

## **Upcoming Proposed Amendments to the Wisconsin Constitution through a Jewish Lens**

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Wisconsin voters who cast ballots in the Spring Election on April 2, 2024, will be confronted with two questions on their ballot that, if they receive a majority of “yes” votes, will amend the Wisconsin Constitution. It is important for all Wisconsin voters to understand these questions and what they would mean for our state’s constitution if they receive a majority of “yes” votes. And it is important for all of us who approach our world through a Jewish paradigm, or otherwise think Jewish-ly about the issues of the day, to consider the impact of these proposed amendments in the context of our tradition and shared values.

### The process of amending Wisconsin’s Constitution

Before launching into the questions themselves, we should understand where in the amendment process the questions on April’s Spring Election ballot fall, and how that process works.

Wisconsin adopted its Constitution in 1848, shortly before being admitted as one of the United States of America. We have never had any constitution other than that first one, adopted 176 years ago. Although our first constitution remains in effect, it has not been static; Wisconsinites have amended it 148 times, with the most recent amendments coming just last year. But how many people in Wisconsin understand the process by which our constitution is amended? And how many understand how the questions that appear from time to time on our ballots are connected to the constitutional amendment process?

Unlike residents of many other states, Wisconsinites cannot initiate amendments to the Wisconsin Constitution. In Michigan, for example, citizens may petition to have a question placed on the statewide ballot about whether to amend the Michigan Constitution. That is exactly what Michigan voters did in 2018 when they approved a citizen petition that amended the Michigan Constitution to transfer the power to draw the state’s congressional and legislative districts from the legislature to an independent redistricting commission. In Wisconsin, by contrast, only the Legislature may initiate amendments, and it can do so in either of two ways: putting ballot questions before the people (art. XII, § 1) or convening a new constitutional convention (art. XII, § 2). Wisconsin has had only two constitutional conventions in its history: one in 1846, which produced a proposed constitution rejected by the voters; and a second in 1847, which produced the constitution approved by the voters. We have not held a constitutional convention since.

Every one of the 148 amendments to Wisconsin’s Constitution have come through ballot questions. This procedure has three steps. First, a majority of the Assembly and a majority of the Senate each must approve an amendment to the constitution in a legislative session. The resolution on which they vote is not subject to veto by the Governor. Second, in the next legislative session following a general election, a majority of the Assembly and a majority of the Senate must each again approve the exact same proposed amendment. Again, the resolution they vote on cannot be vetoed. If the amendment passes two consecutive legislative sessions, then it must be submitted to voters as a ballot question. If a majority of voters approve the ballot question, the proposed constitutional amendment takes effect.

All of this is to say, the ballot questions that will appear on the April 2 ballot have already been approved by majority votes in the Assembly and in the Senate in two consecutive legislative sessions. These questions are on the cusp of becoming part of our state constitution. The public referendum on these questions is the last step. If a majority of voters approves either (or both) of these questions, we'll have new provisions in our constitution.

So, what are the ballot questions that will appear on the April 2 ballot?

There are two.

The first question, Question 1, reads as follows:

“Use of private funds in election administration. Shall section 7 (1) of article III of the constitution be created to provide that private donations and grants may not be applied for, accepted, expended, or used in connection with the conduct of any primary, election, or referendum?”

Language so clear and easily understandable it could only have been written by a group of lawyers.

The background for this proposed amendment is that in 2020, Facebook founder Mark Zuckerberg and his wife, Dr. Priscilla Chan, donated a total of \$350 million to the Center for Tech and Civic Life (CTCL), an established nonprofit based in Chicago that describes itself as “a team 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.” Approximately \$10 million of those funds were used by over 100 municipalities in 38 of Wisconsin’s 72 counties that applied for and received funding to cover the increased costs of administering elections during the COVID-19 pandemic. The funds that were donated were given to support the following types of expenses:

- Poll worker recruitment, hazard pay, and training
- Polling place rental
- Temporary staffing support
- Drive-through voting
- Equipment to process ballots and applications
- Personal protective equipment (PPE) for poll workers
- Nonpartisan voter education from cities and counties

While there has been a disproportionate focus on CTCL grants made to Wisconsin’s five largest cities—Milwaukee, Madison, Green Bay, Racine, and Kenosha—every single municipality in the state of Wisconsin that asked CTCL for money got the full amount of funding it requested. Nonetheless, there has been, over the past four years, a consistent drumbeat of criticism over these grants, based largely on conspiracy theories (with some significant anti-Semitic undertones) that CTCL made these grants to effectuate its partisan preferences. Many of those claims, and the loudest claims, come from groups and individuals that have consistently sought to spread misinformation and doubt about whether President Biden won Wisconsin’s electoral votes in 2020. To date, state and federal courts in Wisconsin, as well as the Wisconsin Elections Commission,

have roundly rejected contentions that these grants were unlawful, including in litigation brought by former President Trump in 2020.

A majority “yes” vote for Question 1 would enshrine in our constitution an amendment banning private donations to aid administration of future elections. Generally speaking, conservative groups and those that fetishize “election integrity”—meaning the most restrictive reading of the laws governing voting procedures—favor a “yes” vote on Question 1. On the opposite side of the spectrum, groups that seek to maximize the opportunity for all eligible voters to participate in our elections favor a “no” vote on Question 1.

An excellent summary of Question 1 and the positions of various groups both supporting and opposing this constitutional amendment may be found [here](#).

The second question on the April 2 ballot reads as follows:

Question 2: “Election officials. Shall section 7 (2) of article III of the constitution be created to provide that only election officials designated by law may perform tasks in the conduct of primaries, elections, and referendums?”

Wisconsin’s statutes already provide extensive and rigorous requirements for “election officials,” a category more typically referred to as “poll workers” that includes chief election inspectors, election inspectors, greeters, tabulators, election registration officials, and special voting deputies. For example, among other requirements, election officials must be able to read and write English; must be qualified voters in the county in which the polling place where they will serve is located; cannot be candidates on the ballot; and cannot be immediately related to any candidate on the ballot. In fact, election officials must be approved by the municipality from a list of nominees submitted by the two major political parties.

The Legislature has identified no specific need for this constitutional amendment, nor has it pointed to any shortcoming of the present statutory restrictions on who may serve as an election official. Wisconsin’s statutes already provide that “only election officials appointed under” the two statutory provisions governing the appointment of election officials “may conduct an election.” It appears that the inclusion of this question on the ballot is an attempt to enshrine in the Constitution provisions that exist now only in statutes, making them much more difficult to change should political control of the legislature and the legislative process shift from its current state.

As with Question 1, conservative and “election integrity” groups favor a “yes” vote on Question 2, whereas groups that seek to expand access to and participation in voting favor a “no” vote on Question 2. There is a concern among some pro-democracy groups that amending the Constitution to include the provision reflected in Question 2 might lead to efforts to stifle current practices that enhance voter participation.

Further information regarding this constitutional amendment may be found [here](#).

Both of these constitutional amendments are specific attempts to address contemporary issues, many of which have only arisen in the past few years. What, if anything, does it mean to examine them through a Jewish lens? What does our tradition teach that is relevant to those deciding how to vote on these referenda? Let us offer a few thoughts.

First, we detailed the process piece of this, about how the state of Wisconsin goes about amending our constitution, because our tradition values process. Just a few weeks ago, we read Parashat Mishpatim, a litany of laws decreed by God. There are more laws set out in Mishpatim than in any other parsha, even when we get into the Book of Leviticus. In fact, Mishpatim is a laundry list of laws, with no narrative whatsoever—until the very end. In Exodus 24:8, we read that Moses “took the record of the covenant”—that is, the list of laws that makes up most of the parsha—and he “read it aloud to the people. And they said, ‘All that Adonai has spoken we will faithfully do!’” This sounds a lot like a ratification. Our tradition recognizes the importance of communal acceptance of the law—even in the context of laws that are, at least in one interpretation, divinely imposed. Another example: a few weeks after the Spring Election, we’ll celebrate Pesach. Midway through the seder, we’ll read of the four children, including the wicked child who asks, “what is this service to *you*.” It is the child’s decision to exclude themselves from the law—to not participate in the practices and procedures (“seder,” we are often reminded, means “order”) of the holiday—that makes them wicked.

As Jews, we recognize an obligation to participate in the lawmaking process. It is that communal, procedural work of wrestling with the law that gives us the Talmud, the halakhic disputes of Rabbis Hillel and Shammai, and Maimonides. It is perhaps no surprise that we are disproportionately represented in the legal field. In the secular context, there is no more direct interaction between the people and the law than in our constitutional amendment process. As the ultimate sovereigns in a democracy, it is the people who ultimately decide whether, when, and how to amend our constitution. Here too, we should consider whether we have an obligation to remain informed on the issues and active in this critical decision.

Second, our tradition emphasizes the collective and our communal responsibility to advance the common welfare. Throughout the Torah, we are repeatedly enjoined to think about the community as a whole and to bring people in, rather than pushing them out. This is true from the beginning, with Abraham’s tent open on all sides as a sign of welcome; it continues through Moses adopting the wisdom (taught by his father-in-law, Jethro) of delegating power to better meet the needs of his community, and extends throughout. Our people’s story, though often focused on a few protagonists, constantly reinforces the importance of all the people. Consider the Mishnah about Nachshon, the unknown Israelite who bravely strode into the Red Sea all the way up to his nose before the waters parted, making way for all the Israelites to follow and saving them from slaughter at the hands of the Egyptian army. Or consider Bezalel, the craftsman appointed by God to oversee the building of the tabernacle, who had many gifts, including recognizing how to make good use of contributions from every Israelite. We could go on and on with examples. Pirkei Avot sums it up famously: “*Lo alecha ham'lacha ligmor, v'lo ata ben chorim l'hibatil mimena*— It is not your duty to complete the work, but neither are you free to desist from it.” Though practices vary widely across movements and branches, each Jew is individually charged with fulfilling the mitzvot. Our religious obligations are not delegated to others; those obligations land on our shoulders individually. This includes the mitzvot that bind us to each other—*mitzvot bein adam l'chaveirot*.

This essential tenet of our tradition sheds light on the April ballot questions. Elections are a communal good; they are essential to how our municipalities, our state, and our nation govern themselves. And administering those elections is essential communal work; we cannot proceed as a polity if we do not have faith in our elections and the results. This is not an abstract problem that we can foist entirely upon municipal clerks and other officials. Each of us must contribute to that work, in whatever way we are able. That may well be as volunteer election officials, or as poll watchers helping ensure public faith in the process. It may well be through financial support of our municipal governments, or of private nonpartisan organizations that help ensure our elections have the necessary resources to be administered properly, in ways that provide ample opportunity for every eligible voter to participate if they so choose. Like those Bezalel invited to help make the mishkan—many of whom never imagined that they could, or would, have any role in that project, each of us can contribute meaningfully to producing a better outcome, even a holier outcome, that serves the whole community.

The ballot questions before the people on April 2 seek to constrain how people in our state can contribute to the common good of running sound, fair, accessible elections that can inspire all people to have faith accurately reflect the will of the voters. As Jews living in our larger communities, we cannot shy away from this obligation, just as we cannot deny the ugly, though deeply familiar, tropes that seem to motivate some of those who support these amendments. We cannot desist from the work of, in the words of our federal Constitution, making a more perfect Union. It is an ongoing process, bending slowly toward justice. These proposed amendments seek to impair that evolution and prevent the continued growth of our democracy. That is not only bad policy, but also an affront to Jewish tradition.

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