



State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

Explainer: Proposed Wisconsin Constitutional Amendments on Election Administration

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This April, Wisconsin voters will be asked to vote on two [proposed amendments](#) to the Wisconsin Constitution. [To amend the Constitution](#), legislators in two successive legislative sessions must pass the proposed amendment by majority vote and then present it to the state's voters for ratification or rejection, also by majority vote.

The two proposed amendments on the April 2, 2024, ballot were introduced in the wake of the 2020 election, when cities across Wisconsin—but most prominently Milwaukee, Madison, Green Bay, Kenosha, and Racine—accepted private grants and consultation services to assist with election administration. The first proposed amendment would prohibit state and local governments from seeking, accepting, or using privately donated money or equipment to conduct elections. The second would prohibit any “individual other than an election official designated by law” from performing “any task in the conduct of any primary, election, or referendum.”

Proponents of these amendments contend that they will help improve the integrity of election administration by shielding election officials from [undue outside influences](#). Opponents respond that private resources are sometimes vital because the nation's election system has been [chronically underfunded](#). These proposals, they observe, would prohibit private support without guaranteeing sufficient public funding to enable officials to administer [safe and secure](#) elections. As opponents see it, proponents' concerns about private grants are overstated and [do not justify](#) changing the Wisconsin Constitution—the state's fundamental law. Opponents also worry that the amendments are ambiguously worded, which could result in [unintended consequences](#). This Explainer breaks down the backstory, proposed text, and policy arguments regarding each amendment.

The Backstory: Private Election Assistance in 2020

Elections across the country are “[chronically and, in some cases, hazardously underfunded](#).” This is not a new phenomenon: Insufficient funding has [contributed](#) to many of the controversies and crises that have plagued U.S. elections in recent decades. The inability to replace [old voting machines](#), for example, can wreak election day havoc and contribute to election distrust, and resource constraints can hinder efforts to improve [physical](#) and [cyber](#) election security. In addition, the limited funds available for election administration are sometimes inequitably distributed, which can disproportionately expose certain populations to [burdens and even disenfranchisement](#). In 2020, faced with the unique challenges involved in administering an election during a pandemic, thousands of underfunded elections agencies, [across nearly every state](#), accepted private grants to help run their elections.

Although Congress included election funding in the CARES Act to address pandemic-related challenges, [experts warned](#) that the \$400 million set aside for election grants would not be enough. One prominent study estimated that states would need a collective [\\$2 billion](#) to safely conduct federal elections during the pandemic. In light of this shortfall, a variety of private entities donated goods, services, and money to help meet the needs of states and localities. For example, [professional sports teams](#) made their stadiums and arenas available to election officials as polling locations and [businesses](#) donated [masks](#) for poll workers. Arnold Schwarzenegger donated nearly [\\$2.5 million](#) to support grants aimed at promoting voting access in states that had historically been subject to preclearance requirements under the Voting Rights Act.

However, media attention, criticism, and legal challenges focused largely on donations made by Facebook-founder Mark Zuckerberg and his wife, Priscilla Chan. Totaling around \$419.5 million, these donations were [distributed as grants by two organizations](#): \$69.5 million by the Center for Election Innovation & Research (CEIR) and \$350 million by the Center for Tech and Civic Life (CTCL). CEIR awarded grants to state election agencies to support [voter education efforts](#), while the CTCL grant program generally aimed to help jurisdictions [safely administer election responsibilities](#) during the COVID-19 pandemic. Both organizations awarded grants to [every qualifying election office, state, county, and city that applied](#). In Wisconsin alone, [CTCL awarded grants to 216 cities and counties](#). These CTCL and CEIR grants became known, often by critics, as “[Zuck Bucks](#)” or “[Zuckerbucks](#).”

In addition to receiving private monetary grants, some counties and cities accepted assistance from [non-profit organizations and individuals](#) with expertise in election administration. These outside consultants providing guidance on such matters as poll worker recruitment, drafting absentee voter instructions, and [the layout of in-person absentee voting locations](#). The use of [outside election consultants](#) did not escape [criticism](#), with some characterizing it as an effort to “[infiltrate](#)” the election.

Despite making grants to states and localities across the political spectrum, CEIR and CTCL both faced allegations of partisan bias. Critics pointed to the large grant awards made to big cities, known to be Democratic strongholds, and to the social media presence and work history of CEIR and CTCL employees. The organizations pushed back, pointing out that their applications did not ask about partisanship, that CEIR awarded the [entire amount requested](#) to all states, and that [CTCL awarded more grants to localities that voted for Trump](#) in 2016 than those that voted for Clinton. Large, historically Democratic-leaning cities did receive the largest grants, but defenders of these grants reasoned that these [cities served larger populations](#), thus creating greater—and different—need.

These grants generated a variety of legal challenges. Some contended that jurisdictions could not lawfully accept the grants, while [others](#) alleged that Zuckerberg, Chan, CEIR, and CTCL violated campaign financing laws.

In Wisconsin, voters filed complaints with the Wisconsin Elections Commission (WEC) against the cities of [Green Bay](#), [Madison](#), [Kenosha](#), [Milwaukee](#), and [Racine](#) and their [election officials](#) for [accepting CTCL grants](#). Complainants asserted that accepting private grants without preauthorization from the WEC or the Legislature violated both state and federal law. The argument was essentially that state law did not expressly authorize localities to accept private funds to administer elections, and that the U.S. Constitution's Elections Clause, which requires state *legislatures* to regulate the time, place, and manner of federal elections, barred election officials from agreeing to any grant conditions that the legislature had not affirmatively approved. The grant conditions at issue were [agreements](#) between the cities and CTCL that specified that the cities would only use the funding for the purposes outlined in the cities' grant applications. [Some voters](#) also filed complaints arguing that the grants constituted bribes.

The WEC [dismissed](#) these complaints. Among its reasons for [rejecting](#) them, the WEC determined that none of the laws it administers prohibited cities or counties from accepting private grants to help run elections.

Separate from these WEC proceedings, [voters](#), [legislators](#), and other [public figures](#) also brought lawsuits challenging the CTCL grants in a number of states, including [Wisconsin](#), [Michigan](#), [Pennsylvania](#), and elsewhere. Most of these cases were dismissed after courts concluded that the plaintiffs either [lacked standing to litigate](#) or had [failed to point to laws](#) prohibiting cities or counties from accepting election administration grants.

Wisconsin Question 1: No Private Funds to Administer Elections Amendment

The first proposed amendment on the April ballot would add language to the Wisconsin Constitution declaring that no state or local agency, officer, or employee “[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.](#)”

The legislature pursued this proposed amendment after unsuccessfully seeking to limit private election grants by statute. Specifically, on a party-line vote in 2021, lawmakers passed [AB 173](#), which would have banned the use of private resources for election administration, with an exception for the WEC to accept private funds if distributed to all municipalities on a per capita basis with the approval of the Joint Committee on Finance. Governor Tony Evers [vetoed](#) that bill, citing concerns that its restrictions on the use of supplemental, outside funding could prevent local elections officials from accessing resources necessary to effectively administer an election. Unlike statutes, proposed constitutional amendments are not subject to veto by the governor.

This move to ban outside funding of election administration is not unique to Wisconsin. Although Zuckerberg has stated that the 2020 grants were a “[one-time donation](#),” and no other major donors have announced plans for future large-scale grants, some lawmakers and citizens remain concerned about the potential influence of private election funders. In total, [27 states](#) have passed laws to address the use of private funding or resources to run elections. At the national level, some members of Congress have also [sought](#) to ban the use of private funds for election administration, but no federal legislation has been enacted to date.

At the same time, there have been countervailing efforts to ensure that localities can continue to accept private grants for election administration. In Michigan, voters [approved](#) a [constitutional amendment](#) in 2022 that, among other provisions, protects the ability of local governments to “accept and use publicly-disclosed charitable donations and in-kind contributions to conduct and administer elections.” [Supporters](#) of such measures typically say that, while they would prefer for elections to be conducted exclusively with public funds, private funding is a potentially important backstop for local governments when public funding falls short. They express [concern](#) that banning private grants, at least without an accompanying guarantee of [adequate and consistent](#) public funding, could leave election administrators without the resources to do their jobs effectively. In that vein, even states that have restricted the use of private funding or resources have often included exceptions for common donations, such as private spaces for use as polling locations or food and beverages for poll workers.

Wisconsin Question 2: Only Designated Election Officials to Conduct Elections Amendment

The second proposed amendment on the April ballot would prohibit “any individual other than an election official designated by law from performing any task in the conduct of any primary, election, or referendum.”

The legislative record on this proposed amendment is relatively thin, providing little concrete guidance on the amendment’s intended scope. A few [snippets](#) of legislative [testimony](#) from supporters of the amendment convey a desire to ban the use of outside elections consultants, like those who advised on election administration in 2020. A description from the Legislative Reference Bureau, however, largely just repeats the proposal’s language, explaining that it would [“prohibit\[\] any individual other than an election official designated by law from performing any task in the conduct of any primary, election, or referendum”](#) and [“\[p\]rohibit\[\] any individual other than an election official designated by law from performing any task in election administration.”](#)

It is thus unclear whether or how this proposed amendment would change existing law. Notably, Wisconsin already has a statute, pre-dating the 2020 election, that addresses who may conduct elections. Wisconsin Statute § 7.30(2)(a) states: [“Only election officials appointed under this section or s. 6.875 may conduct an election.”](#) The legislature relied on this statute in a lawsuit challenging the use of outside election consultants in 2020. [Rejecting the legislature’s claim](#) and affirming the WEC’s earlier decision to dismiss a complaint brought against the City of Madison, the Dane County Circuit Court stated: [“Certainly, nothing in \[existing Wisconsin law\] prohibits clerks from using private grant money or working with outside consultants in the performance of their duties.”](#)

Given the similarity between the language of the existing statute and the proposed constitutional amendment, a court could conclude that the amendment, like the statute, does not prohibit local governments from using outside election consultants (at least if those consultants do not directly “conduct” the election). But it is also conceivable that a court could interpret the amendment to bar the use of outside consultants, or perhaps construe it even more broadly. There are [many individuals](#) involved with the efficient administration of elections who are not sworn election officials—[clerk staff](#); [employees of other municipal agencies](#), who may help to set up polling places or send out absentee ballots; and [vendors](#), who may be onsite to troubleshoot technological issues or transport voting equipment. If the amendment were interpreted to exclude such actors, or to prohibit other election-related activities undertaken by private volunteers, the ability of election administrators to carry out their responsibilities could be significantly impeded.

In short, were this proposed amendment to pass, uncertainty about its scope could generate confusion and disagreement, which could in turn give rise to litigation.

Conclusion

After the governor vetoed legislation that would have prohibited the use of private funds and personnel in election administration, the legislature proposed adopting those prohibitions as constitutional amendments. In April, Wisconsin voters will have their say. The question, in essence, is whether these are matters of such fundamental importance that they should be enshrined in the Wisconsin Constitution—the state’s foundational law. “Yes” votes on the proposed amendments would add private grant and personnel prohibitions to the Constitution. “No” votes would leave the Wisconsin Constitution unchanged, thus leaving these issues to be addressed primarily through statutory and regulatory decisions, rather than through constitutional law.