



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Procedure to Amend the U.S. Constitution

Article V of the U.S. Constitution governs the process that must be used to amend the U.S. Constitution. It provides two procedures to propose an amendment to the U.S. Constitution and two procedures to ratify a proposed amendment. Specifically, Article V of the U.S. Constitution says the following:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

This Information Memorandum discusses the manner in which an amendment to the U.S. Constitution may be proposed and ratified.

#### **PROPOSING AN AMENDMENT TO THE U.S. CONSTITUTION**

Amendments to the U.S. Constitution are initiated by one of two routes:

1. By a **two-thirds** vote of both the U.S. Senate and the House of Representatives.
2. Upon application of the legislatures of **two-thirds** of the states (34 states) to the Congress to call a convention for proposing amendments. This method of proposing an amendment is commonly referred to as an “Article V Convention.”<sup>1</sup>

<sup>1</sup> The Congressional Research Service (CRS) has prepared a report that addresses several issues pertaining to an Article V Convention. Included on pp. 10-17 is a discussion of whether an Article V Convention to propose amendments may be limited to a specific purpose. [*The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, CRS Report R42589 (March 29, 2016), available at: <https://fas.org/sgp/crs/misc/R42589.pdf>.] CRS has prepared two additional reports that: (1) identify current developments; and (2) provide a historical perspective. [*The Article V Convention to Propose Constitutional Amendments: Current Developments*, CRS Report R44435 (March 29, 2016), available at:

An Article V Convention has never been successfully proposed by an application of the legislatures of two-thirds of the states. Neither federal nor state law appears to set the parameters for such an application. Furthermore, it is unsettled whether an Article V Convention to propose amendments may be limited to a specific purpose.

Wisconsin legislators have made recent attempts to: (1) create a process by which delegates from Wisconsin are appointed for, and serve at, an Article V convention; and (2) prohibit a Wisconsin delegate from voting at an Article V Convention to consider or approve a proposed amendment to the U.S. Constitution that is outside the scope of the subject matter of the Article V application or the call of the Article V Convention. [2017 Assembly Bill 165 and its companion bill, 2017 Senate Bill 107; and 2013 Assembly Bill 635.]

Wisconsin legislators have attempted to apply for an Article V Convention to propose amendments by offering a joint resolution. During the 2017 Legislative Session, legislators introduced Assembly Joint Resolution 21 and Senate Joint Resolution 18, companion joint resolutions concerning an application to Congress under the provisions of Article V of the Constitution of the United States for a convention for proposing amendments relating to a balanced budget. Recent examples of other attempts to apply for an Article V Convention to propose amendments include the following:

- **2001 Assembly Joint Resolution 14**, relating to amending the U.S. Constitution for the direct election of the President and Vice President.
- **2007 Assembly Joint Resolution 60**, relating to requesting appropriate action by Congress, upon the application of the legislatures of two-thirds of the several states, to call a constitutional convention to propose an amendment to the United States Constitution to authorize Congress and the states to regulate campaign finance.
- **2011 Assembly Joint Resolution 121**, relating to amending the U.S. Constitution via congressional action or constitutional convention to establish that corporations are not entitled to constitutional rights of natural persons and that money is not speech.
- **2013 Assembly Joint Resolution 81**, relating to application to Congress under the provisions of Article V of the Constitution of the United States for a convention for proposing amendments relating to a balanced budget.

## **RATIFYING AN AMENDMENT TO THE U.S. CONSTITUTION**

Once a proposed amendment has been authorized, it must be ratified. Ratification may be completed by one of two options:

1. By approval of the legislatures of **three-fourths** of the states (38 states).
2. By approval of a state ratifying convention in **three-fourths** of the states (38 states).

Congress must direct which mode of ratification is to be used. For most proposed amendments, Congress has directed that ratification be approved by legislatures of three-fourths of the states. Joint Rule 58 details the procedure for the Wisconsin Legislature to ratify an amendment to the U.S. Constitution. Joint Rule 58 states that the ratification measure must be considered in the form of a joint resolution; the resolution must receive three readings in each house; the vote on adoption or concurrence of the resolution must be by a roll call vote and entered in the journal; and the resolution may not be amended to change the text of the proposed constitutional amendment.

The ratification of an amendment through state ratifying conventions has only been done once for the ratification of the 21<sup>st</sup> Amendment.<sup>2</sup> Neither the U.S. nor Wisconsin Constitution provide for a specific method to form a convention for the purposes of ratifying an amendment to the U.S. Constitution. Wisconsin called for a convention to consider and act upon the ratification of the 21<sup>st</sup> Amendment through the enactment of Chapter 23, Laws of 1933. The Act called for the election of 15 delegates from the state at large to meet and consider “the question of whether or not the proposed amendment should be ratified.” Wisconsin could approve similar legislation if Congress directs the states to consider the ratification of an amendment through state ratifying conventions.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Michael Queensland, Senior Staff Attorney, on March 24, 2017.

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### **WISCONSIN LEGISLATIVE COUNCIL**

One East Main Street, Suite 401 • Madison, WI 53703-3382

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: [leg.council@legis.wisconsin.gov](mailto:leg.council@legis.wisconsin.gov)

<http://www.legis.wisconsin.gov/lc>

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<sup>2</sup> The 21<sup>st</sup> Amendment repealed the 18<sup>th</sup> Amendment, which generally abolished alcohol manufacture or sales on a national level. In addition, the 21<sup>st</sup> Amendment provided each state with wide latitude to set its own laws regarding alcoholic beverages.