 15-8

March 2015

CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY WISCONSIN VOTERS, APRIL 7, 2015

One proposal to amend the Wisconsin Constitution will be submitted to Wisconsin voters on April 7, 2015. The constitutional amendment relates to the election of the chief justice of the Wisconsin Supreme Court.

Ballot Question

The question will appear on the ballot in this form:

Election of Chief Justice. Shall section 4 (2) of Article VII of the constitution be amended to direct that a chief justice of the supreme court shall be elected for a two-year term by a majority of the justices then serving on the court?

Proposed Language

SECTION 1. Section 4 (2) of article VII of the constitution is amended to read:

[Article VII] Section 4 (2) ~~The justice having been longest a continuous member of said court, or in case 2 or more such justices shall have served for the same length of time, the justice whose term first expires, shall be the chief justice.~~ The chief justice of the supreme court shall be elected for a term of 2 years by a majority of the justices then serving on the court. The justice so designated as chief justice may, irrevocably, decline to serve as chief justice or resign as chief justice but continue to serve as a justice of the supreme court.

Legislative Reference Bureau Analysis

The Legislative Reference Bureau analysis of 2015 Senate Joint Resolution 2 states:

This constitutional amendment, to be given second consideration by the 2015 legislature for submittal to the voters in April 2015, was first considered by the 2013 legislature in 2013 Senate Joint Resolution 57, which became Enrolled Joint Resolution 16.

The amendment directs the supreme court to elect a chief justice for a term of two years.

Background

The Wisconsin Constitution ratified in 1848 provided that the supreme court should consist of the circuit court judges of the state meeting to hear appeals. The constitution gave the legislature the authority to create a separate supreme court if it thought it expedient. Chapter 395, Laws of 1852, created a supreme court with a chief justice and two associate justices elected separately. Under this system, there was a single “chief justice” seat, whose holder was automatically chief justice, similar to the system that has prevailed on the federal Supreme Court since 1789. In 1877, the people of Wisconsin ratified an amendment to the constitution requiring three associate justices and increasing the term of office from six to ten years.

The people further amended the constitution in April 1889 to require four associate justices and provide that the justice having the longest continuous service on the court be chief justice. Since Chief Justice Orasmus Cole was also the longest-serving justice at that time, ratification of the amendment did not effect a change in the holder of the office.

A 1903 amendment increasing the supreme court to its present size did not alter the seniority basis for choosing the chief justice. Although a 1977 amendment authorized the senior justice to irrevocably decline the office of chief justice, the senior justice has always served as chief justice since ratification of the 1889 amendment.

During the first century of the senior justice being chief justice *ex officio*, only one attempt was made to modify the method of choosing the chief justice. 1985 Senate Joint Resolution 80, introduced by Senator Gary George and others, provided the court with the authority to elect a chief justice to a four-year term, with the possibility of reelection. Although Senator George offered Senate Substitute Amendment 1, specifically excluding the amendment's application to the incumbent chief justice, Nathan Heffernan, SJR-80 was not adopted by the senate.

According to the Council of State Governments *Book of the States*, currently 19 states allow their supreme court or court of last resort to elect the chief justice. Eight, including Wisconsin, select the chief justice by seniority. In 13 states, the chief justice is appointed by the governor (with varying degrees of oversight in some states). The chief justice is elected by the people in six states, as was the practice in Wisconsin before 1889. Four states use various other methods to select the chief justice.

The 2011 legislative session saw the first attempt since 1985 to change the way Wisconsin selects its chief justice. Senate Joint Resolution 36 was introduced by Senator Rich Zipperer on July 19, 2011; the following day, Assembly Joint Resolution 49 was introduced by Representative Tyler August. Both resolutions required an election for chief justice to occur upon the inauguration of any elected or reelected justice. Neither resolution was adopted by its house of origin. On March 9, 2012, Assembly Joint Resolution 131 on the same subject was introduced by Representative August. It was not adopted.

Current Legislative Action

The 2013 session saw the introduction of Senate Joint Resolution 57 by Senator Tom Tiffany and Assembly Joint Resolution 67 by Representative Rob Hutton on October 22, 2013. Both provided for an election for chief justice every two years with a maximum service of three consecutive terms. Senate Amendment 1 to SJR-57, offered by Senator Mary Lazich, removed the three-term limit. Senate Joint Resolution 57 as amended by SA-1 was adopted by the senate by a vote of 18-15. The assembly concurred in the senate action by a vote of 54-38, and the resolution was enrolled as Enrolled Joint Resolution 16.

2015 Senate Joint Resolution 2, the "second consideration" resolution was introduced on January 7, the first day of the 2015 legislature's first floorperiod. The resolution was adopted by a vote of 17-14 on January 20. The assembly concurred in the resolution on January 22, by a vote of 62-34, and the resolution was enrolled as Enrolled Joint Resolution 2 on January 28, 2015.

Attorney General's Explanatory Statement

Attorney General Brad D. Schimel has provided the following explanatory statement of the effect of the proposed amendment, as required by § 10.01 (2)(c), Wisconsin Statutes:

The Wisconsin constitution currently provides that the chief justice of the Wisconsin Supreme Court is its longest-serving member. The proposed constitutional amendment

would instead select the chief justice through an election by a majority of the justices then serving on the Court.

A “yes” vote on this question would mean that the chief justice shall be elected for a term of two years by a majority of the justices then serving on the Wisconsin Supreme Court. The justice who is elected may decline to serve as chief justice or resign the position, but still continue to serve as a justice of the Wisconsin Supreme Court.

A “no” vote would mean that the longest-serving member of the Wisconsin Supreme Court serves as chief justice of the Court. The justice designated as chief justice may decline to serve as chief justice or resign the position, but still continue to serve as a justice of the Wisconsin Supreme Court.