



2021 Enrolled Joint Resolution 13

A proposed constitutional amendment on the eligibility
to vote in Wisconsin

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Introduction

The 2021 Wisconsin Legislature adopted on first consideration [2021 Senate Joint Resolution 32](#), published as 2021 Enrolled Joint Resolution 13, which would amend the Wisconsin Constitution to state that only a U.S. citizen aged 18 or older may vote in an election for national, state, or local office or at a statewide or local referendum. The amendment also defines the offices and elections the provision would apply to. Under current statutes, voting in Wisconsin state and local elections is limited to U.S. citizens aged 18 or older. The senate adopted the proposal on January 25, 2022, and the assembly concurred in the proposal on February 24, 2022, rendering it eligible for second consideration by the 2023 Wisconsin Legislature.

Legislative passage of a constitutional amendment on first consideration is the first step in the process of amending the constitution. Under [article XII, section 1](#), of the Wisconsin Constitution, amendments to the constitution must be adopted by two successive legislatures and then ratified by the electorate in a statewide election.¹ On first consideration, a proposed amendment to the constitution is offered as a joint resolution in either the assembly or the senate. A joint resolution, unlike a bill, need not be submitted to the governor for approval but must pass both houses in identical form to be effective. If the assembly and the senate both adopt the joint resolution, the Legislative Reference Bureau must publish the proposed constitutional amendment on the Internet no later than August 1 preceding the next general election.

In the next succeeding legislature, the proposed amendment may be offered on second consideration. Once again, the proposal takes the form of a joint resolution and may be offered in either the assembly or the senate. A second consideration joint resolution proposes the identical amendment that was proposed by the first consideration joint resolution and also specifies the date of the election at which the proposed amendment will be submitted to the electorate and the wording of the question that will appear on the ballot. If the assembly and the senate both adopt the joint resolution without making changes to the proposed amendment, the proposed amendment is submitted to the electorate. If the electorate ratifies the amendment, the constitution is amended.

Background

Under [article III, section 1](#), of the current Wisconsin Constitution, “Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.” Although this clause provides universal suffrage to U.S. citizens in Wisconsin, it does not *limit* voting to citizens. A prominent article by University of

1. Every Wisconsin legislature convenes in January of an odd-numbered year and adjourns in January of the next succeeding odd-numbered year.

Kentucky Law Professor Joshua Douglas claims that Wisconsin’s lack of a constitutional prohibition on noncitizen voting and municipalities’ “home rule” authority means that municipalities may grant suffrage in local elections to noncitizens.² Municipalities in other states that lack a prohibition on noncitizen voting have used their home rule authority to permit noncitizens to vote in local elections. However, the current statutes governing elections in Wisconsin do limit voting in state and local elections to U.S. citizens. Only “eligible electors” are qualified to vote in national, state, and local elections in Wisconsin, and the statutes limit “eligible electors” to include only U.S. citizens.³ According to the 2016–20 American Community Survey, 95 percent of the population in Wisconsin was born in the United States, while 5 percent was foreign-born.⁴

Noncitizen voting has been a contentious issue in Wisconsin since before the state was admitted to the Union. The state’s first constitution, ratified in 1848, extended suffrage to “white [male] persons of foreign birth, who shall have declared their intention to become citizens.”⁵ The initial constitution also permitted noncitizen American Indians to vote as long as they had “once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.”⁶ These provisions allowing for noncitizen voting were a matter of considerable debate at the 1847–48 constitutional convention.⁷

At the time of its initial statehood, Wisconsin’s population was mostly comprised of recent immigrants to the state, both from within and outside the United States.⁸ In 1850, 38 percent of the male residents of the state were foreign-born. The alien suffrage provision of the constitution was favored by this large constituency, especially German immigrants.⁹

Noncitizen suffrage in Wisconsin was eventually restricted in 1908, following the passage of a constitutional amendment limiting noncitizen, foreign-born voter eligibility to those persons who declared their intention to seek citizenship prior to December 1, 1908.¹⁰ After that date, noncitizen, foreign-born voters had four years to become citizens

2. Wis. Const. art. XI, § 3; Joshua Douglas, “[The Right to Vote Under Local Law](#),” *George Washington Law Review* 85, no. 4 (July 2017): 1110, <https://www.gwlr.org>.

3. Wis. Stat. § 6.02. Local elections in Wisconsin are governed under Wis. Stat. chs. 5 to 12, as are state-level elections. Wis. Stat. §§ 5.01 (2) and 5.02 (4).

4. “[QuickFacts: Wisconsin](#),” United States Census Bureau, accessed June 14, 2022, <https://www.census.gov>.

5. Wis. Const. art. III, § 1 (1848). “Declarant immigrant” suffrage was an innovation at the time, and Congress later incorporated declarant immigrant suffrage into nine U.S. territories: Oregon, Minnesota, Washington, Kansas, Nebraska, Nevada, Dakota, Wyoming, and Oklahoma. Gerald Neuman, “[We are the People: Alien Suffrage in German and American Perspective](#),” *Michigan Journal of International Law* 13, no. 2 (1992): 298, <https://repository.law.umich.edu>.

6. Wis. Const. art. III, § 1 (1848).

7. Louise P. Kellogg, “The Alien Suffrage Provision in the Constitution of Wisconsin,” *The Wisconsin Magazine of History* 1, no. 4 (June 1918): 423–25.

8. Wisconsin’s population increased from 30,945 in 1840 to 305,391 in 1850. “[Population of Wisconsin, 1820–1990](#),” Wisconsin Historical Society, accessed June 29, 2022, <https://www.wisconsinhistory.org>.

9. Kellogg, “Alien Suffrage Provision,” 423.

10. [1907 Joint Resolution 25](#).

before their suffrage would be revoked on December 1, 1912.¹¹ Around this time, in 1910, foreign-born residents made up 22 percent of the state.¹² The provisions relating to non-citizen American Indians were deemed obsolete and were repealed by a constitutional amendment in 1986.¹³

Other states

Noncitizen voting in federal elections has been illegal since 1996.¹⁴ All state constitutions guarantee the right to vote for certain persons, usually citizens who have not committed felonies. No state permits noncitizens to vote in state-level elections.¹⁵ However, there are several states that do not forbid local governments from extending suffrage in local elections to noncitizens. In testimony submitted along with 2021 Senate Joint Resolution 32, Majority Leader Jim Steineke said that the proposed amendment was put forward in response to legislation in other states and cities that permit noncitizens to vote in local elections.¹⁶

Maryland has at least 11 municipalities where noncitizens can vote—the most in the nation.¹⁷ The Maryland Constitution grants home rule powers to municipalities, giving them significant autonomy over their own affairs, as long as a municipality’s laws do not conflict with the state statutes or constitution.¹⁸ The Wisconsin Constitution provides similar home rule authority to municipalities.¹⁹ The Maryland Constitution, like Wisconsin’s, also does not explicitly limit voting to citizens. Maryland courts have ruled that the constitutional limits on eligibility and registration of voters do not restrict how local elections may be operated.²⁰ As a result, Maryland municipalities can create their own registration lists for local elections and allow noncitizens to vote on ballots that only include local races. Unlike Maryland, however, the Wisconsin Statutes explicitly limit voting in local elections to citizens, and that statutory limitation preempts Wisconsin municipalities’ home rule authority.²¹

11. The provisions on foreign-born voters were deemed obsolete, and their text was eliminated in 1934, along with the restriction that all voters be male. [1933 Joint Resolution 76](#).

12. U.S. Census Bureau, “Supplement for Wisconsin,” *Thirteenth Census of the United States Taken in the Year 1910* (Washington, D.C.: U.S. Census Bureau, 1913), 595.

13. 1985 Assembly Joint Resolution 3.

14. 18 U.S.C. § 611.

15. “[Who Can and Can’t Vote in U.S. Elections](#),” USA.gov, accessed June 29, 2022, <https://www.usa.gov>.

16. Wis. Leg. Council, Hearing Materials for 2021 SJR 32, [Testimony of Majority Leader Jim Steineke](#), Senate Comm. on Veterans and Military Affairs and Constitution and Federalism, *SJR 32: Eligibility to vote in Wisconsin* (Dec. 14, 2021), <https://docs.legis.wisconsin.gov>.

17. Audrey Conklin, “[Where are Noncitizens Allowed to Vote in the US?](#)” *Fox News*, December 15, 2021, <https://www.foxnews.com>.

18. Md. Const. art. XI-A.

19. Wis. Const. art. XI, § 3(1).

20. Tara Kini, “Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections,” *California Law Review* 93, no. 1 (Jan. 1, 2005), 296–97 (citing *Smith v. Stephan*, 66 Md. 381 (1887)).

21. Under the most recent Wisconsin Supreme Court decision addressing the home rule provision of the Wisconsin Con-

Other municipalities offer similar privileges. In November 2016, San Francisco voters passed Local Measure N, allowing noncitizens who are parents of children that live in San Francisco to vote in San Francisco School Board elections held from 2017 to 2022.²² That privilege was made permanent in 2021.²³ In Vermont, the cities of Winooski and Montpelier permit noncitizens to vote in city elections.²⁴

In December 2021, New York City voted to permit noncitizens who are lawful permanent residents or who are authorized to work in the United States to vote in elections for municipal offices and in municipal referenda.²⁵ However, the ordinance extending suffrage to noncitizens was struck down as a violation of the state constitution and state election laws in June 2022.²⁶ As of this writing, an appeal of that ruling is pending.²⁷

Before 2020, at least two states had an explicit constitutional prohibition on noncitizen voting. Arizona’s prohibition has existed since the state’s original constitution was adopted in 1912,²⁸ and North Dakota added its prohibition in 2018.²⁹ In 2020, several states proposed new laws and constitutional amendments to prevent noncitizens from voting in state and local elections. Alabama, Colorado, and Florida passed ballot measures to ensconce citizen-only voting into their state constitutions.³⁰ In June 2022, the Ohio Legislature placed a referendum for a similar constitutional amendment on the state’s November ballot.³¹ ■

stitution, the court held that “a legislative enactment can trump a city charter ordinance either (1) when the enactment addresses a matter of statewide concern, or (2) when the enactment with uniformity affects every city or village.” *Black v. City of Milwaukee*, 2016 WI 47, ¶ 26.

22. “[November 8, 2016 Election Results—Summary](#),” City and County of San Francisco, Department of Elections, accessed June 29, 2022, <https://sfelections.sfgov.org>.

23. San Francisco Ord. No. [206-21](#) (Dec. 13, 2021).

24. Winooski also allows noncitizens to vote in “city meetings,” which are meetings where residents directly vote on governmental actions.

25. New York City Local Law No. 11 (2022).

26. *Fossella v. Adams*, ___ Misc. ___ (N.Y. Sup. Ct. Richmond Cnty. 2022).

27. Jeffery C. Mays, “[New York City’s Noncitizen Voting Law is Struck Down](#),” *New York Times*, June 27, 2022, <https://www.nytimes.com>.

28. Ariz. Const. art. VII, § 2 (1912). Arizona cities lack constitutional home rule of the sort provided for cities in Wisconsin and Maryland.

29. “[Official 2018 General Election Results](#),” North Dakota Secretary of State, accessed June 29, 2022, <https://results.sos.nd.gov>.

30. Patty Nieberg, “[Three States Pass Amendments that ‘Only Citizens’ Can Vote](#),” AP News, November 7, 2020, <https://apnews.com>.

31. [Ohio House Joint Resolution 4](#) (134th Gen. Assemb.).

State of Wisconsin



2021 Senate Joint Resolution 32

ENROLLED JOINT RESOLUTION

To renumber and amend section 1 of article III; and *to create* section 1 (1) of article III of the constitution; **relating to:** eligibility to vote in Wisconsin (first consideration).

Resolved by the senate, the assembly concurring, That:

SECTION 1. Section 1 of article III of the constitution is renumbered section 1 (2) of article III and amended to read:

[Article III] Section 1 (2) Every Only a United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district who may vote in an election for national, state, or local office or at a statewide or local referendum.

SECTION 2. Section 1 (1) of article III of the constitution is created to read:

[Article III] Section 1 (1) In this section:

- (a) "Local office" means any elective office other than a state or national office.
- (b) "National office" means the offices of president and vice president of the United States, U.S. senator, and representative in congress.
- (c) "Referendum" means an election at which an advisory, validating, or ratifying question is submitted to the electorate.
- (d) "State office" means the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent of public instruction, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the assembly, and district attorney.

SECTION 3. Numbering of new provision. If another constitutional amendment ratified by the people creates the number of any provision created in this joint resolution, the chief of the legislative reference bureau shall determine the sequencing and the numbering of the provisions whose numbers conflict.

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

Representative Robin J. Vos
Speaker of the Assembly

Senator Chris Kapenga
President of the Senate

March 2, 2022

Date

Michael J. Queensland
Senate Chief Clerk