



LEGISLATIVE REFERENCE BUREAU

2021 Enrolled Joint Resolution 17

A proposed constitutional amendment prohibiting private grants for the conduct of elections and limiting who may perform elections administration

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Introduction

The 2021 Wisconsin Legislature adopted on first consideration [2021 Senate Joint Resolution 101](#), published as 2021 Enrolled Joint Resolution 17, which would create a provision in the Wisconsin Constitution that prohibits state and local governments from using privately sourced moneys or equipment in connection with the conduct of elections and would specify who may perform tasks related to the conduct of elections. As discussed in detail in the next section of this report, state and federal courts have found that no state law currently prohibits municipalities in Wisconsin from accepting private election grants. The senate introduced 2021 Senate Joint Resolution 101 on February 3, 2022, and adopted Senate Substitute Amendment 1 to 2021 Senate Joint Resolution 101 on February 22, 2022; the assembly concurred in the substitute amendment on February 24, 2022. The proposal is now 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

Municipal clerks and their staff faced extraordinary challenges caused by the COVID-19 pandemic during the statewide spring election held in April 2020. These challenges included:

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

- A historic increase in the number of voters requesting absentee ballots;²
- A decrease in the number of polling locations in the cities of Milwaukee and Green Bay;
- A rush to procure personal protective equipment for use at polling locations;
- A shortage of poll workers;
- Long lines to vote in person on election day in the cities of Milwaukee and Green Bay; and
- Confusion for voters and election officials about the timeline and rules for voting as the legal landscape shifted almost daily in the days before the election due to a number of lawsuits.³

As a result of additional costs associated with those challenges, the five largest municipalities in Wisconsin maintained that, as of June 2020, they had “spent all or most of the budgeted resources for all of 2020.”⁴

In July 2020, the mayors from the five largest Wisconsin cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine—announced that they had secured grant funds from the Center for Tech and Civic Life (CTCL)⁵ to implement the “[Wisconsin Safe Voting Plan](#),” a plan, as CTCL asserts, to administer the partisan primary and general election safely during the midst of the pandemic.⁶ Additionally, in September 2020, CTCL and the Center for Election Innovation & Research (CEIR)⁷ announced a \$300 million donation from Mark Zuckerberg, CEO of Meta Platforms (formally Facebook, Inc.) and his wife Priscilla Chan to “promote safe and reliable voting in states and localities during the 2020 COVID-19 Pandemic.”⁸ Of the \$300 million donation, \$250 million went to CTCL and

2. Wisconsin Elections Commission, [April 7, 2020: Absentee Voting Report](#) (Madison, WI: Wisconsin Elections Commission, May 2020), <https://elections.wi.gov/>.

3. Shawn Johnson, “[To the Polls in a Pandemic: How Wisconsin Went Ahead with an Election amidst a Public Health Crisis](#),” *Wisconsin Public Radio*, April 13, 2020, <https://www.wpr.org/>. These lawsuits, which moved rapidly between the courts, included Democratic Nat’l Comm. v. Bostelmann, Nos. 20-1538, 20-1539, 20-1545, 20-1546, 2020 U.S. App. LEXIS 25831 (7th Cir. Apr. 3, 2020); Order Denying Motion to Stay, Democratic Nat’l Comm. v. Bostelmann, 2020 U.S. Dist. LEXIS 57918 (W.D. Wis. Apr. 2, 2020), *sub nom.*; Republican Nat’l Comm. v. Democratic Nat’l Comm., 589 U.S. ____, 140 S. Ct. 1205 (2020) (per curiam); Democratic Nat’l Comm. v. Bostelmann, 977 F.3d 639 (7th Cir. 2020) (Nos. 20-2835, 20-2844); Democratic Nat’l Committee v. Wis. State Legislature, 141 S. Ct. 28 (2020) (20A66) (denying application to vacate stay issued by the 7th Cir. Ct. of App. in this matter and in ...); Wis. Legislature v. Evers, No. 2020AP000608 (Wis. Apr. 6, 2020) (granting petition for leave to commence an original action and enjoining, in part, Executive Order No. 74).

4. Center for Tech and Civic Life, “[Wisconsin Safe Voting Plan 2020](#),” (June 15, 2020), <https://www.techandcivillife.org/>. This plan was submitted to CTCL by the mayors of Wisconsin’s five largest municipalities.

5. Center for Tech and Civic Life (CTCL) describes itself as a nonprofit organization “of civic technologists, trainers, researchers, election administration and data experts working to foster a more informed and engaged democracy, and helping to modernize U.S. elections.” “[Our Story](#),” Center for Tech and Civic Life, accessed June 13, 2022, <https://www.techandcivillife.org/>.

6. “[CTCL Partners with 5 Wisconsin Cities to Implement Safe Voting Plan](#),” Center for Tech and Civic Life, accessed June 14, 2022, <https://www.techandcivillife.org/>.

7. Center for Election Innovation & Research (CEIR) describes itself as an “innovative non-profit with a proven track record of working with election experts from around the country and from both sides of the aisle” and works to “build voter trust and confidence, increase voter participation, and improve the efficiency of election administration.” “[About](#),” Center for Election Innovation & Research, accessed June 13, 2022, <https://electioninnovation.org/>.

8. Center for Tech and Civic Life, “[Priscilla Chan and Mark Zuckerberg Commit \\$300 Million Donation to Promote Safe and Reliable Voting during COVID-19 Pandemic](#),” news release, September 1, 2020.

its COVID-19 Response Grant Program.⁹ This program was available to all U.S. local election jurisdictions. CTCL distributed grants ranging from \$5,000 to \$19 million to almost 2,500 U.S. local election jurisdictions across 49 states.¹⁰ Ultimately, over 200 municipalities across the state of Wisconsin accepted a combined \$10 million in CTCL grants, of which the cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine received \$8.8 million of the combined total.¹¹

While multiple lawsuits challenged the legality of these private grants, both state and federal courts have dismissed such lawsuits. In one lawsuit filed in Wisconsin in September 2020, Wisconsin Voters Alliance sued the cities of Kenosha, Green Bay, Madison, Milwaukee, and Racine in federal court seeking to block their acceptance of the grants.¹² The plaintiffs argued that the cities were prohibited from accepting the grants by the elections¹³ and supremacy¹⁴ clauses of the U.S. Constitution, the National Voters Registration Act,¹⁵ the Help America Vote Act,¹⁶ and Wis. Stat. § [12.11](#) (which prohibits election bribery).¹⁷ The plaintiffs also argued that the grants constitute a “constitutionally-impermissible public-private partnership.”

U.S. District Judge William Griesbach declined to enjoin the cities from accepting the grants, stating, “the Court finds nothing in the statutes Plaintiffs cite, either directly or indirectly, that can be fairly construed as prohibiting the defendant Cities from accepting funds from CTCL. Absent such a prohibition, the Court lacks the authority to enjoin them from accepting such assistance.”¹⁸ Judge Griesbach did not address the arguments related to the elections and supremacy clauses of the U.S. Constitution, nor did he address the argument related to public-private partnership. Judge Griesbach also declined the plaintiffs’ motion for injunction pending appeal under the same reasoning as set out in his previous order.¹⁹ The plaintiffs’ appeals to the United States Court of Appeals for the Seventh Circuit and the Supreme Court of the United States were denied.²⁰

9. “[CTCL Receives \\$250M Contribution to Support Critical Work of Election Officials](#),” Center for Tech and Civic Life, accessed June 15, 2022, <https://www.techandcivillife.org/>.

10. “[COVID-19 Response Grants](#),” Center for Tech and Civic Life, accessed June 14, 2022, <https://www.techandcivillife.org/>. “[Final Report on 2020 COVID-19 Response Grant Program and CTCL 990s](#),” Center for Tech and Civic Life, accessed June 14, 2022, <https://www.techandcivillife.org/>. On its website, CTCL provides a complete list of all jurisdictions that received grants.

11. Patrick Marley and Haley BeMiller, “[Republicans Focus on Election Grants to Five Cities that Favor Democrats, But More Than 200 Wisconsin Communities Got Funds](#),” *Milwaukee Journal Sentinel*, March 31, 2021.

12. *Wisconsin Voters Alliance v. Racine*, No. 2:20-CV-01487 (E.D. Wis.).

13. U.S. Const. art. I, § [4, cl. 1](#).

14. U.S. Const. art. VI, cl. [2](#).

15. [52 U.S.C. §§ 20501–20511](#).

16. [52 U.S.C. §§ 20901–21145](#).

17. Complaint, *Wis. Voters Alliance v. City of Racine*, No. 2:20-CV-01487 (E.D. Wis. filed Sept. 24, 2020).

18. [Order Denying Motion for Preliminary Relief](#), *Wis. Voters Alliance v. City of Racine*, No. 2:20-CV-01487, 2020 U.S. Dist. LEXIS 195545 (E.D. Wis., Oct. 14, 2020), 3.

19. [Order](#), *Wis. Voters Alliance v. City of Racine*, No. 2:20-CV-01487, 2020 U.S. Dist. LEXIS 194917 (E.D. Wis., Oct. 21, 2020).

20. [Order](#), *Wis. Voters Alliance v. City of Racine*, No. 20-03002 (7th Cir. Oct. 23, 2020); *Wis. Voters Alliance v. City of*

In November 2020, the Wisconsin Voters Alliance sued the Wisconsin Elections Commission, petitioning the Supreme Court of Wisconsin to take original jurisdiction.²¹ Among other arguments the plaintiffs advanced in order to invalidate the results of the 2020 presidential election in Wisconsin, the plaintiffs argued, “Whether there is sufficient evidence of the Wisconsin Election Commission and local elections officials, primarily in the cities which received Zuckerberg money, failing to administer and conduct the November 3, 2020 election for presidential electors in accordance with Wisconsin law that the election should be declared void and the choice of the Presidential Electors revert back to the State Legislature.”²² In a 4–3 decision, the Wisconsin Supreme Court held that issues of material fact prevented the court from taking original jurisdiction.²³

In the months after these two Wisconsin cases were dismissed, the Wisconsin Legislature attempted to address the issue of private election grants. In June 2021, the legislature passed [2021 Assembly Bill 173](#).²⁴ As enrolled, the bill prohibited counties and municipalities from applying for or accepting “private resources”²⁵ for purposes of election administration. The bill also permitted the Wisconsin Elections Commission to accept private resources unless the grant requires the commission to use the resources for specific purposes or requires the commission to repay or return the resources for any reason.²⁶ Under the bill, if the commission accepted the resources, it must distribute the funding to each municipality on a per capita basis to offset the municipality’s election-related expenses.²⁷ The commission must also expend the resources only as approved by the Joint Committee on Finance.²⁸ On June 24, 2021, Governor Tony Evers vetoed the bill. In his veto message, Governor Evers stated:

Our election laws are robust and lay out clear procedures for how municipal and county officials must administer an election, a process that is not threatened by a municipality applying for and accepting additional resources. By generally prohibiting donations or grants, this bill unnecessarily restricts the use of resources that may be needed to ensure elections are administered effectively. Finally, the acceptance and expenditure of a grant

Racine, No. 20A75 (U.S. Oct. 29, 2020).

21. [Emergency Petition for Original Action](#), Wis. Voters Alliance v. Wis. Elections Comm., No. 2020AP1930-OA (Wis. Nov. 24, 2020).

22. *Id.* at 4.

23. [Wis. Voters Alliance v. Wis. Elections Comm.](#), No. 2020AP1930-OA (Wis. Dec. 4, 2020). Justice Brian Hagedorn wrote a concurrence, joined by Justices Ann Walsh Bradley, Rebecca Frank Dallet, and Jill J. Karofsky. Justice Patience D. Roggensack dissented, joined by Chief Justice Annette Kingsland Ziegler and Justice Rebecca Grassl Bradley.

24. The assembly passed 2021 Wis. AB 173 on May 11, 2021, and the senate concurred in the bill on June 9, 2021.

25. The bill defined “private resources” to mean “moneys, equipment, materials, or personnel provided by any individual or nongovernmental entity, but does not include employees receiving paid leave to act as tabulators or election officials.” Wis. Legis. Reference Bureau, [2021 Wis. AB 173 as enrolled](#), <https://docs.legis.wisconsin.gov>.

26. *Id.*

27. If the distribution resulted in any municipality receiving a sum less than \$25, the commission may retain the sum and apply it to the commission’s own expenses until the minimum distribution amount is \$25 or more.

28. *Id.*

would also be governed by statutory provisions that dictate how amendments to municipal budgets must be noticed and approved, thereby ensuring transparency for interested parties.²⁹

In January 2022, residents from the cities of Green Bay, Kenosha, Madison, Milwaukee, and Racine filed five separate lawsuits in their respective county's circuit court against the Wisconsin Elections Commission.³⁰ Previously, in April 2021, plaintiffs in each of the lawsuits had filed similar complaints with the commission against their city officials and the commission itself, alleging that the acceptance of private grants to administer elections violated state and federal laws.³¹ When the commission dismissed these complaints,³² the plaintiffs appealed to their circuit courts seeking judicial review of the commission's decisions.³³

While the other four lawsuits are still pending, Dane County Circuit Court Judge Stephen Ehlke rejected the appeal in Dane County and dismissed the lawsuit in a ruling from the bench in June 2022.³⁴ Referencing federal Judge Griesbach's ruling against the Wisconsin Voters Alliance, Judge Ehlke stated, "Quite obviously, the Legislature introduced [bills banning private election grants] because nothing in existing Wisconsin law prohibited these things."³⁵

2021 Enrolled Joint Resolution 17

Section 1 of 2021 Enrolled Joint Resolution 17 would create a new section under article III of the Wisconsin Constitution that prohibits state agencies, officers or employees in state government, political subdivisions, or officers or employees of a political subdivision from applying for, accepting, expending, or using "any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity." Additionally, under the resolution, any individual other than an election official designated

29. Gov. Tony Evers, "[Governor's Veto Message](https://docs.legis.wisconsin.gov) [of 2021 Wis. AB 173]," June 30, 2021, <https://docs.legis.wisconsin.gov>.

30. Complaint, *Carlstedt v. Wis. Elections Comm.*, [No. 2022CV000024](#) (Brown Cnty. Cir. Ct. Jan. 6, 2022); Complaint, *Thomas v. Wis. Elections Comm.*, [No. 2021CV001620](#) (Kenosha Cnty. Cir. Ct. Jan. 6, 2022); Complaint, *Liu v. Wis. Elections Comm.*, [No. 2022CV000046](#) (Dane Cnty. Cir. Ct. Jan. 6, 2022); Complaint, *Werner v. Wis. Elections Comm.*, [No. 2022CV000150](#) (Milwaukee Cnty. Cir. Ct. Jan. 6, 2022); and Complaint, *Prujansky v. Wis. Elections Comm.*, [No. 2022CV000024](#) (Racine Cnty. Cir. Ct. Jan. 6, 2022).

31. Devin Willems and Erinn Taylor, "[Update: Five Green Bay Residents to File New Complaint Regarding 2020 Election](https://www.wearegreenbay.com/)," *We Are Green Bay*, April 8, 2021, <https://www.wearegreenbay.com/>; [Complaint](#), *Carlstedt v. Wolfe* (Wis. Elections Comm. Apr. 7, 2021), 3.

32. As an example of the Wisconsin Elections Commission's dismissal, see John Axelrod and Deborah C. Meiners, [letter to Erick Kaardal](#), December 8, 2021, <https://elections.wi.gov/>.

33. Ben Krumholz, "[Green Bay Residents File Appeal on City's November 2020 Election](#)," *Fox 11 News*, January 7, 2022, <https://fox11online.com/>.

34. Shawn Johnson, "[Another Judge Rejects Case Challenging 2020 Election Grants](#)," *Wisconsin Public Radio*, June 1, 2020, <https://www.wpr.org/>.

35. Shawn Johnson, "[Another Judge Rejects Case Challenging 2020 Election Grants](#)."

by law would be prohibited from performing “any task in the conduct of any primary, election, or referendum.”

In his testimony on the resolution as its author, Senator Eric Wimberger stated that the proposed constitutional amendment “is aimed to stop private entities and wealthy individuals from circumventing campaign finance laws, directly buying off cities and using the government entity as a targeted GOTV [get out the vote] effort.”³⁶ ■

36. Wis. Legis. Council, [Hearing Materials for 2021 Wis. SJR 101](https://docs.legis.wisconsin.gov), Testimony of State Sen. Eric Wimberger, Senate Comm. on Elections, Election Process Reform and Ethics, *SJR 101: Prohibiting the Use of a Donation or Grant of Private Resources for Purposes of Election Administration and Specifying Who May Perform Tasks Related to Election Administration (First Consideration)*, (Feb. 7, 2022), <https://docs.legis.wisconsin.gov>.

State of Wisconsin



2021 Senate Joint Resolution 101

ENROLLED JOINT RESOLUTION

To create section 7 of article III of the constitution; **relating to:** prohibiting state and local governments from using privately sourced moneys or equipment in connection with the conduct of elections and specifying who may perform tasks related to the conduct of an election (first consideration).

Resolved by the senate, the assembly concurring, That:

SECTION 1. Section 7 of article III of the constitution is created to read:

[Article III] Section 7 (1) No state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for, accept, expend, or use any moneys or equipment in connection with the conduct of any primary, election, or referendum if the moneys or equipment are donated or granted by an individual or nongovernmental entity.

(2) No individual other than an election official designated by law may perform any task in the conduct of any primary, election, or referendum.

SECTION 2. 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.

A blue ink signature of Robin J. Vos, written in a cursive style.

Representative Robin J. Vos
Speaker of the Assembly

A blue ink signature of Chris Kapenga, written in a cursive style.

Senator Chris Kapenga
President of the Senate

March 2, 2022

Date

A blue ink signature of Michael J. Queensland, written in a cursive style.

Michael J. Queensland
Senate Chief Clerk