



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### The Wisconsin Legislature's Application for an Article V Convention Related to Balanced Budget Amendments

Article V of the U.S. Constitution provides two methods for initiating the process of amending the U.S. Constitution, one of which authorizes Congress, on application of the legislatures of two-thirds of the several states, to call a convention for proposing amendments.<sup>1</sup> This method of proposing an amendment to the U.S. Constitution is commonly referred to as an “Article V convention.” On December 7, 2017, an application was submitted to Congress pursuant to 2017 Assembly Joint Resolution 21 (“AJR 21”) on behalf of the Wisconsin Legislature, requesting an Article V convention for the limited purpose of proposing amendments to the U.S. Constitution that would require the federal government to operate under a balanced budget.

This information memorandum provides an overview of AJR 21, as well as 2017 Wisconsin Act 83 (“Act 83”), which creates the process for appointing delegates to an Article V convention, and 2017 Assembly Joint Resolution 20 (“AJR 20”), which sets forth the rules and procedures recognized by the Wisconsin Legislature for convening such a convention.

#### **APPLICATION TO CONGRESS FOR AN ARTICLE V CONVENTION FOR A FEDERAL BALANCED BUDGET AMENDMENT**

Both houses of the Wisconsin Legislature must adopt a joint resolution applying to Congress for an Article V convention for proposing amendments, called an “Article V application.” AJR 21, adopted on November 7, 2017, is the Wisconsin Legislature’s application to Congress, under Article V of the U.S. Constitution, requesting that Congress call a constitutional convention, for the limited purpose of proposing amendments to the U.S. Constitution that would require the federal government to operate under a balanced budget.

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<sup>1</sup> For a full explanation of the process by which the U.S. Constitution may be amended, see Legislative Council, *Procedure to Amend the U.S. Constitution*, Information Memorandum (March 2017), available at: [https://docs.legis.wisconsin.gov/misc/lc/information\\_memos](https://docs.legis.wisconsin.gov/misc/lc/information_memos).

In making this application to Congress, AJR 21 listed the following as reasons for such a constitutional amendment:

- Previous presidential administrations and Congress have allowed an unprecedented amount of federal debt to accumulate, which currently exceeds \$20 trillion.
- A report by President Obama's National Commission on Fiscal Responsibility and Reform<sup>2</sup> issued a warning on the debt levels, stating: "If the U.S. does not put its house in order, the reckoning will be sure and the devastation severe."
- The U.S. Constitution does not currently require the federal government to operate under a balanced budget.
- Members of both political parties and both houses of Congress have called for a balanced budget amendment to the U.S. Constitution to no avail.
- Article V of the U.S. Constitution authorizes state legislatures to convene a convention for proposing amendments upon the passage of 34 state resolutions.
- Forty-nine states, by constitution or statute, require a balanced budget.
- The Legislature supports the federal government operating under a balanced budget.

AJR 21 directs the chief clerks of the Wisconsin Senate and Assembly to jointly forward a proper authenticated copy of the resolution to the president of the U.S. Senate and the speaker of the U.S. House of Representatives. In a letter dated December 6, 2017, a duly-certified copy of the resolution was sent jointly by both chief clerks to Senate President Michael Pence and then House Speaker Paul Ryan.

AJR 21 also specifies that it constitutes a continuing application for a convention for proposing amendments in accordance with Article V of the U.S. Constitution until such a convention is convened on the same subject or until the Legislature rescinds AJR 21.

### **PROCESS FOR APPOINTING DELEGATES REPRESENTING THE WISCONSIN LEGISLATURE**

Act 83, signed by Governor Walker on November 27, 2017 and effective beginning on November 29, 2018, creates a procedure for the appointment of Wisconsin delegates in response to a congressional call for a convention under Article V of the U.S. Constitution. [s. 13.176, Stats.]

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<sup>2</sup> The National Commission on Fiscal Responsibility was created on February 18, 2010 by President Obama under Executive Order 13531. The commission's full report was published in December 2010, and is available at: <http://momentoftruthproject.org/report>.

### ***APPOINTMENT OF DELEGATES***

Following the adoption of an Article V application, Act 83 requires the Legislature and the governor to appoint nine delegates and six alternate delegates to attend the convention as follows:

- The speaker of the Assembly must appoint three members of the Assembly as delegates and two members of the Assembly as alternate delegates.
- The president of the Senate must appoint three members of the Senate as delegates and two members of the Senate as alternate delegates.
- The Assembly and Senate minority leaders must each appoint one member, from the Assembly and Senate, respectively, as delegates and must jointly appoint either a member of the Assembly or Senate as an alternate delegate.
- The governor must appoint one member of either the Assembly or Senate as a delegate and one member of either the Assembly or Senate as an alternate delegate.

Each person charged with appointing delegates must maintain a list of alternate appointees, in addition to the appointed alternate delegates. A vacancy in the delegation or in the alternate delegation must be filled within 24 hours after the vacancy occurs. The replacement must be appointed by the person who appointed the original delegate or alternate delegate.

A delegate's term begins with the call of the Article V convention and ends on the day of the final adjournment of the convention.

### ***JOINT COMMITTEE OF CORRESPONDENCE***

In addition to appointing delegates, the Legislature must create a joint committee of correspondence (JCC) in response to a congressional call for an Article V convention. The JCC must be comprised of six members, each of whom may not also serve as a delegate to the convention, appointed as follows:

- The speaker of the Assembly must appoint two members of the Assembly.
- The president of the Senate must appoint two members of the Senate.
- The Assembly and Senate minority leaders must each appoint one member, from the Assembly and Senate, respectively.

### ***DELEGATION ACTIONS***

#### ***Voting on Convention Rules and Proposed Constitutional Amendments***

Delegates must generally direct all communication with the Legislature to the JCC. Specifically, the delegates must communicate with the JCC before taking a vote on any proposal to adopt or modify the rules governing the Article V convention or on any proposed final amendment to the U.S. Constitution.

If the JCC does not make a decision about a proposal to adopt or modify the convention governing rules within six hours of receiving notification from the delegates, then the delegates must presume that the JCC approves. If, however, the JCC decides against the proposal within the six-hour time frame, then the delegates must vote against the adoption or modification of the rules. If the adoption or modification takes effect despite JCC's disapproval, then the delegates may not participate further in the convention.

JCC must also determine whether a proposed final amendment to the U.S. Constitution is an unauthorized amendment, meaning that it is "outside the scope of the subject matter of the Article V application." If the JCC determines that the proposed amendment is not unauthorized or if the JCC does not make a decision within six hours of receiving notification from the delegates, then the delegates must presume that the proposed amendment is within the scope of the Article V application and may vote on it. If, however, the JCC decides within the six-hour time frame that the proposed final amendment is an unauthorized amendment, then the delegates may not vote on it and may not participate further in the convention.

### ***Prohibited Actions***

A delegate may not vote or take any other action to consider or approve an "unauthorized amendment." If a delegate engages in prohibited behavior, the delegation, at the request of any one delegate, may convene to consider removing the delegate who engaged in prohibited behavior and may immediately dismiss the delegate by the approval of a majority of the other appointed delegates. The chief clerks of the Assembly and Senate, jointly, must certify, in writing, to an Article V convention the identity of the delegates appointed or dismissed and the filling of any delegation vacancy within 24 hours.

## **RULES AND PROCEDURES FOR CONVENING AN ARTICLE V CONVENTION**

AJR 20, adopted on November 7, 2017, articulates the Legislature's intent to recognize official rules and procedures for convening an Article V convention. Specifically, the resolution provides that if Congress calls for an Article V convention for the purpose of proposing amendments to the U.S. Constitution, then the State of Wisconsin will recognize the rules and procedures adopted by the Assembly of State Legislatures (ASL)<sup>3</sup> on June 17, 2016, as the official rules and procedures for convening the convention. The ASL rules generally address several topics, including: (1) officers of the convention and rules; (2) delegates; (3) sessions of the convention; (4) voting and quorum calls; (5) resolutions and proposals; (6) decorum and debate; (7) committee of the whole; and (8) committees of the convention.<sup>4</sup>

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<sup>3</sup> The ASL, comprised of state legislators from around the country, was organized for the purpose of drafting rules and procedures by which an Article V convention would function. Wisconsin legislators participated in ASL meetings and were involved in the development of the ASL rules and procedures.

<sup>4</sup> The ASL rules and procedures are on file in the Wisconsin Legislative Reference Bureau's reference collection, available at: <https://wisconsinlegislative-reference-bureau.on.worldcat.org/oclc/1036987816>.

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

This memorandum was prepared by Melissa Schmidt, senior staff attorney, and Rachel E. Snyder, staff attorney, on February 8, 2019.