

2003 DRAFTING REQUEST

Senate Joint Resolution

Received: 02/20/2004

Received By: pdykman

Wanted: Soon

Identical to LRB:

For: Tim Carpenter (608) 266-8535

By/Representing: G. Stuart Ewy

This file may be shown to any legislator: NO

Drafter: pdykman

May Contact:

Addl. Drafters:

Subject: Constitutional Amendments
Health - miscellaneous

Extra Copies: DAK
JK
RAC
JTK

Submit via email: YES

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

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

The right of the residents of Wisconsin to adequate, accessible, and affordable health care

Instructions:

See Attached

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>
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	02/21/2004	02/23/2004	02/23/2004	_____	02/23/2004	02/23/2004	

FE Sent For:

<END>

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Kmg

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2/23

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/?	pdykman						

FE Sent For:

<END>

Dykman, Peter

From: Dykman, Peter
Sent: Friday, February 20, 2004 1:57 PM
To: Sen.Carpenter
Subject: RE: Const'l Amendment *****Please do not forward*****

I just turned it into editing with a request that it be typed before Tuesday. When you and the senator get the copy, check it over and get back to me with any changes.

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

From: Sen.Carpenter
Sent: Friday, February 20, 2004 1:56 PM
To: Dykman, Peter
Cc: Sen.Carpenter
Subject: RE: Const'l Amendment *****Please do not forward*****

Thanks! Tim will ask me later today if there will be a problem getting it in a form to introduce by Tues. Do you see a problem?

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

From: Dykman, Peter
Sent: Friday, February 20, 2004 1:42 PM
To: Sen.Carpenter; Ewy, Stuart
Subject: RE: Const'l Amendment *****Please do not forward*****

I think that works and is clear, but that necessary duties seems not quite right. In the constitution, duties refer to persons only except in one case, where it refers to the duty of the state. Elsewhere, the constitution uses "the legislature shall" to create a duty. However, I can't think of a better term at this time, for either duty or necessary.

It will be drafted as a new section 27

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

From: Sen.Carpenter
Sent: Friday, February 20, 2004 1:24 PM
To: Dykman, Peter
Cc: Sen.Carpenter
Subject: RE: Const'l Amendment *****Please do not forward*****
Importance: High

Hi Peter:

Here is the latest draft after your comments:

"The health and well being of the people having been determined to be fundamental to the enjoyment of the rights of life, liberty, and the pursuit of happiness, the right of the residents of Wisconsin to adequate, accessible, and affordable health care shall be ensured by the state as one of its necessary duties, and the legislature shall provide by law for the providing of such health care."

I understand the technical merit in your suggestion to further tie this proposed amendment to the rights in Article 1 by changing Article 1 to include the right to health care. However, the words currently in Article 1 Section 1 are to me a beautiful, elegant echo to the phrasing originally found in our Declaration of Independence. I'm reticent; it would strike me as unseemly to change Article 1. Unless you disagree, I believe that reciting the rights in the proposed amendment leaves little question as to the origin of the right to health care.

The word "government" has been changed to "state" to indicate that the attendant responsibilities lie with the state government, and not the inferior governments.

The word "foundational" has been changed to "fundamental" for ease in interpretation and to avoid any confusion.

Let me know your thoughts.

-Stuart

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

From: Dykman, Peter
Sent: Friday, February 20, 2004 12:44 PM
To: Sen.Carpenter
Cc: Ewy, Stuart
Subject: RE: Const'l Amendment *****Please do not forward*****

You are using the form of the second amendment to the US constitution. "A well regulated Militia, being necessary to the security of a free State, " causes confusion of whether it is a limitation or a purpose statement or something else.

AMENDMENT II 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.

By creating the right in article one, it becomes a fundamental right in Wisconsin. Your additional language ties it into article one section one. Another way to emphasize the tie would be to amend section one after the string of three.

Article I, §1

Equality; inherent rights. Section 1. [As amended Nov. 1982 and April 1986] All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. [1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982; 1983 J.R. 40, 1985 J.R. 21, vote April 1986]

the right of the residents of Wisconsin to adequate, accessible, and affordable health care shall be ensured by the government as one of its necessary duties,

can be construed two ways: 1) this is referring to a right that already exists or 2) this creates a right.

This debate started in the 1700's and continues to today. Was the bill of rights needed at all if it speaks of inalienable rights which must have existed from the beginning of the human race or for at least a couple of millenniums? If they existed, was the bill of rights a limitation on those rights and therefore dangerous?

The last two rights in Wisconsin stated that the right exists upon ratification but doesn't directly address whether the amendment creates a new right or reaffirms an existing right.

Article I, §25

Right to keep and bear arms. Section 25. [As created Nov. 1998] The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose. [1995 J.R. 27, 1997 J.R. 21, vote November 1998]

Article I, §26

Right to fish, hunt, trap, and take game. Section 26. [As created April 2003] The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law. [2001 J.R. 16, 2003 J.R. 8, vote April 2003]

I wonder if the word foundational should be fundamental?

=====

Here are the sections referring to government, which here is in the broadest most general sense, not intending to impose a specific duty or grant a specific power

Article I, §1

Equality; inherent rights. Section 1. [As amended Nov. 1982 and April 1986] All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. [1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982; 1983 J.R. 40, 1985 J.R. 21, vote April 1986]

Article I, §4

Right to assemble and petition. Section 4. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

Article I, §22

Maintenance of free government. Section 22. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

The use of state is more common but the use of legislature is much more common

Article I, §9m

Victims of crime. Section 9m. [As created April 1993] This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law. [1993 J.R. 2, vote April 1993]

Article VIII, §4

Contracting state debts. Section 4. The state shall never contract any public debt except in the cases and manner herein provided.

Article VIII, §7 ¶(2) (a)

(a) The state may contract public debt and pledges to the payment thereof its full faith, credit and taxing power:

Article VIII, §10

Internal improvements. Section 10. [As amended Nov. 1908, Nov. 1924, Apr. 1945, Apr. 1949, Apr. 1960, Apr. 1968 and Apr. 1992] Except as further provided in this section, the state may never contract any debt for works of internal improvement, or be a party in carrying on such works.

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

From: Sen.Carpenter
Sent: Friday, February 20, 2004 11:01 AM
To: 'Our Family'; Dykman, Peter

Cc: Sen. Carpenter
Subject: RE: Const'l Amendment *****Please do not forward*****
Importance: High

Peter Dykman

Hi Peter:

Our office has reviewed the many law review articles and suggestions that you have helpfully provided us to assist making Tim's drafting instructions clearer in this matter.

Accordingly, Tim would like to modify his drafting instructions regarding the proposed constitutional amendment as follows:

"Art. 1 Section 27 (Proposed)

The health and well being of the people having been determined to be foundational to the enjoyment of the rights to life, liberty, and the pursuit of happiness, the right of the residents of Wisconsin to adequate, accessible, and affordable health care shall be ensured by the government as one of its necessary duties, and the legislature shall provide by law for the ensuring of such health care."

Note that the proposed right to health care is intended to arise from the rights enumerated in Art. 1 section 1. If the people approve this by referendum, the people will by the act of approval affirmatively determine the "foundational" nature of this right, and its connection with the rights enumerated in Article 1 Section 1. It is also intended that it be clear that it is the government's duty to ensure this right, but leaves it necessarily to the legislature to accordingly act as it sees best to perform this duty. We think that using the word "ensuring" rather than "providing" gives the legislature enough leeway in this matter to come up with its plan, as long as it fulfills the requirements of "adequate, accessible, and affordable." Do you agree? The legislature's compliance with such duty arising from the right, of course, being reviewable by the judiciary. If someone does not believe that the legislature's acts in this manner are in compliance with the Constitution, they can challenge it in court.

Please let me know if you have any questions.

Thank you for your assistance in this matter.

Tim would like the final product available to be introduced on Tuesday, February 24, 2004.

Regards,
G. Stuart Ewy
Chief of Staff
Office Of Senator Tim Carpenter
State Capitol Building
Room 126S
PO BOX 7882
Madison, WI 53707-7882
(608) 266-8535

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

From: Our Family [mailto:pjdykman@chorus.net]
Sent: Wednesday, December 10, 2003 11:52 AM
To: Stuart Ewy
Subject: RE: Const'l Amendment *****Please do not forward*****
Importance: High

*****Please do not forward*****

"have a right to accessible and affordable basic health care." might eventually be interpreted by the courts to be meaningful, and enforceable.

Might not. The courts would say that it has some meaning and some effect but would likely not give it a very broad meaning. The court would have to decide who has the obligation to provide it because it is stated in the passive. It would have to decide how accessible is accessible and how affordable is affordable and how basic is basic. I don't know the health care area. You may wish to speak to Debora Kennedy and Pam Kahler about those issues before giving me the instructions. Statutes drafted that way are meaningless except on a political basis. In the constitution, there are general statements, especially in Article I. You might want to add a sentence that the legislature, by law, shall implement this section but I don't know if that adds any certainty or enforceability or meaning. Many of the Article I sections are prohibitions on government or granting rights that individuals may exercise so they are not good models for creating a duty of government. I believe that the original request for Article I, Section 9m may have been to create rights for crime victims but after discussing this issue the way I am writing in this e-mail, the section was structured in the active voice requiring the state to do something.

You probably want to wait to make the request formally of me until you know why and how and when and etc so that Sen Carpenter (not you) can send me the request in hard copy with plenty of background info attached on how broad you want it and what you intend. It is likely that the letter (on letterhead) will be cited by the courts but they are not bound to use it to interpret the provision.

Exemption of property of debtors. SECTION 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Right to keep and bear arms. SECTION 25. [As created Nov. 1998] The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose. [1995 J.R. 27, 1997 J.R. 21, vote November 1998]

Right to fish, hunt, trap, and take game. SECTION 26. [As created April 2003] The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law. [2001 J.R. 16, 2003 J.R. 8, vote April 2003]

District schools; tuition; sectarian instruction; released time. SECTION 3. [As amended April 1972] The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours. [1969 J.R. 37, 1971 J.R. 28, vote April 1972]

Victims of crime. SECTION 9m. [As created April 1993] This state shall treat crime victims, as defined by law, with fairness, dignity and respect for their privacy. This state shall ensure that crime victims have all of the following privileges and protections as provided by law: timely disposition of the case; the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; reasonable protection from the accused throughout the criminal justice process; notification of court proceedings; the opportunity

to confer with the prosecution; the opportunity to make a statement to the court at disposition; restitution; compensation; and information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law. [1993 J.R. 2, vote April 1993]

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

From: Dykman, Peter [mailto:Peter.Dykman@legis.state.wi.us]
Sent: Wednesday, December 10, 2003 10:50 AM
To: Pjdykman (pjdykman@chorus.net)
Subject: FW: Const'l Amendment

> -----
> From: Ewy, Stuart
> Sent: Wednesday, December 10, 2003 10:49:58 AM
> To: Dykman, Peter
> Subject: Const'l Amendment
> Auto forwarded by a Rule
>

Hi Peter-

Tim would like a draft of a resolution re a constitutional amendment which states that all Wisconsinites have a right to accessible and affordable basic health care. Not sure of the exact wording, so will need some guidance from you to make it meaningful, and enforceable.

Thanks!

Regards,
G. Stuart Ewy
Chief of Staff
Office Of Senator Tim Carpenter
State Capitol Building
Room 126S
PO BOX 7882
Madison, WI 53707-7882
(608) 266-8535



PJD: k...
king

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
2003 SENATE JOINT RESOLUTION

1 **To create** section 27 of article I of the constitution; **relating to:** the right of the
2 residents of Wisconsin to adequate, accessible, and affordable health care (first
3 consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 2003 legislature on first consideration, provides that the right of the residents of Wisconsin to adequate, accessible, and affordable health care shall be ensured by the state as one of its necessary duties, and the legislature shall provide by law for the ensuring of such health care.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

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

provision

5 **SECTION 1.** Section 27 of article I of the constitution is created to read:

6 [Article I] Section 27. The health and well-being of the people having been
7 determined to be fundamental to the enjoyment of the rights of life, liberty, and the
8 pursuit of happiness, the right of the residents of Wisconsin to adequate, accessible,

1 and affordable health care shall be ensured by the state as one of its necessary duties,
2 and the legislature shall provide by law for the providing of such health care. provision

3 ***Be it further resolved, That*** this proposed amendment be referred to the
4 legislature to be chosen at the next general election and that it be published for 3
5 months previous to the time of holding such election.

6 (END)

redraft

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2003 SENATE JOINT RESOLUTION

Mandy Noon

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