



## CONSTITUTIONAL AMENDMENTS: NOVEMBER 5, 2024

### INTRODUCTION

The Utah Legislature referred four proposed constitutional amendments to voters for the election on November 5, 2024. The amendments affect county-elected sheriffs, education funding, and the citizen initiative process.

The table below provides a glimpse into each amendment. Two amendments passed legislative hearings unanimously, and neither has been challenged in court. The other two amendments passed nearly along party lines and each has subsequently been voided by Utah courts, though they will remain on the ballot.

The Utah Foundation is a nonprofit, nonpartisan, public policy research organization. It does not support or oppose any of the constitutional amendments discussed in this report.

### WHAT IS COMPANION LEGISLATION?

Changing the Utah Constitution is a long process. Constitutional amendments must pass the Utah State Legislature by 66% and then be ratified by 50% of the public.<sup>1</sup> By contrast, most Utah laws pass with only a simple majority (50%) of legislators. As a result, when the Legislature seeks to change policy in a way that would alter the Constitution, the policy sometimes includes “companion legislation.” This companion legislation only becomes active if the public ratifies the associated constitutional amendment. This allows greater flexibility when policy changes are complex, or part of a larger compromise.

In many cases, arguments for and against amendments often include the benefits or costs of the companion legislation. However, it is important to note that companion legislation is much more flexible and can be readily changed, while, as noted, it is difficult to change the Constitution. The promises made in companion legislation are worth only the amount of trust voters have in 50% of future state legislators.

<sup>1</sup> Utah Constitution Article XXIII, Section 1, [https://le.utah.gov/xcode/ArticleXXIII/Article\\_XXIII,\\_Section\\_1.html](https://le.utah.gov/xcode/ArticleXXIII/Article_XXIII,_Section_1.html)

### An Overview of Key Facts of the Four Amendments

Amendment	Topic	Legislative Support	Groups in Opposition	Judicial Challenges
A	Allows state income taxes to pay for any state need. Currently limited to education, children, and people with disabilities.	22 to 6 in the Utah State Senate and 57 to 17 in the Utah House of Representatives	Utah Education Association, Voices for Utah Children, Utah Parent Teacher Association, Utah School Employees Association	Yes. The Third District Court voided A, citing the Utah Supreme Court ruling on D.
B	Increases education funding from a specific account.	Unanimous	None known	No
C	Requires counties to elect a sheriff every four years.	Unanimous	None known	No
D	Allows legislative bodies to change voter initiatives and prohibits foreign influence in the initiative process.	20 to 8 in the Utah State Senate and 54 to 21 in the Utah House of Representatives	League of Women Voters, Mormon Women for Ethical Government, Better Boundaries	Yes. The Supreme Court ruled that Amendment D would remain on the ballot but not be counted.

# AMENDMENT A: CONSTITUTIONAL REQUIREMENTS FOR EDUCATION FUNDING AMENDMENT

**UPDATE:** The Utah Third District Court has voided Amendment A, citing the Utah Supreme Court’s decision on Amendment D. Nonetheless, the issue will remain on the ballot. As such, we feel this section is still useful to voters in understanding the issue and the amendment’s controversy.

## What It Would Do

This amendment would allow income tax revenue (currently set aside for public education and programs for children and people with disabilities) to be used for “other state needs” after specific K-12 education funding requirements are met. If this amendment passes, it would also trigger two pieces of companion legislation (other laws that become effective if and when the amendment is ratified) that would (a) protect education funding in the event of a decline in enrollment and (b) abolish the state portion of the sales tax on food.<sup>2</sup>

## Background

Over the past two decades, Utah has ranked at the bottom for per-student K-12 education spending, only moving up from the bottom spot to second from the bottom in 2021, when Utah slightly outspent Idaho.<sup>3</sup> Despite this low spending, Utah’s educational outcomes compare well nationally and are average among peer states (which also perform well nationally).<sup>4</sup>

Beginning in 1947, income tax revenue could only be used for Kindergarten through 12<sup>th</sup> grade public education. Following a constitutional amendment in 1996, state income tax revenues have also been used to fund Utah’s technical schools, colleges, and universities. A 2020 constitutional amendment added language allowing income tax revenue to be used for

other child-related programs and programs for people with disabilities.<sup>5</sup> The 2024 amendment follows these previous amendments in allowing the earmarked income tax to be used for *any* purpose after some education funding requirements are met.

The amendment comes with companion legislation in the form of two bills. House Bill 54 would eliminate state sales taxes on food if the amendment is passed.<sup>6</sup> The second, House Bill 394, would allow for some state school funding to remain the same, even in the event of declining K-12 enrollment, over a minimum period of five years.<sup>7</sup>

Senate Joint Resolution 10, which put the amendment on the ballot, passed 22 to 6 in the Utah State Senate, with all Democratic members voting against it, and 57 to 17 in the Utah House of Representatives, with all Democratic members and three Republicans voting against.<sup>8</sup>

## Analysis

The constitutional amendment’s education funding requirements include two provisions. First, a portion of the growth in income tax revenue must be reserved to account for growing student enrollment or increases in the price of providing education services.

The second provision refers to the “Public Education Economic Stabilization Restricted Account,” which was created during the 2020 General Session of the Utah Legislature and acts as a rainy day fund for Utah schools.<sup>9</sup>

It should be noted that while these provisions protect funding regarding emergency shortfalls and increased costs from inflation and enrollment, they do nothing to protect the core ongoing funding of Utah’s K-12 education system. That said, nothing in Utah statute or the

2 Senate Joint Resolution 10, 2023 General Session, “Proposal to amend Utah Constitution - Income tax,” <https://le.utah.gov/~2023/bills/static/SJR010.html>.

3 Teigen, Shawn Significant Statistics | Utah is No Longer at the Bottom in Education Spending per Student (Utah Foundation, May 18, 2021) <https://www.utahfoundation.org/2021/05/utah-is-no-longer-at-the-bottom-in-education-spending-per-student/>; Data come from US Census Annual Survey of School Finances <https://www.census.gov/programs-surveys/school-finances.html>.

4 See Utah Foundation research, such as Making the Grade? K-12 Outcomes and Spending in Utah at <https://www.utahfoundation.org/reports/making-the-grade-k-12-outcomes-and-spending-in-utah/>.

5 Andrea Thomas Brandly, Phil Dean, Matty Orritt and Natalie Roney, 2024, “Decoding the income tax earmark: Proposed changes to Utah’s Constitution,” <https://d36oiwf74r1rap.cloudfront.net/wp-content/uploads/2024/08/ConstAmend-Aug2024.pdf>.

6 House Bill 54, 2023 General Session, “Tax revisions,” <https://le.utah.gov/~2023/bills/static/HB0054.html>.

7 House Bill 394, 2023 General Session, “Hold harmless for public education enrollment,” <https://le.utah.gov/~2023/bills/static/HB0394.html>.

8 Senate Joint Resolution 10, 2023 General Session, “Proposal to amend Utah Constitution - Income tax,” <https://le.utah.gov/~2023/bills/static/SJR010.html>.

9 Utah State Code §53F-9-204, <https://le.utah.gov/xcode/Title53F/Chapter9/53F-9-S204.html>.

Utah Constitution currently protects core education funding in the status quo. For example, under the current earmark, the Legislature could reduce K-12 education funding and spend more on higher education or Medicaid. Furthermore, the Legislature could simply lower the income tax rate and compensate by reducing Utah education spending. In fact, Utah's income tax rate has been reduced three times since 2017.<sup>10</sup> Finally, by allowing higher education, child-related programs, and programs for people with disabilities to straddle the education fund and the general fund, the state can effectively use income tax revenue for nearly any state need. The constitutional amendment would merely formalize a current practice.

Proponents of the amendment argue that loosening the earmark on income tax is essential for lawmakers to be able to balance the state budget in the coming years. They cite changing demographics and tax revenues as part of the challenge, namely that income tax revenues are likely to increase, and K-12 enrollment is likely to decline in the coming years due to Utah's changing economy and populace.

Opponents of the amendment, including the Utah Educators Association and the Utah PTA, worry that removing the current earmark would have a neutral or negative impact on education spending in Utah.<sup>11</sup> Opponents worry that the priority given to education funds will not be substantial enough to meet their preferences.

Opponents often reference school vouchers with regard to their opposition to Amendment A. However, the amendment does not directly or indirectly deal with the voucher program. Vouchers, in this case, are held up as an example of how the priorities of the Legislature do not align with their own priorities, suggesting that this amendment would allow the Legislature more flexibility with funds otherwise reserved for education, children, and people with disabilities.

## Takeaway

A vote **for** this amendment would allow the Legislature to use income tax funds for all state needs, essentially removing the current constitutional earmark after some requirements for education funding are met. It would also trigger the companion legislation protecting education funding from declines in growth and abolishing the state portion of the sales tax on food.

A vote **against** this amendment would maintain the current constitutional dedication of income tax revenue for education.

## More Information

Senate Joint Resolution 10, 2023 General Session, "Proposal to amend Utah Constitution - Income tax," <https://le.utah.gov/~2023/bills/static/SJR010.html>.

House Bill 54, 2023 General Session, "Tax revisions," <https://le.utah.gov/~2023/bills/static/HB0054.html>.

House Bill 394, 2023 General Session, "Hold harmless for public education enrollment," <https://le.utah.gov/~2023/bills/static/HB0394.html>.

Learn more about education funding here: Andrea Thomas Brandly, Phil Dean, Matty Orritt, and Natalie Roney, "Decoding the income tax earmark: Proposed changes to Utah's Constitution," 2024, <https://d36oiwf74r1rap.cloudfront.net/wp-content/uploads/2024/08/ConstAmend-Aug2024.pdf>.

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<sup>10</sup> Utah State Tax Commission, 2024, "History of the Utah Tax Structure: 2023", p192, <https://tax.utah.gov/esu/history/history.pdf>.

<sup>11</sup> Utah Educators Association "UEA Board of Directors Opposes Proposed Constitutional Amendment," 2024, <https://myuea.org/about-uea/leaders/president/from-our-president/uea-board-directors-opposes-proposed-constitutional>.

# AMENDMENT B: UTAH STATE SCHOOL FUND DISTRIBUTION CAP INCREASE AMENDMENT

## What It Would Do

This amendment would increase the limit on annual fund distributions from the Utah Permanent State School Fund from 4% to 5%.

## Background

The Utah Permanent State School Fund is part of the Utah Trust System, a program put in place at Utah's founding to produce revenue for important state programs.<sup>12</sup> Since its inception, the trust has grown rapidly and is now valued at over \$3.3 billion. Currently, the Utah Constitution dictates that up to 4% of the fund may be distributed each year for education funding. From 2018 to 2022, an average of 3.6% was distributed – around \$92 million annually.

House Joint Resolution 18 from 2023, which put the amendment on the ballot, passed unanimously 27 to 0 in the Utah State Senate and 66 to 0 in the Utah House of Representatives.<sup>13</sup>

## Analysis

Lawmakers argue that the trust is large enough to grant increased annual distributions, seeking to raise them from 4% to 5%. This change would become effective in 2025. From 2018 to 2022, distributions usually fell below the 4% cap, with average annual distributions at 3.6%. If the average distribution were to not change, \$120 million would be expected from a fund holding \$3.3 billion. The maximum distribution under the current law would be \$132 million on a fund balance of \$3.3 billion. The maximum distribution under the proposed amendment would be \$165 million on a fund balance of \$3.3 billion.

There is no known opposition to this amendment, and it is broadly supported by Utah's educational community.

## Takeaway

A vote **for** this amendment will increase the maximum annual fund distributions from the Utah Permanent State School Fund to public schools from 4% to 5%.

A vote **against** the amendment will keep the limit at 4%.

## More Information

House Joint Resolution 18, 2023 General Session, "Proposal to amend Utah Constitution - State School Fund," <https://le.utah.gov/~2023/bills/static/HJR018.html>.

<sup>12</sup> Utah Land Trusts Protection and Advocacy Office, "Utah's Trust System," <https://landtrustsadvocacy.utah.gov/utahs-trust-system/>.

<sup>13</sup> House Joint Resolution 18, 2023 General Session, "Proposal to amend Utah Constitution - State School Fund," <https://le.utah.gov/~2023/bills/static/HJR018.html>.

## AMENDMENT C: ELECTIONS OF COUNTY SHERIFFS AMENDMENT

### What It Would Do

This amendment would provide a constitutional requirement to the current practice of electing county sheriffs to four-year terms.

### Background

Utah currently directs the election of county sheriffs by state statute.<sup>14</sup> There are 29 county sheriffs in Utah who may serve unlimited consecutive terms of four years. This amendment would not change how sheriffs are elected or how they serve in Utah. Instead, it would serve to provide a constitutional requirement to the current practice.

House Joint Resolution 10 from 2023, which put the amendment on the ballot, passed unanimously 26 to 0 in the Utah State Senate and 72 to 0 in the Utah House of Representatives.<sup>15</sup>

### Analysis

In the U.S., 48 states have sheriffs and most counties have elected sheriffs. Only one state and a few counties in select states has appointed sheriffs.<sup>16</sup> If Utah approves this amendment, it will join many other states that provide for the election of county sheriffs in their constitutions. For example, Utah and Wyoming are the only Mountain States that do not already mention the election of sheriffs in their constitutions.<sup>17</sup>

### Takeaway

A vote **for** the amendment would provide a constitutional requirement to the current practice of electing county sheriffs.

A vote **against** the amendment would not create a constitutional requirement and would have no effect on the current practice of electing sheriffs.

### More Information

House Joint Resolution 10, 2023 General Session, "Proposal to amend Utah Constitution- election of county sheriffs," <https://le.utah.gov/~2023/bills/static/HJR010.html>.

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14 Utah State Code §17-22-1.5 <https://le.utah.gov/xcode/Title17/Chapter22/17-22-S1.5.htm>.

15 House Joint Resolution 10, 2023 General Session "Proposal to amend Utah Constitution- election of county sheriffs", <https://le.utah.gov/~2023/bills/static/HJR010.html>.

16 National Sheriffs' Association, "Frequently Asked Questions", <https://www.sheriffs.org/about-nsa/faq>; National Sherriffs' Association, "Office of Sherrif state-by-state elections information", <https://www.sheriffs.org/sites/default/files/uploads/documents/GovAffairs/State-by-State%20Election%20Chart%20updated%2008.13.15.pdf>.

17 Utah Foundations review of the constitutions of the Mountain States.

## AMENDMENT D: LEGISLATIVE ALTERATION OF BALLOT INITIATIVES AND FOREIGN CONTRIBUTIONS BAN AMENDMENT

**UPDATE:** On September 25, 2024, the Utah Supreme Court determined that votes for Amendment D will not be counted, upholding the ruling of the Utah Third District Court. The Supreme Court wrote, “The Legislature did not cause the amendment to be published in newspapers throughout the state for two months, and the description that will appear on the ballot does not submit the amendment to voters ‘with such clarity as to enable voters to express their will.’”<sup>18</sup> Because the issue remains on the ballot, the Utah Foundation has chosen to maintain this section so voters can understand the issue and controversy.

### What It Would Do

This amendment would have allowed the Utah Legislature to amend or repeal any citizen-led initiatives and prohibit foreign influence on those initiatives. It also would have triggered companion legislation, Senate Bill 4003, that contains provisions granting extra time to collect signatures for citizen-led initiatives and stating that the Legislature must evaluate the intent of an initiative while amending it.

### Background

Citizen-led ballot initiatives are a form of direct democracy where citizen groups can draft a bill and, if they collect enough signatures, put that bill to vote before the entire state. If the bill gets enough votes, it becomes state law.

That is what happened in 2018 when Utah voters passed Proposition 4, which banned partisan gerrymandering and established an independent redistricting commission to draw congressional maps.

In 2021, the Legislature chose to repeal and replace Proposition 4, which allowed partisan gerrymandering and reduced the accountability of the Legislature to the independent redistricting commission.<sup>19</sup>

<sup>18</sup> LWVU v. Utah Legislature Per Curiam Decision, 2024, no 20240965, [https://utahnewsdispatch.com/wp-content/uploads/2024/09/Per-Curiam-Decision\\_104460274.pdf](https://utahnewsdispatch.com/wp-content/uploads/2024/09/Per-Curiam-Decision_104460274.pdf).

<sup>19</sup> Senate Bill 200, 2020 General Session, “Redistricting amendments,” <https://le.utah.gov/~2020/bills/static/SB0200.html>.

This move was challenged in a lawsuit filed by the League of Women Voters of Utah, which reached the Utah Supreme Court. The Supreme Court ruled against the Legislature in 2024, ruling that by repealing and replacing Proposition 4, the Legislature had violated the right of citizens to “alter or reform their government” found in the Declaration of Rights portion of the Utah Constitution.<sup>20</sup>

The Legislature responded by holding a special session and rapidly drafting the bill that has now become Amendment D, which would allow the Legislature to amend or remove any citizen-led initiatives.

Amendment D was challenged by the League of Women Voters of Utah and Mormon Women for Ethical Government on two grounds. First, it did not meet a requirement found in the Utah Constitution that amendment texts are to be published in a newspaper 60 days before the election. Second, the language written to present the amendment to voters on the November ballot was misleading, in part because it stated that it “strengthened” the initiative process while it actually gave the Legislature power to repeal any citizen-led initiatives.

A Utah Third District Court judge decided that (a) the ballot language was “counterfactual” in asserting that it strengthened the initiative process and (b) the Legislature failed to provide adequate notice of the amendment in a newspaper. These findings were upheld by the Utah Supreme Court.

It is of note that none of the other amendments on the 2024 ballot met the newspaper requirement. This requirement led to the voiding of Amendment A, but since there are no current legal challenges to B or C, it seems as they will remain on the ballot and counted.

### Analysis

The Utah Constitution empowers both the Legislature and the people with the power to create laws for the state.<sup>21</sup> It also states that “all political power is inherent in the people ... and they have a right to alter and reform their government.”<sup>22</sup> The Utah Supreme Court has ruled that while both people and the Legislature

<sup>20</sup> ULWV vs Legislature, 2024, No 20220991, <https://legacy.utcourts.gov/opinions/supopin/League%20of%20Women%20voters%20v.%20Utah%20State%20Legislature20240711.pdf>.

<sup>21</sup> Article I (2), [https://le.utah.gov/xcode/Article/Article\\_I\\_\\_Section\\_2.html?v=UC\\_AI\\_S2\\_1800010118000101](https://le.utah.gov/xcode/Article/Article_I__Section_2.html?v=UC_AI_S2_1800010118000101).

<sup>22</sup> Article VI (1)(b), [https://le.utah.gov/xcode/ArticleVI/Article\\_VI\\_\\_Section\\_1.html?v=UC\\_AVI\\_S1\\_1800010118000101](https://le.utah.gov/xcode/ArticleVI/Article_VI__Section_1.html?v=UC_AVI_S1_1800010118000101).

have lawmaking ability, the people should receive preference when attempting to alter or reform their government.<sup>23</sup> This amendment would have explicitly given legislative bodies preference over citizen initiatives even as it would have denied individuals the right to alter or reform their government.<sup>24</sup>

Opponents of this amendment prefer the status quo and the deference given to the initiative process – which is the method outlined in the Constitution for the people to utilize their legislative power.

Proponents point out that the Utah Supreme Court ruling created a unique class of legislation where the Legislature has a limited ability to repeal or alter laws. No other laws – whether in statute or in the constitution – require alterations or repeals to maintain the original intent of the legislation.

However, the Utah Supreme Court ruling affirms that the Legislature has the power to alter citizen-led ballot initiatives that alter or reform the government if they support or do not hinder the original intent of the legislation. It even allows for changes that are “narrowly tailored to advance a compelling government interest.”<sup>25</sup>

Additionally, many ballot initiatives would not have been given for the protected status provided by the Supreme Court. Only those initiatives that are seeking to alter or reform government are protected.<sup>26</sup> In 2018, there were two voter initiatives that did not address altering or reforming government: the expansion of Medicaid and legalizing medical marijuana. Accordingly, neither of these initiatives would have been subject to the provisions outlined by the Utah Supreme Court. The Legislature could (and did) alter or amend the statute created by these initiatives just as it could alter or amend any other statute.

If Amendment D had been allowed to count and had it passed, the companion legislation would have offered some protection to all initiatives, not just those altering or reforming the government. However, the Legisla-

ture retained several caveats that severely limit this claimed protection.<sup>27</sup>

This amendment also prohibits foreign influence in the initiative process. Proponents argue that this protects the initiative process. Opponents argue that the inclusion of a ban on foreign influence is not a compelling argument given that even supporters of the provision can cite no evidence of foreign influence on citizen initiatives in Utah in the past, although they are able to point to limited examples of foreign influence in other states.<sup>28</sup>

## Takeaway

A vote **for** the amendment would have changed the Utah Constitution to assert that the Legislature has the power to amend or repeal all citizen-led initiatives, even if the initiatives are altering or reforming the government. This would have countered a recent Utah Supreme Court decision. It would have also added language banning foreign influence on citizen-led initiatives. The companion legislation would have lengthened the amount of time allowed to gather signatures and granted statutory protections to the intent of the initiative, though with large caveats.

A vote **against** this amendment would have allowed the status quo, guided by the Utah Supreme Court decision limiting the Legislature’s ability to repeal or alter citizen-led initiatives that alter or reform government.

## More Information

Senate Joint Resolution 401, Fourth Special Session, “Proposal to amend Utah constitution – Voter Legislative Power,” <https://le.utah.gov/~2024S4/bills/static/SJR401.html>.

Senate Bill 4003, 2024 Fourth Special Session, “Statewide initiative and referendum amendments,” <https://le.utah.gov/~2024S4/bills/static/SB4003.html>.

23 ULWV vs Legislature, 2024, No 20220991, <https://legacy.utcourts.gov/opinions/supopin/League%20of%20Women%20Voters%20v.%20Utah%20State%20Legislature20240711.pdf>

24 ULWV vs Legislature, 2024, No 20220991, <https://legacy.utcourts.gov/opinions/supopin/League%20of%20Women%20Voters%20v.%20Utah%20State%20Legislature20240711.pdf>.

25 ULWV vs Legislature, 2024, No 20220991, <https://legacy.utcourts.gov/opinions/supopin/League%20of%20Women%20Voters%20v.%20Utah%20State%20Legislature20240711.pdf>.

26 ULWV vs Legislature, 2024, No 20220991, <https://legacy.utcourts.gov/opinions/supopin/League%20of%20Women%20Voters%20v.%20Utah%20State%20Legislature20240711.pdf>.

27 Caveats include if the law has an adverse fiscal impact, if a special session is called to address the law, after the law has been in place for a year, and the fact that the legislature leaves it up to itself as to whether its actions align with the general purpose of the initiative. See Senate Bill 4003, 2024 Fourth Special Session, “Statewide initiative and referendum amendments,” <https://le.utah.gov/~2024S4/bills/static/SB4003.html>.

28 Gerke, Robert, 2024, “Is foreign influence swaying Utahs’ ballot initiatives?,” <https://www.sltrib.com/news/politics/2024/08/23/is-foreign-influence-swaying/>.



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# ON THE BALLOT

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