

Fourth in a series of papers about state constitutional issues

At the November 3, 2026, general election, Proposal 2026-01 will ask voters whether a constitutional convention should be convened for the purpose of a general revision of the 1963 Michigan Constitution. Article XII, Section 3 provides that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to voters. If the question is approved, the convention would convene in Lansing on October 5, 2027. If rejected, it will automatically appear on the ballot again in 2042.

Proposal 2026-01 will ask voters:

Shall a convention of elected delegates be called for the purpose of a general revision of the Michigan Constitution, any such revision to be submitted to the voters for ratification?

The Citizens Research Council is publishing a series of papers to provide information which voters may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this time. The Citizens Research Council takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in the papers in this series will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

ARTICLE I – DECLARATION OF RIGHTS

A state government has the power to make and execute laws, except to the extent they are constitutionally limited. The purpose of a bill of rights is for the people to enumerate those basic individual liberties that government action cannot impair. Both the United States Constitution and the Michigan Constitution contain such enumerations.

Article I of the Michigan Constitution, Declaration of Rights, establishes the basic individual liberties afforded to Michigan residents. A “declaration” or “bill” of rights limits what the government can do and guarantees certain protections and freedoms to the population. The U.S. Constitution contains a similar Bill of Rights, as does the constitution of every other state in the country. State constitutions, including Michigan’s, reaffirm many of the rights and liberties in the U.S. Bill of Rights, but state constitutions often contain more specific language and a broader set of enumerated rights and liberties.

By maintaining its own declaration of rights, Michigan citizens may define more specific and additional rights and liberties beyond those enumerated in the U.S. Constitution. In addition, enumerating rights in the state constitution allows for better enforcement of those rights.

The rights and liberties contained in the state constitution are a matter of significant public concern. Any effort to revisit Michigan’s constitution would bring with it intense debate on several key issues within the declaration of rights. The areas of debate surrounding Article I, however, are essentially questions of values, rather than questions of governance and efficiency, so a constitutional convention may not be necessary to address any of these controversies in the

same way it would be to address other contested aspects of the constitution. The alternative is the continued practice of addressing public questions about values and social issues through the constitutional amendment process.¹

The Michigan Declaration of Rights

The Michigan Declaration of Rights contains many rights and liberties that are present in the U.S. Constitution, as well as other state constitutions. Many of these rights existed in the original 1835 Michigan Constitution and have survived in some form through the three subsequent constitutions, while others have been added throughout the years.²

The rights present in the 1963 Constitution include the core federal First Amendment freedoms (freedom of speech, press, assembly, petition, and religion), a right to bear arms, and rights of criminal defendants. Article I also includes an equal protection clause, prohibitions on slavery and involuntary servitude, and a ban on *ex post facto* laws (i.e., those that retroactively criminalize behavior that was legal at the time it took place) and bills of attainder (i.e., a law that declares a person or group guilty of a crime without trial).

While these rights conceptually overlap, important differences exist that create broader rights than those protected federally. For example, Section 16 of Michigan’s Declaration of Rights provides, in part: “cruel *or* unusual punishment shall not be inflicted” (emphasis added). This is distinct from the Eighth Amendment to the U.S. Constitution that bans cruel *and* unusual punishment.

Michigan voters have also added a series of provisions to Article I, including crime victims’ rights, defining marriage as between one man and one woman (currently invalidated by a U.S. Supreme Court decision),³ a prohibition on affirmative action, authorization for stem cell research, and a right to reproductive freedom.

Specifically, since the adoption of the 1963 Constitution, ten possible amendments to Article I have been placed before the voters (see Table 1). Voters approved nine amendments and rejected one. Five of the approved amendments modified existing provisions of Article I, while four established new sections.⁴

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Table 1
Proposed Amendments to Article I of the 1963 Constitution

Year	Section	Summary	Method	Outcome
1972	Section 20	Allowed trials with fewer than 12 jurors in misdemeanor cases	Legislature – HJR M of 1972	Approved (66-34%)
1978	Section 15	Allowed courts to deny bail under certain circumstances in violent crimes	Legislature – HJR Q of 1978	Approved (83-17%)
1988	Added Section 24	Established rights of crime victims	Legislative – HJR P of 1988	Approved (80-20%)
1994	Section 20	Limited criminal appeals	Legislative - SJR D of 1994	Approved (74-26%)
2004	Added Section 25	Provided marriage is between one man and one woman	Initiative – Proposal 2	Approved (59-41%)
2006	Added Section 26	Banned affirmative action for public employment, education, and contracting	Initiative – Proposal 2	Approved (58-42%)
2008	Added Section 27	Permitted stem cell research under certain conditions	Initiative – Proposal 2	Approved (53-47%)
2012	-	Guarantee public and private employees the right to join labor unions and collectively bargain.	Initiative – Proposal 2	Rejected (43-57%)
2020	Section 11	Required a search warrant to access a person's electronic data or communications	Legislative - SJR G of 2019	Approved (89-11%)
2022	Added Section 28	Established right to reproductive freedom	Initiative – Proposal 3	Approved (57-43%)

Sources: *Michigan Manual, 2023-2024*⁵

Other efforts to amend Article I through initiative petition and the legislative process have failed to reach the ballot.

The Case for a State Bill of Rights

Despite the existence of the U.S. Bill of Rights, a state bill or declaration of rights is a necessary aspect of any state constitution for several related reasons. A state declaration of rights is, at worst, redundant. But a state declaration of rights can allow the state to protect different rights, guarantee the applicability of overlapping rights, and create an independent source of rights that can be enforced and interpreted differently in the state.

Difference in Rights Protected

While the majority of rights found in Article I are also addressed in some form in the U.S. Constitution, they are not identical. For example, as noted earlier, the state provision on cruel or unusual punishment is broader than the federal provision. Similarly, language granting a right to bear arms is present in both

constitutions but is worded differently and opens the door to different possible laws being permitted. Notably, the state constitution now includes an explicit grant of reproductive rights that is not present in the U.S. Constitution.

Some rights are more or less universally accepted across the country, but many topics exist where Michigan's residents are likely to prefer different rights than those applicable to other states through the U.S. Constitution. Additionally, the bar to amending the U.S. Constitution is extremely high, making it harder to respond to modern issues with new or amended constitutional rights. Having a way for the state to select which rights it wants to protect makes sense in light of these factors.

Applicability to the States

While the federal Bill of Rights establishes many of the same rights as Michigan's Article I, the application of the federal Bill of Rights to the states is not automatic. The rights protected in the U.S. Constitution are restrictions on the federal government that the U.S. Supreme Court has applied to the states through the Fourteenth Amendment's "incorporation" of these rights.⁶

The concept of incorporation is not particularly controversial at this point in history, but it is something that happens individually through particular court cases that reach the Supreme Court. This means that the court could reverse any of those applications in the future and that the rights are tied to interpretation rather than clear language.

Given that framework, having important rights reiterated in state constitutions makes sense because it leaves no doubt as to whether a particular aspect of a given constitutional right applies in the state.

Abortion Rights and the Federal-State Dynamic

The history of abortion rights is a good demonstration of the federal-state dynamic regarding rights. Advocates tried to legalize access to abortions in Michigan through a statutory initiative petition in 1972, but the proposal failed. The next year, the federal right to an abortion was established in *Roe v Wade* when the U.S. Supreme Court interpreted the Fourteenth Amendment to the U.S. Constitution to protect abortion through an implied right to privacy and applied that to the states (an "Applicability to the States" question). Fifty years later, views at the U.S. Supreme Court changed and the federal right to an abortion was overturned.⁷

In Michigan, this played out in two ways. One aspect of the response was for advocates to establish an explicit right to an abortion in the 1963 Michigan Constitution in 2022 (a "Difference in Rights Protected"). But alongside that effort, advocates also sued to overturn the statutory abortion ban that existed in Michigan law but had been nullified by the *Roe v Wade* ruling. A ruling that the ban was *a violation of the Michigan Constitution* (an "Independent Source of Rights") would have effectively put the ban on hold and could easily have overturned it if the new amendment had not mooted the issue.

Independent Source of Rights

Placing rights directly in the state constitution gives the state's Supreme Court the ability to define the boundaries of the rights within the state context rather than relying entirely on the federal judiciary to outline how the rights apply.

The state Supreme Court cannot make a right more restrictive than the federal guarantee, but it can go further in many instances. This concept is evident in equal protection cases, as the state judiciaries are free to interpret protections on the basis of sex to cover sexual orientation and gender identity even if the federal judiciary does not. Similarly, state courts could be more protective of a criminal defendant's right to counsel than the federal judiciary, even if the constitutional language is identical.

Likely Topics of Debate

If Michigan's voters decide to call a constitutional convention, a number of issues related to Article I would likely be areas of significant debate. The biggest areas of controversy would likely be around several key social issues, most notably those added since 2004, as well as others that have become more salient or controversial in recent years. With a couple of exceptions, the provisions that echo the rights protected in the U.S. Bill of Rights would probably generate less debate. The potential addition of other rights not currently present in the constitution is also possible. Delegates would also likely confront the issue of how specific constitutional rights should be and what details should be left to the legislature to define by statute.

Contested Social Issues

Equal Protection (Section 2): The equal protection clause of the state constitution may be one of the most contested aspects of any potential Article I revisions. The primary issue would center around the topic of sex. Michigan's existing language does not establish sex as a constitutionally protected class in the state. The federal constitution also excludes sex as an explicitly protected class, but many state constitutions include it.⁸ Michigan statute currently includes sex as a protected class in many areas (e.g., Elliot-Larsen Civil Rights Act⁹). Efforts have been made to add sex to the equal protection clause, but they were derailed by the question of whether adding sex would implicate sexual orientation and gender identity rather than traditional questions of discrimination against women.¹⁰ Further expansions of statutory protections for sexual orientation and gender identity in recent years would inform this debate as well.¹¹

An open debate on the equal protection clause may also raise the issue of other potential protected classes. Aside from issues discussed above, the state's existing civil rights law has protections for familial/marital status, age, height, and weight.¹² Broader questions of health status and disability rights may also likely be topics of discussion.¹³ Some people may seek to protect issues of conscience or belief (e.g., political views or affiliation).

Right to Bear Arms (Section 6): The provision establishing a right to bear arms may be a point of contention at a convention. Current federal jurisprudence around the Second Amendment to the U.S. Constitution sets a perimeter around what states can do to regulate firearm ownership and use, but that jurisprudence is always subject to change. Further, plenty of room exists within the federal framework for states to make laws related to firearms.¹⁴

Both sides of the issue may seek to alter the existing language, as the intense controversy over the meaning of the federal Second Amendment (and the individual right to bear arms) is a relatively new phenomenon and did not develop until after the 1963 Constitution was adopted.¹⁵

Same-sex Marriage (Section 25): Some may wish to address the state's existing provision prohibiting same-sex marriage at a convention because it was invalidated by the U.S. Supreme Court in 2015.¹⁶ Removing the language from the constitution would prevent the ban from going back into effect if the U.S. Supreme Court reconsidered federal permissiveness, which is something that has been floated as the court's membership has shifted since the decision was handed down in 2015.

Affirmative Action (Section 26): Affirmative action was a more salient policy issue when Michigan's ban was adopted in 2006, but the U.S. Supreme Court has more recently narrowed the extent to which affirmative action is permissible.¹⁷ That said, the topic of diversity-conscious decisions is still very much a contested issue in 2026. It is likely that advocates of practices such as affirmative action would attempt to remove or alter the language, even if only to leave the door open to changes at the U.S. Supreme Court. Alternatively, this issue seems likely to generate efforts to further restrict any sort of identity-based policy, beyond the restrictions of the existing language.

Reproductive Freedom (Section 28): The 2022 adoption of the reproductive freedom amendment, its margin of victory, and end of *Roe*-era federal protections for abortion make it unlikely that this provision would be discarded entirely at a constitutional convention (keeping in mind that the proposed constitution drafted will need to achieve voter approval). However, abortion remains a contentious issue and efforts to limit the scope of the amendment may occur. The 2022 amendment language was drafted by advocates of abortion rights and the public was presented with an up or down vote on the issue. It is easy to imagine a deliberative process at a convention coming up with different language that could meaningfully alter the status quo.

Death Penalty (Article IV, Section 46): The constitutional prohibition on the death penalty is currently contained in Article IV (Legislative Branch), but fits within the framework of a declaration of rights. The provision is presently situated within a series of sections about laws the legislature can or cannot enact. At the very least, it may be discussed in this context. The death penalty is a contentious issue and remains legal in a majority of states and at the federal level. Michigan, however, has a long history of prohibiting the practice.

Enumerated Rights in Other States

State constitutions in the United States all contain a similar set of core rights and liberties, but variation among the states exists related to other enumerated rights. For example, Michigan is one of ten states that have an explicit constitutional right to abortion enshrined in the state constitution.¹⁸ If Michigan voters call a constitutional convention, delegates would certainly debate the contested issues described above, but they may also consider adding provisions related to issues that are not presently in the state's constitution.

Examples of provisions that exist in other states include rights to:^a

- Privacy
- Public records access
- Food
- Health care access and/or decision-making
- Farm and/or fish
- Clean air and water
- Form unions and collectively bargain

Additionally, while the debate on physician-assisted suicide has largely played out as a matter of state statute and state court decisions interpreting implied rights, the first constitutional amendment related to the issue in another state was adopted in 2024 (West Virginia prohibited the practice).¹⁹

Removing Invalidated Sentence

One issue delegates may consider at a convention would be removing an invalid clause from Section 11, which provides "The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state." This sentence was invalidated by the Michigan Supreme Court in 1970, ruling that it conflicted with U.S. Supreme Court precedent on the subject.²¹

Level of Constitutional Specificity

A common theme in recent years has been the expansion of constitutional provisions beyond the basic establishment of rights and structures to more detailed language that had been traditionally found in statute.²⁰ This is a concept that goes beyond the declaration of rights. Recent voting rights and redistricting amendments have been the clearest examples of this phenomenon (see Article II (Elections) and Article IV (Legislative Branch)).

^a See, for example: Privacy in Alaska, Arizona, Florida, Louisiana, and Montana; open records in Florida and Montana; handicapped rights in Illinois; labor rights in Illinois; right to food in Maine; right to farm in Missouri; right to clean air and water in New York; right to health care decision-making in Ohio, Oklahoma, and Wyoming; health care as a fundamental right in Oregon; right to hunt and fish North Carolina. This is a non-exhaustive list of the select rights for illustrative purposes. All 50 state constitutions are available [here](#).

The intent of these efforts is often to make policy more permanent and less susceptible to the year-to-year fluctuation in control of the governor's office and legislature. Getting an amendment on the ballot and rallying majority public support to amend the constitution is a higher bar than is required to enact a statutory change.

Some have argued that Sections 24 through 28 of Article I fall into this category. These provisions are all broadly in line with the concept of constitutional rights in that they set an overarching policy that the state must follow. Allowing or prohibiting same-sex marriage, affirmative action, stem cell research, and abortion, for example, are certainly legitimate uses of the state constitution as they are big picture questions about personal liberty and the government's role in people's lives.

These provisions are more specific than some of the other rights found in the constitution, but that is not inherently problematic. Policymaking through the courts has become more common in the six decades since the 1963 Constitution was adopted, meaning that more clarity from the constitution is not always a bad thing. A balance must exist between the kind of language in the constitution and the kind of language that belongs in statute.

As the provisions stand now, the language is not overly prescriptive so as to intrude on the role of the legislative process. That said, the trend toward overly prescriptive language in other aspects of the constitution is something to be aware of going into any debates about Article I. It is easy to imagine advocates on all sides of various enumerated rights seeking to get more specific provisions into the constitution to lock in their particular policy preferences.

Article I and a Constitutional Convention

Unlike other articles of the constitution, the sections of Article I stand on their own. Whereas a constitutional convention may be warranted to address the interconnectedness of issues in other articles of the constitution, the amendment process may suffice to add, delete, or amend provisions in Article I. While a constitutional convention would be funded through state appropriations, the cost of initiating and/or advocating for (or opposing) amendments is borne by the special interest groups. While the merits of proposed constitutional amendments are weighed on their own, proposed additions, deletions, and amendments to current provisions in Article I will be weighed alongside other provisions in a drafted constitution proposed to the people addressing the powers of the executive, legislative, and judicial branches, powers of taxation, and elections processes.

Conclusion

Article I of the Michigan Constitution establishes the rights and liberties which define the relationship between the state and its residents. While it has many similarities to the federal Bill of Rights, Michigan’s Declaration of Rights is an essential aspect of the state’s constitution. Differences in language, the uneven applicability of federal rights to the states, and the value of having an independent source of rights interpreted by the state judiciary all support the maintenance of a state Declaration of Rights.

Many areas of significant controversy exist within the Declaration of Rights. If the state’s residents call a constitutional convention, issues such as equal protection, firearms regulation, same-sex marriage, affirmative action, and reproductive freedom could be major topics of debate, alongside questions about whether to add new enumerated rights or increase constitutional specificity.

Endnotes

- 1 See [“A Brief Michigan Constitutional History,”](#) Citizens Research Council of Michigan, Report 425-02, February 2026.
- 2 See [Michigan Constitution of 1835, Michigan Constitution of 1850, Michigan Constitution of 1908, and Michigan Constitution of 1963.](#)
- 3 [“Obergefell v. Hodges.”](#) Oyez. Accessed January 12, 2026.
- 4 [“Proposed Amendments to the Constitution of 1963 —Summary of Adoption or Rejection.”](#) *Michigan Manual 2023-2024.* Pages 98-104.
- 5 [“Proposed Amendments to the Constitution of 1963 —Summary of Adoption or Rejection.”](#) *Michigan Manual 2023-2024.* Pages 98-104.
- 6 [“Modern Doctrine on Selective Incorporation of Bill of Rights.”](#) Constitution Annotated. Accessed January 12, 2026.
- 7 [“Dobbs v. Jackson Women’s Health Organization.”](#) Oyez. Accessed January 12, 2026.
- 8 [“State-Level Equal Rights Amendments.”](#) Brennan Center for Justice. Accessed January 12, 2026.
- 9 [Elliot-Larsen Civil Rights Act, 1976 Public Act 453.](#)
- 10 See, for example [House Joint Resolution GG of 2016.](#) Accessed January 12, 2026.
- 11 See: [“AG Nessel Prevails in ELCRA Case.”](#) Michigan Department of Attorney General. July 28, 2022; [“Gov. Whitmer Signs Bipartisan Legislation Expanding Rights and Freedoms for LGBTQ+ Michiganders.”](#) Executive Office of the Governor. March 16, 2023.
- 12 [Elliot-Larsen Civil Rights Act, 1976 Public Act 453.](#)
- 13 See, for example: [Article I, Section 19 of Illinois Constitution.](#) Accessed January 12, 2026.
- 14 [“The Second Amendment: Interpretation and Debate.”](#) National Constitution Center. Accessed January 12, 2026.
- 15 [“Learning from Second Amendment Litigation.”](#) SCOTUSblog. September 9, 2025.
- 16 [“Obergefell v. Hodges.”](#) Oyez. Accessed January 12, 2026.
- 17 [“Supreme Court strikes down affirmative action programs in college admissions.”](#) SCOTUSblog. June 29, 2023.
- 18 [“What’s Next for State Abortion Ballot Initiatives?”](#) KFF. December 18, 2024.
- 19 [“Amendment One Passes By 1 Percentage Point.”](#) West Virginia Public Broadcasting. November 6, 2024.
- 20 [“Amending the Michigan Constitution: Trends and Issues,”](#) Citizens Research Council of Michigan, Report 425-03, March 2026.
- 21 [“A Missed Opportunity to Start Cleaning Up the Michigan Constitution.”](#) Citizens Research Council of Michigan. September 30, 2020.

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