



# Wisconsin Briefs

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## CONSTITUTIONAL AMENDMENT GIVEN “FIRST CONSIDERATION” APPROVAL BY THE 2013 WISCONSIN LEGISLATURE

### INTRODUCTION

One joint resolution to amend the Wisconsin Constitution was adopted on first consideration by the 2013 Wisconsin Legislature and is eligible for second consideration by the 2015 Legislature. It eliminates the constitutional provision making the longest serving justice of the supreme court chief justice and requires the supreme court to elect its chief justice by a majority vote of the justices serving on the court.

Sections Affected	Resolution	Subject
Article VII, Sec. 4 (2)	2013 Senate Joint Resolution 57 (Enrolled Joint Resolution 16)	Requiring the supreme court to elect its chief justice by majority vote.

Legislative passage of a constitutional amendment on “first consideration” is the first step in the amending process. According to Article XII, Section 1, of the Wisconsin Constitution, amendments must be adopted by two successive legislatures and ratified by the electorate.

On first consideration, a proposed change is offered as a joint resolution that does not have to be submitted to the governor for approval. If the resolution is adopted by both houses, the resolution must be published for three consecutive months prior to the next general election. Then, a second joint resolution embodying the identical constitutional text must be offered on “second consideration” in the next legislature, and the wording of the proposed amendment must be approved without change. The second joint resolution specifies the wording of the ballot question(s) and sets the date for submitting the question(s) to the people at a statewide election. (The portions of the joint resolution relating to the ballot question and date can be amended.)

### ELECTION OF THE CHIEF JUSTICE BY A MAJORITY OF THE SUPREME COURT

#### A. Analysis – As Introduced

This constitutional amendment, proposed to the 2013 legislature on first consideration, directs the supreme court to elect a chief justice for a term of two years and limits the chief justice to no more than three consecutive terms as chief justice.

#### B. Text – As Enrolled

~~SECTION 1. [Article VII] Section 4 (2) The justice having been longest a continuous member of said court, or in case 2 or more such justices shall have served for the~~

~~same length of time, the justice whose term first expires, shall be the chief justice. The chief justice of the supreme court shall be elected for a term of 2 years by a majority of the justices then serving on the court.~~ The justice so designated as chief justice may, irrevocably, decline to serve as chief justice or resign as chief justice but continue to serve as a justice of the supreme court.

### C. Background

The Wisconsin Constitution ratified in 1848 provided that the supreme court should consist of the circuit court judges of the state meeting together to hear appeals. The constitution gave the legislature the authority to create a separate supreme court if it thought it expedient. Chapter 395, Laws of 1852, created a supreme court with a chief justice and two associate justices elected separately. Under this system, there was a single “chief justice” seat, whose holder was automatically chief justice, similar to the system that has prevailed on the federal supreme court since 1789. In 1877, the people ratified an amendment to the constitution requiring four associate justices and increasing the term of office from six to 10 years.

The people further amended the constitution in April 1889 to require five associate justices and provide that the justice having the longest continuous service on the court be chief justice. Since Chief Justice Orasmus Cole was also the longest serving justice at that time, ratification of the amendment did not effect a change in the holder of the office.

A 1903 amendment increasing the supreme court to its present size did not alter the seniority basis for choosing the chief justice. Although a 1977 amendment authorized the senior justice to irrevocably decline the office of chief justice, the senior justice has always served as chief justice since ratification of the 1889 amendment.

During the first century of the senior justice being chief justice *ex officio*, only one attempt was made to modify the method of choosing the chief justice. 1985 Senate Joint Resolution 80, introduced by Senator Gary George and others, provided the court with the authority to elect a chief justice to a four-year term, with the possibility of reelection. Although Senator George offered Senate Substitute Amendment 1, specifically excluding the amendment’s application to the incumbent chief justice, Nathan Heffernan, SJR-80 was not adopted by the senate.

According to the Council of State Governments’ *Book of the States*, currently 19 states allow their supreme court or court of last resort to elect the chief justice. Eight, including Wisconsin, select the chief justice by seniority. In 13 states, the chief justice is appointed by the governor (with varying degrees of oversight in some states). The chief justice is elected by the people in six states, as was the practice in Wisconsin before 1889. Four states use various other methods to select the chief justice.

The 2011 legislative session saw the first attempt since 1985 to change the way Wisconsin selects its chief justice. Senate Joint Resolution 36 was introduced by Senator Rich Zipperer on July 19, 2011; the following day Assembly Joint Resolution 49 was introduced by Representative Tyler August. Both resolutions required an election for chief justice to occur upon the inauguration of any elected or reelected justice. Neither was adopted by its house of origin. On March 9, 2012, Assembly Joint Resolution 131 on the same subject was introduced by Representative August. It was not adopted.

The 2013 session saw the introduction of Senate Joint Resolution 57 by Senator Tom Tiffany and Assembly Joint Resolution 67 by Representative Rob Hutton on October 22, 2013. Both provided for an election for chief justice every two years with a maximum service of three con-

