



2023 Enrolled Joint Resolution 9

A proposed constitutional amendment on requiring photographic identification to vote

Richard Loeza
senior legislative analyst



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One East Main Street, Suite 200, Madison, Wisconsin 53703
<http://legis.wisconsin.gov/lrb> • 608-504-5801

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Introduction

The 2023 Wisconsin Legislature adopted on first consideration [2023 Senate Joint Resolution 73](#), published as 2023 Enrolled Joint Resolution 9, which would amend the Wisconsin Constitution to state that no qualified voter may cast a ballot unless he or she presents valid photographic identification that verifies the voter’s identity. That identification must be issued by the State of Wisconsin, the federal government, a federally recognized American Indian tribe or band in Wisconsin, or a college or university in Wisconsin. The amendment would allow the legislature to define what forms of photo ID are acceptable and to establish exceptions. The amendment would also allow individuals who are unable to present photo ID when they vote to cast a provisional ballot. Provisional ballots are counted only if the voter later presents his or her photo ID.

2023 Enrolled Joint Resolution 9 largely reflects existing statutory requirements. Currently, in order to vote at a polling place or to obtain an absentee ballot, most voters must present “proof of identification” to election officials.¹ “Proof of identification” means any one of the forms of identification enumerated by statute “that contains the name of the individual to whom the document was issued, which name conforms to the individual’s voter registration form . . . and that contains a photograph of the individual.”² Individuals who cannot provide proof of identification may vote by casting a provisional ballot but must subsequently provide proof of identification to election officials or municipal clerks.³

The senate adopted 2023 Senate Joint Resolution 73 on November 7, 2023, and the assembly concurred on November 9, 2023, rendering the amendment eligible for second consideration by the 2025 Wisconsin Legislature.

Legislative passage of a constitutional amendment on first consideration is the first step in the process of amending the constitution. Under Wis. Const. art. XII, § 1, amendments to the constitution must be adopted by two successive legislatures and then ratified by the electorate in a statewide referendum.⁴ 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

1. Wis. Stat. §§ [6.79 \(2\) \(a\)](#) and [6.86 \(1\) \(ac\)](#).

2. Wis. Stat. § [5.02 \(16c\)](#). There are some exceptions to the photograph requirement. See Wis. Stat. §§ [343.14 \(3m\)](#) and [343.50 \(4g\)](#).

3. Wis. Stat. § [6.97 \(3\)](#).

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

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 voters 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 voters. If voters ratify the amendment, the constitution is amended.

History of voter ID

Throughout the 2000s, several states saw efforts advocating for election reforms—including voter ID laws that were in part motivated by a loss of voter confidence following the 2000 presidential election and vote count difficulties in Florida.⁵ That loss of confidence resulted in a bipartisan commission, the Commission on Federal Election Reform, issuing a 2005 report *Building Confidence in U.S. Elections*, which recommended that states require voters to present identification cards or driver’s licenses that comply with the recently passed REAL ID Act.⁶

In 2005, Georgia and Indiana were the first states to adopt “strict” voter photo ID requirements, requiring photographic ID in order to cast a ballot.⁷ By 2011, eight states had strict voter photo ID laws.⁸ Today, nine states, including Wisconsin, have a strict voter photo ID requirement.⁹ However, 36 states request or require voters to present some type of identification in order to vote, although in most of these states, photo ID is not required or there is a procedure allowing voters without ID to vote.¹⁰

Proponents of voter ID laws argue that the requirements prevent election fraud.¹¹ Specifically, supporters argue that these laws prevent individuals from impersonating another voter.¹² Proponents also argue that voter ID laws promote public confidence in the integrity of elections, detect fraud other than voter impersonation fraud, and promote orderly election administration.¹³

5. Commission on Federal Election Reform, *Building Confidence in U.S. Elections*, September 2005, 1.

6. *Building Confidence in U.S. Elections*, 18–21. Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005; P.L. 109–13.

7. Benjamin Highton, “Voter Identification Laws and Turnout in the United States,” *Annual Review of Political Science* 20 (2017): 149–67, 151.

8. “Walker Signs Photo ID Requirement into Law,” *CBS News*, May 25, 2011, <https://www.cbsnews.com/>.

9. National Conference of State Legislatures, “Voter ID Laws,” February 2, 2024, <https://www.ncsl.org/>.

10. NCSL, “Voter ID Laws.”

11. State Reps. Bonnie Ladwig and Stephen Freese, “Co-sponsorship of election reform bills,” January 3, 2001, in Hearing Materials for 2001 AB 12, Assembly Comm. on Campaigns and Elections.

12. Prohibited under Wis. Stat. § 12.13 (1) (d).

13. *Building Confidence in U.S. Elections*, 18–21. “Defendants’ Brief in Opposition to Plaintiff’s Motion for Preliminary Injunctions as to Eleven Named Plaintiffs,” *Frank v. Walker*, Case No. 11-CV_1128, 16–20.

Opponents of strict voter ID requirements argue that voter impersonation fraud is exceedingly rare and that any benefits are outweighed by the burdens an ID requirement imposes.¹⁴ Specifically, opponents argue that these bills place a barrier to voting for individuals without the money or time to obtain an ID or the documents required to obtain an ID.

Early proposals, 2011 Wisconsin Act 23, and current voter ID requirements

The first set of proposed voter ID laws in Wisconsin were introduced in 2001 but failed to pass the legislature.¹⁵ From 2003 to 2005, the legislature passed three voter ID bills.¹⁶ These bills would have required all individuals registering to vote or attempting to cast a ballot to present an ID issued by the Wisconsin Department of Transportation (DOT) or a military ID. However, Governor James Doyle vetoed all three attempts. Governor Doyle argued the legislation would prevent many people from voting, be prohibitively expensive to implement, was unnecessary, did not prevent felon voting or double voting, created administrative burdens, and did not match practice in most other states at the time.¹⁷

In 2011, the legislature and Governor Scott Walker successfully enacted a voter ID law in Wisconsin. Under 2011 Wisconsin Act [23](#), most voters must present “proof of identification” when voting at a polling place, when early voting,¹⁸ and to obtain an absentee ballot.¹⁹

Under current law, the acceptable forms of proof of identification include:²⁰

1. A driver’s license
2. A state ID card issued by DOT
3. An ID card issued by a U.S. uniformed service
4. A U.S. passport
5. A certificate of U.S. naturalization issued within the last two years
6. An unexpired driver’s license or state ID card receipt
7. An ID card issued by a federally recognized Indian tribe in Wisconsin
8. An unexpired ID card issued by a university, college, or technical college in Wisconsin
9. An unexpired veteran ID card issued by the federal Department of Veterans Affairs

14. For example, Brady Horine, “[What’s So Bad About Voter ID Laws?](#)” League of Women Voters, May 23, 2023, <https://www.lwv.org/>; American Civil Liberties Union, “[Fact Sheet on Voter ID Laws](#),” August 2021, <https://www.aclu.org/>.

15. 2001 Wis. AB [12](#) and 2001 Wis. AB [259](#).

16. 2003 Wis. AB [111](#), 2005 Wis. AB [63](#), and 2005 Wis. SB [42](#).

17. Veto messages for 2003 Wis. AB [111](#), 2005 Wis. AB [63](#), and 2005 Wis. SB [42](#).

18. In-person voting by absentee ballot.

19. Wis. Stat. §§ [6.79 \(2\) \(a\)](#) and [6.86 \(1\) \(ac\)](#) and [\(ar\)](#).

20. Wis. Stat. § [5.02 \(6m\)](#).

Obtaining a state ID card from DOT is free if requested for voting purposes.²¹ Normally, the process for obtaining an ID requires individuals to submit documentation of their date of birth, social security number, immigration status, and other information.²² Because individuals may have difficulty obtaining this documentation due to cost or other reasons, DOT created the special “[petition process](#),” which allows individuals to petition for a voter ID card by providing documentation and allows DOT to attempt to verify an individual’s identity.²³ The petition process has been at the center of several court challenges to the voter ID law (see “Court challenges” below).

Under current law, there are exceptions to the requirement to show ID at the polling place for voters in the confidential voter program and individuals who surrendered their driver’s licenses to law enforcement.²⁴ There are also exceptions to the voter ID requirement for several types of absentee voters: overseas voters, military voters, indefinitely confined voters, participants in the confidential voter program, repeat absentee voters, voters with surrendered driver’s licenses, and voters in retirement homes or residential care facilities.²⁵

2023 Enrolled Joint Resolution 9 essentially reflects current law but would make the voter ID requirement a constitutional mandate. Senator Van Wanggaard, lead author of 2023 Enrolled Joint Resolution 9, testified that the amendment was proposed in anticipation of a challenge to the constitutionality of Act 23 in the Wisconsin Supreme Court.²⁶

Court challenges

After Act 23’s passage, several individuals and groups filed lawsuits challenging the constitutionality of the voter ID law in state and federal courts. These cases resulted in final rulings that have largely upheld the voter ID requirement, although they have also resulted in changes to how the law is implemented.

In *League of Women Voters v. Walker*, the Wisconsin Supreme Court held that voter ID did not create an additional qualification to vote in violation of Wis. Const. art. III, § 1.²⁷ The court additionally ruled that the voter ID requirements were permitted under Wis. Const. art. III, § 2.²⁸ That section allows the legislature to enact laws “providing for the registration of electors” (i.e., voters). The court found that the voter ID requirements

21. Wis. Stat. § [343.50 \(5\) \(a\) 3](#).

22. Wis. Stat. § [343.165 \(1\) \(a\) to \(e\)](#).

23. Wis. Admin. Code Trans § [102.15](#). For example, under sub. [\(5m\)](#), an individual who is unable to provide a birth certificate can make a petition and oath that they are unable to provide the documentation, and DOT can attempt to verify the individual’s birth records with the Department of Health Services or another jurisdiction’s vital records agency.

24. Wis. Stat. §§ [6.47](#) and [6.79 \(6\) and \(7\)](#).

25. Wis. Stat. § [6.87 \(1\)](#) and [\(4\) \(b\)](#).

26. Wis. Legis. Council, [Hearing Materials for 2023 SJR 73](#), Testimony of State Sen. Van H. Wanggaard, Senate Comm. on Shared Revenue, Elections and Consumer Protection, *SJR 73: Requiring Photographic Identification to Vote in Any Election (First Consideration)* (Oct. 24, 2023), 2, <http://docs.legis.wisconsin.gov>.

27. *League of Women Voters v. Walker*, 581 N.W. 2d 302 (2014), [311](#).

28. *League of Women Voters*, [312–13](#).

were essentially a registration law because they are “the mode by which election officials verify that a potential voter is the elector listed on the registration list.”²⁹

In *Milwaukee Branch of NAACP v. Walker*, the challengers argued DOT’s petition process, discussed above, was a burden on the right to vote because the process required voters to provide documentation that was not costless to obtain.³⁰ The Wisconsin Supreme Court applied an interpretation “saving” the law by noting that the rules allowed DOT to use discretion to provide voter IDs. If DOT used that discretion to grant IDs to individuals for whom obtaining an ID would otherwise impose a cost, then the ID requirement would not be imposing a severe burden on the right to vote.”³¹

In 2014, DOT issued rules to harmonize the free ID process with the saving instruction applied by the supreme court in *NAACP v. Walker* by more clearly describing how and when IDs will be granted.³² In 2016, the petition process was again revised to ease the process for individuals with common law name changes, provide translators, require DOT to seek out records to corroborate free ID applications, and provide temporary ID receipts that could be used to vote.³³

Two simultaneous federal cases, *Frank v. Walker* and *One Wisconsin v. Thomsen*, challenged Act 23 in federal court on the grounds that the act violated the First and Fourteenth Amendments to the U.S. Constitution by creating a burden on voters that is not justified by the state’s interests in the voter ID law.³⁴ The federal Seventh Circuit Court of Appeals found that the voter ID law was justified by the state’s interest in promoting confidence in the electoral system.³⁵ Moreover, the appeals court also ruled that the law “extends to every citizen an equal opportunity to get a photo ID” and therefore did not violate the Voting Rights Act.³⁶ Later, the Seventh Circuit ruled in *Luft v. Evers* (a case combining *Frank* and *One Wisconsin*) that the petition process was a sufficient “safety net” for voters who had difficulty obtaining voter IDs through normal procedures.³⁷

These federal cases did result in one change to ease the Act 23 requirements for student IDs. Act 23 originally noted that unexpired student IDs could be used as voter IDs only if the student also provided proof of current enrollment at the polling place.³⁸ In *Luft*, the appeals court affirmed a lower court ruling that the proof of enrollment requirement was unconstitutional.³⁹ ■

29. *League of Women Voters*, 305–6, and Wis. Const. art. III, § 2 (2).

30. *Milwaukee Branch of NAACP v. Walker*, 851 N.W. 2d 262 (2014), 278.

31. *NAACP v. Walker*, 264–66.

32. Clearinghouse Rule 14-061, codified at 2015 Wis. Admin. Code Trans § 102.15.

33. Emergency Rule 1618.

34. *Frank v. Walker*, 17 F. Supp. 3d 837 (E.D. Wis. 2014), 844–45 and *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904.

35. *Frank*, 749–51.

36. *Frank*, 753.

37. *Luft v. Evers*, 963 F.3d 665 (Wis. Ct. App. 2020), 678–79, 681.

38. Wis. Stat. § 5.02 (6m) (f).

39. *Luft*, 681.

State of Wisconsin



STATE OF WISCONSIN

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SECRETARY OF STATE

2023 Senate Joint Resolution 73

ENROLLED JOINT RESOLUTION 9

To create section 1m of article III of the constitution; relating to: requiring photographic identification to vote in any election (first consideration).

Resolved by the senate, the assembly concurring, That:

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

[Article III] Section 1m (1) No qualified elector may cast a ballot in any election unless the elector presents valid photographic identification that verifies the elector's identity and that is issued by this state, the federal government, a federally recognized American Indian tribe or band in this state, or a college or university in this state. The legislature shall by law establish acceptable forms of photographic identification, and the legislature may by law establish exceptions to the requirement under this subsection.

(2) A qualified elector who is unable to present valid photographic identification on election day shall be permitted to cast a provisional ballot. A provisional ballot may not be counted unless the elector presents valid photographic identification at a later time and place as provided by the legislature by law.

SECTION 2. Numbering of new provisions. 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

November 19, 2023

Date

Richard A. Champagne
Acting Senate Chief Clerk